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14 *Attorneys for Plaintiffs*

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 DENNIS SEIDER and LEAH SEIDER,
18 as Trustees of the Seider Family Trust,

19 Plaintiffs,

20 v.

21 CITY OF MALIBU, JOHN
22 AINSWORTH, in his official capacity as
23 Executive Director of the California
24 Coastal Commission, and DONNE
25 BROWNSEY, in her official capacity as
26 Chair of the California Coastal
27 Commission, CARYL HART, in her
28 official capacity as Vice-Chair of the
California Coastal Commission, DAYNA
BOCHCO, in her official capacity as
commissioner of the California Coastal
Commission, EFFIE TURNBULL-
SANDERS, in her official capacity as
commissioner of the California Coastal
Commission, SARA AMINZADEH, in her
official capacity as commissioner of the
California Coastal Commission, LINDA
ESCALANTE, in her official capacity as
commissioner of the California Coastal
Commission, MIKE WILSON, in his
official capacity as commissioner of the
California Coastal Commission,
CATHERINE RICE, in her official
capacity as commissioner of the California

No. 2:20-cv-8781-SPG-MRW

**FIRST AMENDED
COMPLAINT**

1 Coastal Commission, STEVE PADILLA,
2 in his official capacity as commissioner of
3 the California Coastal Commission,
4
5 Defendants.

6 INTRODUCTION

7 1. “The point of the First Amendment is that majority preferences must be
8 expressed in some fashion other than silencing speech on the basis of its content.”
9 *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 392 (1992). That is what we have
10 here: the enforcement of a City of Malibu ordinance, drafted and also enforced by
11 the California Coastal Commission, designed to further majority preferences for open
12 and public beach for all, regardless of private ownership of the beach. Plaintiffs
13 Dennis and Leah Seider bring this lawsuit because their proposed speech, as
14 described more fully below, does nothing more than lawfully and properly demarcate
15 the line between where the plaintiffs’ property line on the beach ends and the public’s
16 right of access to the beach begins. Because of the content of their sign, neither the
17 Commission nor the City will permit their speech. That is a content-based
18 impermissible restriction on speech, and the Court must declare it unconstitutional.
19 Hanging a sign on one’s property to declare it private property is a tradition likely as
20 old as the country itself, and prohibiting such a trifling amount of speech amounts to
21 nothing short of unconstitutional conduct that the Court cannot countenance.

22 2. The Seiders have an oceanfront home in Malibu, California. Their
23 property extends seaward to the mean high tide line. As a condition of the original
24 Commission-issued permit that authorized building the home, the last 25 feet of the
25 beach before the mean high tide line is burdened by a lateral access easement for the
26 benefit of the public, but much of the dry sand beach is unencumbered, private beach.
27 To put trespassers on notice and protect their property against future claims of
28 prescriptive rights, the Seiders want to put up a simple, truthful sign on their property
demarcating the boundary between unencumbered private property and the easement.

1 In the absence of a sign, members of the public have asserted the right to remain on
2 the Seiders’ private property—specifically citing the lack of signage.

3 3. In the Coastal Zone, California law requires a Coastal Development
4 Permit for most signs. The City of Malibu has primary jurisdiction and authority for
5 permitting. When Dennis inquired about obtaining a permit for the proposed sign,
6 Malibu’s planning director explained in no uncertain terms that Malibu could not
7 issue a permit for such a sign because the sign would violate a provision of the City’s
8 Local Implementation Plan (LIP) for coastal development that prohibits signs
9 “purport[ing] to identify the boundary between State tidelands and private property.”

10 4. Under the LIP, in instances where coastal development within Malibu
11 may “lessen or negate” the purpose of a Commission-issued permit condition, permit
12 applicants may also be required to obtain an amendment to that condition and
13 authorization for the proposed development. According to the LIP, that initial
14 determination is made by the Director of the Malibu Planning Commission.

15 5. Any permit applicant seeking an amendment to a previous permit
16 condition must proceed by applying directly to the Commission.

17 6. The Seiders’ proposed sign truthfully describing the lateral access
18 easement would not “lessen or negate” that condition of the original Commission-
19 issued permit, so the City is the proper permitting authority to which to apply.

20 7. If the City is not the proper permitting authority, the Commission has
21 authority to determine if the Seiders’ proposed sign complies with Malibu’s LIP and
22 the California Coastal Act.

23 8. Despite the fact that their proposed sign is expressly prohibited by the
24 LIP, the Seiders considered applying for a permit from the City anyway, but found
25 that Malibu requires them, as a condition of applying, to agree to indemnify the City
26 “from and against all liability and costs relating to the City’s actions concerning [the]
27 project, including (without limitation) any award of litigation expenses in favor of
28 any person or entity who seeks to challenge the validity of any of the City’s actions

1 or decisions in connection with [the] project.” Since the enforcement of this provision
2 could cause Dennis and Leah significant liability even if the permit were granted,
3 they chose not to apply and instead seek injunctive and declaratory relief.

4 9. In order to protect their property rights and vindicate their freedom of
5 speech, the Seiders bring this action seeking prospective relief that will guarantee
6 them the ability to apply for whichever permits and amendments are necessary
7 without the burden of content-based speech restrictions. This action also seeks a
8 declaration that the indemnification clause unconstitutionally conditions Dennis and
9 Leah’s free speech rights on the agreement to pay Malibu’s legal bills.

10 10. This case lies at the intersection between free speech and property rights.
11 Americans should not—and do not—need government permission to mark the
12 boundaries of their private property in order to enforce their fundamental right to
13 exclude trespassers. Neither the Commission nor the City can demand that the
14 Seiders forfeit both their First Amendment and property rights.

15 **JURISDICTION AND VENUE**

16 11. This action arises under the First Amendment to the United States
17 Constitution, incorporated against the States by the Fourteenth Amendment and
18 enforced through 42 U.S.C. § 1983. The Court has jurisdiction under 28 U.S.C.
19 §§ 1331 (federal question), 1343(a) (redress for deprivation of civil rights), and 1367
20 (supplemental jurisdiction). Declaratory relief is authorized by the Declaratory
21 Judgment Act, 28 U.S.C. §§ 2201-2202.

22 12. Venue is proper in this district under 28 U.S.C. § 1391(b)(1)-(2).
23 Defendant, the City of Malibu, is located within this district, and a substantial part of
24 the events giving rise to this claim have occurred in the Central District of California.

25 13. This Court is not prevented by Eleventh Amendment sovereign
26 immunity from exercising jurisdiction over state actors, such as the Coastal
27 Commission’s executive director and commissioners, if those officials are attempting
28 to enforce unconstitutional laws against the plaintiffs. *Ex parte Young*, 209 U.S. 123,

1 167 (1908). The Seiders seek only prospective declaratory and injunctive relief
2 against the executive director and commissioners. *See Seminole Tribe of Fla. v. Fla.*,
3 517 U.S. 44, 73 (1996).

4 14. A live controversy exists between the parties because the City of Malibu
5 and the Commission continue to prohibit the Seiders from posting a truthful sign
6 describing the limits of the parcel they own.

7 15. A live controversy also exists with respect to the indemnification
8 requirement because the City of Malibu continues to require permit applicants to
9 agree to indemnify the City in order to apply for a sign permit.

10 **PARTIES**

11 16. Plaintiff Dennis Seider is a retired attorney who practiced law in
12 California for over 40 years. He is an inactive member of the California bar. He and
13 his wife, Plaintiff Leah Seider, are Trustees and Trustors of the Seider Family Trust,
14 which owns the property located at 26642 Latigo Shore Drive in Malibu, California
15 (“the Property”).

16 17. Defendant City of Malibu is a municipality in Los Angeles County,
17 California. Pursuant to the Coastal Act, Defendant has had primary permitting
18 authority for all Coastal Development Permits, including the sign permit at issue in
19 this case, since the California Coastal Commission certified its Local Coastal
20 Program in 2002.

21 18. Defendant John Ainsworth, in his official capacity, is the Executive
22 Director of the California Coastal Commission. Mr. Ainsworth has the power and
23 responsibility to administer the affairs of the Commission, including its power to
24 consider amendments to existing coastal development permits under Title
25 14 California Code of Regulations, Section 13166.

26 19. Defendant Donne Brownsey, in her official capacity, is the chair of the
27 California Coastal Commission. Ms. Brownsey has the power and responsibility to
28 ensure the enforcement of and abide by the requirements of the California Coastal

1 Act, including Sections 30210, 30211, 30213, 30220, 30221, as well as Title
2 14 California Code of Regulations, Section 13166. As a Commissioner, Ms.
3 Brownsey would be entitled to vote on any material amendment or CDP application
4 that is heard by the Commission.

5 20. Defendant Dr. Caryl Hart, in her official capacity, is the vice-chair of
6 the California Coastal Commission. Dr. Hart has the power and responsibility to
7 ensure the enforcement of and abide by the requirements of the California Coastal
8 Act, including Sections 30210, 30211, 30213, 30220, 30221, as well as Title
9 14 California Code of Regulations, Section 13166. As a Commissioner, Dr. Hart
10 would be entitled to vote on any material amendment or CDP application that is heard
11 by the Commission.

12 21. Defendant Dayna Bochco, in her official capacity, is a Commissioner of
13 the California Coastal Commission. Ms. Bochco has the power and responsibility to
14 ensure the enforcement of and abide by the requirements of the California Coastal
15 Act, including Sections 30210, 30211, 30213, 30220, 30221, as well as Title
16 14 California Code of Regulations, Section 13166. As a Commissioner, Ms. Bochco
17 would be entitled to vote on any material amendment or CDP application that is heard
18 by the Commission.

19 22. Defendant Effie Turnbull-Sanders, in her official capacity, is a
20 Commissioner of the California Coastal Commission. Ms. Sanders has the power and
21 responsibility to ensure the enforcement of and abide by the requirements of the
22 California Coastal Act, including Sections 30210, 30211, 30213, 30220, 30221, as
23 well as Title 14 California Code of Regulations, Section 13166. As a Commissioner,
24 Ms. Turnbull-Sanders would be entitled to vote on any material amendment or CDP
25 application that is heard by the Commission.

26 23. Defendant Sara Aminzadeh, in her official capacity, is a Commissioner
27 of the California Coastal Commission. Ms. Aminzadeh has the power and
28 responsibility to ensure the enforcement of and abide by the requirements of the

1 California Coastal Act, including Sections 30210, 30211, 30213, 30220, 30221, as
2 well as Title 14 California Code of Regulations, Section 13166. As a Commissioner,
3 Ms. Aminzadeh would be entitled to vote on any material amendment or CDP
4 application that is heard by the Commission.

5 24. Defendant Linda Escalante, in her official capacity, is a Commissioner
6 of the California Coastal Commission. Ms. Escalante has the power and
7 responsibility to ensure the enforcement of and abide by the requirements of the
8 California Coastal Act, including Sections 30210, 30211, 30213, 30220, 30221, as
9 well as Title 14 California Code of Regulations, Section 13166. As a Commissioner,
10 Ms. Escalante would be entitled to vote on any material amendment or CDP
11 application that is heard by the Commission.

12 25. Defendant Mike Wilson, in his official capacity, is a Commissioner of
13 the California Coastal Commission. Mr. Wilson has the power and responsibility to
14 ensure the enforcement of and abide by the requirements of the California Coastal
15 Act, including Sections 30210, 30211, 30213, 30220, 30221, as well as Title
16 14 California Code of Regulations, Section 13166. As a Commissioner, Mr. Wilson
17 would be entitled to vote on any material amendment or CDP application that is heard
18 by the Commission.

19 26. Defendant Catherine Rice, in her official capacity, is a Commissioner
20 of the California Coastal Commission. Ms. Rice has the power and responsibility to
21 ensure the enforcement of and abide by the requirements of the California Coastal
22 Act, including Sections 30210, 30211, 30213, 30220, 30221, as well as Title
23 14 California Code of Regulations, Section 13166. As a Commissioner, Ms. Rice
24 would be entitled to vote on any material amendment or CDP application that is heard
25 by the Commission.

26 27. Defendant Steve Padilla, in his official capacity, is a Commissioner of
27 the California Coastal Commission. Mr. Padilla has the power and responsibility to
28 ensure the enforcement of and abide by the requirements of the California Coastal

1 Act, including Sections 30210, 30211, 30213, 30220, 30221, as well as Title
2 14 California Code of Regulations, Section 13166. As a Commissioner, Mr. Padilla
3 would be entitled to vote on any material amendment or CDP application that is heard
4 by the Commission.

5 28. In their official capacities, Executive Director Ainsworth and the
6 Commissioners are subject to federal lawsuits seeking prospective declaratory and
7 injunctive relief prohibiting them from acting in a manner inconsistent with the
8 United States Constitution. *Ex parte Young*, 209 U.S. 123.

9 **FACTUAL ALLEGATIONS**

10 ***Coastal Act and Malibu's Local Coastal Plan***

11 29. In 1976, California enacted the Coastal Act, Cal. Pub. Res. Code
12 § 30000, *et seq.*, in order to—among other things—“[m]aximize public access to and
13 along the coast and maximize public recreational opportunities in the coastal zone
14 consistent with sound resources conservation principles and constitutionally
15 protected rights of private property owners.” *Id.* § 30001.5(c).

16 30. The Coastal Act requires municipalities such as Malibu to create “Local
17 Coastal Programs” (“LCPs”) for certification by the Coastal Commission. *See id.*
18 § 30500(a) (“Each local government lying, in whole or in part, within the coastal
19 zone shall prepare a local coastal program for that portion of the coastal zone within
20 its jurisdiction.”); *id.* § 30512 (describing certification procedure). When the Coastal
21 Commission certifies an LCP, it vests the authority to grant or deny coastal
22 development permits (CDPs) to the local government, although it retains appellate
23 jurisdiction over permitting. *Id.* § 30519(a).

24 31. Malibu’s LCP was certified in 2002. As the City has noted, the LCP was
25 drafted by the Commission and forced upon the City, in part by state legislation.
26 Nevertheless, once the LCP was certified, the City assumed permitting authority
27 along its shoreline, including authority over sign permits. Once certified, no part of
28 an LCP can be amended without the Commission’s certification.

1 32. One portion of an LCP is a Local Implementation Plan (“LIP”),
2 which consists of ordinances enacted to implement the LCP. Malibu’s LIP,
3 current as of February 2019, is available here:
4 [https://www.malibucity.org/DocumentCenter/View/4421/Malibu-Local-
5 Implementation-Plan-LIP-?bidId=](https://www.malibucity.org/DocumentCenter/View/4421/Malibu-Local-Implementation-Plan-LIP-?bidId=) (last visited Oct. 10, 2022).

6 ***Malibu LIP’s Sign Permitting Scheme***

7 33. Malibu’s LIP subjects most signs to a permitting requirement.
8 Exempted signs are listed in Section 3.15.4(D) of the LIP.

9 34. For those signs requiring a permit, a permit applicant must seek a CDP
10 on a form provided by Malibu’s Planning Department. Permit applicants must pay a
11 fee and provide certain information, including current development on the property;
12 the proposed location of the sign; the proposed design, size, and colors of the sign;
13 how the sign will be attached; the sizes and dimensions of all other signs on the
14 property; photographs of the sides of all buildings on the property; and “[s]uch other
15 information as the Planning Department may require to secure compliance with this
16 Chapter.” LIP § 3.15.4(A)(9).

17 35. The Planning Manager then reviews all permit applications in light of
18 eleven criteria specified in the LIP. *Id.* § 3.15.4(B). Many of these criteria are
19 objective, but some are not. The Planning Manager must determine, for example, that
20 the proposed sign “is not detrimental to the public health, safety, or welfare,” that
21 “the size, shape, color, and placement of the sign is compatible with the
22 neighborhood,” and that “a proposed sign in close proximity to any residential district
23 does not adversely affect the quality or character of such residential area.” *Id.*
24 § 3.15.4(C).

25 36. Certain signs are prohibited altogether, such that no permit will issue for
26 them. LIP § 3.15.3. While most of these are content-neutral—such as the bans on
27 “[p]rojecting signs,” “[r]evolving signs,” and [d]evices dispensing bubbles and free
28 floating particles of matter”—Section 3.15.3(X) explicitly refers to the content of the

1 sign, prohibiting “[s]igns which restrict public access to State tidelands, public
2 vertical or lateral access easement areas, or which purport to identify the boundary
3 between State tidelands, and private property[.]” Although arguably this portion of
4 the LIP does not apply to the Seiders’ sign, since their sign identifies a boundary
5 between an easement over the private property and the unencumbered private
6 property, Malibu takes the position that this portion applies to the Seiders’ proposed
7 sign.

8 ***Commission jurisdiction over certain coastal development***

9 37. The California Coastal Commission retains authority over coastal
10 development permits previously issued by the Commission. LIP § 13.10.2. This
11 includes compliance with permit conditions. *Id.*

12 38. At the time a complete application for a Coastal Development Permit is
13 made, the Planning Manager “shall determine and inform the applicant” of all
14 applicable permit review procedures. *Id.*

15 39. If the coastal development is determined to “lessen or negate” the
16 purpose of “any specific permit condition,” the applicant “must seek to file an
17 application with the Coastal Commission for an amendment to the Commission-
18 issued coastal development permit and authorization for the proposed new
19 development” *Id.*; see also City of Malibu’s Motion to Dismiss, ECF No. 13, at
20 4, 17 (noting that the Planning Director must conduct a “threshold review for
21 jurisdiction,” and that Planning Commission review would take place “[w]ere the
22 Planning Director to determine that the Seiders’ proposed sign would not ‘lessen or
23 negate the purpose of’ a Commission-issued CDP”).

24 40. The Commission will then determine whether the application for
25 amendment shall be accepted for filing “pursuant to the provisions of Title 14
26 California Code of Regulations, Section 13166.” *Id.*

27 41. Under Title 14, California Code of Regulations, Section 13166, the
28 executive director “shall reject” any application for an amendment that “would lessen

1 or avoid . . . the intended effect of an approved” coastal development permit
2 condition.

3 42. An applicant may appeal the executive director’s determination to the
4 Commission. Title 14 Cal. Code Reg. § 13166(a)(1). If the Commission overturns
5 the executive director’s determination, the application must be referred to the
6 Commission for approval. The Commission shall approve the amendment only if it
7 finds by a majority vote that the amendment “conforms with the policies of Chapter
8 3 of the Coastal act or with a certified local coastal program if applicable.” *Id.*
9 § 13166(c).

10 ***Malibu CDP Application—Indemnification Clause***

11 43. Malibu requires property owners to fill out a form to begin the process
12 of applying for a CDP. The current form is available here:
13 [https://www.malibucity.org/DocumentCenter/View/13101/Application_Uniform?bi
14 dId=](https://www.malibucity.org/DocumentCenter/View/13101/Application_Uniform?bi
14 dId=) (last visited Oct. 10, 2022).

15 44. The permit application form includes an “indemnification clause,” to
16 which each applicant must agree before he or she may submit an application for a
17 CDP. The indemnification clause reads:

18 The property owners, and their successors in interest, shall indemnify
19 and defend the City of Malibu and its officers, employees and agents
20 from and against all liability and costs relating to the City’s actions
21 concerning this project, including (without limitation) any award of
22 litigation expenses in favor of any person or entity who seeks to
23 challenge the validity of any of the City’s actions or decisions in
connection with this project. The City shall have the sole right to choose
its counsel and property owners shall reimburse the City’s expenses
incurred in its defense of any lawsuit challenging the City’s actions
concerning this project.

24 ***Background on the Property***

25 45. In 1976, the Seiders’ predecessor-in-interest, Alexander Keith, sought a
26 permit from the then-existing South Coast Regional Commission (a predecessor
27 agency to the Coastal Commission) to build a single-family home on the Property.
28 The South Coast Regional Commission granted the permit on the condition that Keith

1 record a deed restriction granting lateral public access up to 25 feet inland of the
2 mean high tide line (except not where 25 feet inland would be within 5 feet of the
3 permitted structure). Upon information and belief, Keith recorded the deed
4 restriction. The permit grant is attached as Exhibit 1.

5 46. When the Seiders came into possession of the Property, they were
6 initially unaware of the deed restriction due to a mistake on the part of the title
7 insurance company. At one point, Dennis contested the validity of the lateral access
8 easement, but he now recognizes its validity.

9 47. In 2018, a sign reading “PRIVATE BEACH” was positioned on the
10 crossbeams below the Seiders’ house, facing the beach, in order to establish their
11 property ownership. A photograph of this location is attached as Exhibit 2.

12 48. On April 29, 2020, the Coastal Commission sent Dennis and Leah a
13 Notice of Violation of the California Coastal Act related to the “PRIVATE BEACH”
14 sign. The Coastal Commission stated that the sign was unpermitted, that its content
15 was contrary to the 1976 deed restriction, and that it violated Section 3.15.3(X) of
16 the Malibu LIP. The Coastal Commission gave Dennis and Leah until May 13, 2020,
17 to remove the sign. The Seiders removed the sign. This letter is attached as Exhibit
18 3.

19 49. Further, in August 2022, Dennis Seider discovered an online guide and
20 mobile app called “Our Malibu Beaches”, which describes itself as “The definitive
21 guide to the public beaches of Malibu.” <https://ourmalibubeaches.com/>.

22 50. The “Our Malibu Beaches” project is a collaboration between both
23 private and public entities, and has received state funding through the Santa Monica
24 Mountains Conservancy.

25 51. Further, Santa Monica Mountains Conservancy and California Coastal
26 Commission staff have actively worked with the app developers to provide
27 information about the location of public beaches within Malibu.
28

1 52. Dennis discovered that the Our Malibu Beaches online guide describes
2 the private portion of his beach as such: “2d house-high, wood, A-shaped roof—can
3 use dry sand for 25 ft from HTL, up to 5 ft from the house.” This does not accurately
4 describe the lateral access easement, which starts at the *mean high tide line* (and does
5 not ambulate with daily tides) and continues 25 feet landward, but never beyond the
6 5-foot privacy buffer adjacent to the house.

7 53. On August 28, 2022, Dennis emailed Jenny Price, Ben and John Adair
8 (the three creators of the app), Joe Edmiston (Executive Director of the Santa Monica
9 Mountains Conservancy), and George Lang (Director of the Conejo Recreation &
10 Park District), requesting that the language be updated to more truthfully convey the
11 nature of the lateral access easement. This email (and all replies described in ¶¶ 51–
12 53) are attached as Exhibit 9.

13 54. On August 29, 2022, Jenny Price responded, stating that “no one can
14 possibly know” where the MHTL is, and copying Linda Locklin, manager of the
15 Coastal Commission’s Coastal Access Program and a Commission staff member.

16 55. That same day, Dennis responded, noting that settled law affixes the
17 MHTL at average high tide mark over an 18.6 year period. *See Borax Consol. v. City*
18 *of Los Angeles*, 296 U.S. 10, 27 (1935).

19 56. Ms. Locklin responded shortly thereafter, repeating that “the Mean High
20 Tide Line moves every day and any survey that you perform only provides a HTL
21 for one point in time. . . . Thus it is not possible to set a specific line in the sand to
22 delineate the public/private line.

23 ***Dennis’ Attempt to Apply for a Sign CDP from Malibu***

24 57. Although Dennis took down the “PRIVATE BEACH” sign, the Seiders
25 sought to put up a replacement sign that would explain the existence of the lateral
26 access easement so as to not run afoul of the Coastal Commission’s objection.

27 58. Dennis and Leah needed the sign because, in the absence of signage,
28 they have dealt with an influx of trespassers who assume the beach behind the house

1 is entirely public. When Dennis politely informs these trespassers that much of the
2 dry sand is private property—and that the public only has an easement over the
3 remainder—beachgoers often appeal to the lack of signage in asserting that the beach
4 is public. A true and accurate sign is the only practical way for Dennis and Leah to
5 protect their property rights and avoid potential confrontations with beachgoers.
6 Although Dennis often welcomes beachgoers to stay for a particular day, he also
7 asserts his family’s property rights and informs the beachgoers of public beaches a
8 short distance away.

9 59. The COVID-19 pandemic exacerbated the problem. While many public
10 beaches were closed, more beachgoers intruded onto the private portion of the
11 Property. The lack of signage has significantly hindered the Seiders’ ability to
12 enforce their property rights, including their right to exclude trespassers.

13 60. For these reasons, Dennis sought to apply for a CDP from Malibu. On
14 June 1, 2020, he emailed Malibu Planning Director Bonnie Blue asking about the
15 permit process. He inquired:

16 I would like to apply for a permit to put up a sign on our house saying
17 something like “PRIVATE PROPERTY FROM THIS SIGN ___ FEET
18 SEAWARD AFTER WHICH THE PUBLIC HAS A LATERAL
19 ACCESS ALONG THE SHORE” or something similar that is
unambiguous and is still useful to the beach going public. I will have
the property surveyed so the sign is accurate. How is getting the permit
best done?

20 This email is included as part of Exhibit 4.

21 61. On June 9, 2020, Blue responded that “[a]ccording to the LCP, a sign
22 like this is not allowed. I’ve included the code section below. If you wanted to apply
23 anyway, a CDP would be needed.” The cited code section was LIP § 3.15.3(X), the
24 prohibition on “[s]igns which restrict public access to State tidelands, public vertical
25 or lateral access easement areas, or which purport to identify the boundary between
26 State tidelands, and private property[.]” This email is included as part of Exhibit 4.

27 62. On June 10, 2020, Dennis again emailed Blue, noting that he
28

1 thought the sign was worded so as to not offend the language of the LIP
2 prohibition as it does not restrict access to tidelands or lateral access
3 nor does it identify a boundary between our property and the tidelands
4 but does indicate instead delineate the boundary between our
unburdened property and that part of our property burdened by a public
lateral access

5 Dennis expressed concern that “we have quite a few folks that have come to sit under
6 our house or on the beach immediately in front of our house and when we come down
7 to use the beach they sometimes are abusive in their refusal to move, asking
8 ‘. . .Where does it say this is private property; this is the Republic of California—I
9 know my rights—I can sit wherever I want . . . etc.” This email is also included in
10 Exhibit 4.

11 63. Despite the denial, Dennis sought to apply for a CDP anyway. On
12 June 12, 2020, he downloaded the CDP application form described above (paragraph
13 43) and filled out most of it. However, he stopped at the indemnification clause and
14 refused to agree, believing that it could subject he and Leah to significant liability
15 whether or not the permit was ultimately granted.

16 64. On June 15, 2020, Dennis emailed Blue and the members of the Malibu
17 City Council to describe his problem with beachgoers trespassing on the private
18 portion of his beach. He noted that:

19 My neighbors and I have had an unusually large number of folks
20 coming to the beach at Latigo by walking down our private street and
21 using Tivoli Condominiums private stairs to access the sand, a series of
22 private beaches with some deeded lateral access, because the nearest
public access is blocked by the MRCA who states that it is being
blocked at the order of the Los Angeles County Board of Supervisors.

23 He urged that the City Council repeal the prohibition on his proposed sign. This email
24 is included in Exhibit 5. Blue wrote back on June 26 noting that any changes to the
25 LIP would have to be approved by the Coastal Commission. That response is
26 included in Exhibit 6.

27 65. On June 17 Dennis emailed Blue again, asking whether “an agreement
28 to indemnify the city” was a “necessary part of the application for a CDP regarding

1 a beach property sign.” This email is also included in Exhibit 4. Dennis noted: “I
2 certainly don’t have the money to engage in that kind of Litigation.” Blue indicated
3 in response on June 26 that Dennis could not apply for a permit without agreeing to
4 the indemnification provision. That response is included in Exhibit 6.

5 66. Due to the indemnification clause, Dennis decided not to formally apply
6 for a permit.

7 67. On June 29, 2020, Dennis and Leah had the Property surveyed by Chris
8 Nelson & Associates. The survey, which is attached as Exhibit 7, demarcates the
9 mean high tide line as well as the location of the lateral access easement. It shows a
10 significant portion of dry sand beach not within the easement.

11 68. On September 10, 2020, Dennis emailed Blue again and proposed an
12 alternative sign that would simply state the boundaries of the Property by reference
13 to the mean high tide line, rather than attempt to ascertain the location of the line.
14 The proposed sign would have read:

15 PRIVATE PROPERTY EXTENDS TO HOUSE FROM 25 FEET
16 LANDWARD OF MEAN HIGH TIDE LINE
17 TO INCLUDE 25 FOOT LATERAL PUBLIC ACCESS

18 Blue indicated that this sign, too, would run afoul of the LIP. A further email from
19 Blue emphasized that any sign on the beach describing the boundary of Dennis’s
20 private property would violate Section 3.15.3(X) of the LIP. These emails are
21 attached as Exhibit 8.

22 69. Blue’s September 10 response did invite Dennis to apply for a permit
23 with the new language, but Dennis was still unwilling to agree to the indemnification
24 clause. He also did not want to go through a futile permit application process. At no
25 point did Blue direct Dennis to apply to the Coastal Commission for an amendment
26 to the 1976 permit.

27 70. Although the mean high tide line is not a static location, it establishes
28 by reference the true boundary of the Property. The prohibition in Section 3.15.3(X)

1 of Malibu’s LIP prohibits Dennis and Leah from informing the public as to the true
2 and accurate boundaries of their property. They are unable to use the surveyed
3 location of the mean high tide line, the 18.6-year average, *see supra* ¶ __, or even
4 reference the mean high tide line itself on a sign. As such, they have no practical way
5 to enforce their property rights.

6 71. The prohibition in Section 3.15.3(X) also leaves Dennis and Leah at risk
7 of future claims of a prescriptive easement for the benefit of the public if they are not
8 permitted to post adequate signage demarcating their property. The Coastal
9 Commission openly solicits from the public evidence of public use over private
10 property as part of its ongoing efforts to obtain prescriptive rights against private
11 landowners. *See Public Access Prescriptive Rights, California Coastal Commission,*
12 [https://www.coastal.ca.gov/access/prescriptive-](https://www.coastal.ca.gov/access/prescriptive-rights/#:~:text=This%20is%20called%20a%20public,for%20significant%20public%20access%20benefits)
13 [rights/#:~:text=This%20is%20called%20a%20public,for%20significant%20public](https://www.coastal.ca.gov/access/prescriptive-rights/#:~:text=This%20is%20called%20a%20public,for%20significant%20public%20access%20benefits)
14 [%20access%20benefits](https://www.coastal.ca.gov/access/prescriptive-rights/#:~:text=This%20is%20called%20a%20public,for%20significant%20public%20access%20benefits).

15 ***Procedural history***

16 72. On March 1, 2021, this Court held that the California Coastal
17 Commission was a necessary party within the ambit of Federal Rule 19(a). The Court
18 dismissed with leave to amend and join the necessary parties. The Court further
19 dismissed the Seiders’ indemnification clause claims as unripe.

20 73. The Seiders timely appealed that ruling to the Ninth Circuit.

21 74. On June 1, 2022, the Ninth Circuit issued its opinion, affirming in part,
22 vacating, and remanding. The Panel held that the Commission was a necessary party
23 because it would have “primary jurisdiction” over the Seiders’ permit application,
24 because the proposed sign “although legally accurate, would ‘lessen’ the purpose of
25 maintaining maximum public access to the public parts of the beach.” *Seider as Tr.*
26 *of Seider Fam. Tr. v. City of Malibu*, No. 21-55293, 2022 WL 1769793, at *1 (9th
27 Cir. June 1, 2022).

1 75. While the Ninth Circuit affirmed the dismissal of Counts Three and
2 Four, it did not rule on ripeness, instead holding that such claims would only arise if
3 and when the Seiders were required to obtain a CDP from the City, but not when they
4 obtained an amendment or CDP directly from the Commission. *Id.* at *2.

5 76. On September 2, 2022, this Court ordered the Seiders to join the
6 California Coastal Commission or, if the Commission could not be joined, join the
7 individual Commissioners of the California Coastal Commission.

8 ***Any permit application to the City or Commission is futile***

9 77. The Seiders now find themselves in an impossible position. Section
10 13.10 of the LIP first requires that the Seiders make a “complete application” for a
11 CDP to the City of Malibu. At that point, the “Planning Manager shall determine and
12 inform the applicant of the applicable review procedures” under the LIP. LIP § 13.10.
13 This includes a determination of whether the proposed development is “[s]ubject to
14 the requirement for a Coastal Development Permit or permit amendment from the
15 Coastal Commission.” *Id.* § 13.10(A)(1). Where development would “lessen or
16 negate the purpose of any specific permit condition . . . of a Commission-issued
17 coastal permit”, the applicant “must seek to file an application with the Coastal
18 Commission” for an amendment and authorization for the proposed new
19 development. *Id.* § 13.10.2(B). Any such application is governed by Title 14
20 California Code of Regulations, Section 13166. *Id.*

21 78. The Ninth Circuit has held that the Seiders’ proposed sign “although
22 legally accurate, would ‘lessen’ the purpose” of the lateral access easement. *Seider*
23 *as Tr. of Seider Fam. Tr.*, 2022 WL 1769793, at *1.

24 79. Under Title 14 California Code of Regulations, Section 13166, the
25 Executive Director “shall reject” any application for an amendment “if he or she
26 determines that the proposed amendment would lessen . . . the intended effect of an
27 approved or conditionally approved permit”
28

1 80. Commission staff has previously confirmed this interpretation, noting in
2 their April 29, 2020 enforcement letter that “pursuant to Section 13166 of the
3 California Code of Regulations, Commission staff must reject an application to
4 amend a previously issued CDP if that amendment would lessen the intended effect
5 of the previously issued CDP” Exhibit 3.

6 81. Taken together, the Ninth Circuit ruling and Malibu LIP require the
7 Seiders to file an application that the governing regulations prohibit the executive
8 director from even accepting.

9 82. Even if such an application was accepted by the executive director,
10 Commission staff believes it “must reject” any sign that would “interfere with public
11 use of beach area required by a previously issued CDP to be open to the public.” *See*
12 Exhibit 3.

13 83. Additionally, the Seiders cannot avoid this procedural trap by applying
14 directly to the Commission for a CDP for their desired sign. The Commission has
15 previously stated that a sign that “purports to identify the boundary between state
16 tidelands and private property” is “a violation of both the City of Malibu’s LCP and
17 the Coastal Act.” Exhibit 3.

18 84. The Seiders are left in a Catch-22, where they are now substantively and
19 procedurally prohibited from obtaining a permit to post a “legally accurate” sign for
20 their property, and have no avenue available by which they may truthfully convey
21 information to the public about their private property. Left with no way to apply for
22 a CDP from the City or an amendment from the Commission without certain
23 rejection, they seek prospective relief in this Court.

FIRST CAUSE OF ACTION

(Violation of the First Amendment — Content Based Speech Restriction)

85. Plaintiffs hereby re-allege the allegations in the proceeding paragraphs as though fully set forth herein.

86. The First Amendment to the United States Constitution provides in relevant part that “Congress shall make no law . . . abridging the freedom of speech” U.S. Const. amend. I. The Fourteenth Amendment incorporates the First Amendment’s protections against the States. *Gitlow v. New York*, 268 U.S. 652, 666 (1925).

87. Defendant City of Malibu is a “person” within the meaning of 42 U.S.C. § 1983. *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 690 (1978). In denying Plaintiffs’ request for a CDP and enforcing the indemnification clause against Plaintiffs, Defendant acted under color of state law. Defendant retains policies, as part of the LIP certified by the Coastal Commission, which effectively prohibit the Seiders from obtaining the necessary CDP.

88. Defendants Executive Director John Ainsworth and the Commissioners, in their official capacities, are persons within the meaning of Section 1983 when, as here, they are sued for prospective relief to enjoin a violation of federal law under *Ex parte Young*. In their capacity as Executive Director and Commissioners, these defendants act under color of state law and enforce policies—the Commission-certified Malibu LCP, the Coastal Act, and Title 14 California Code of Regulations Section 13166, that effectively prohibit the Seiders from obtaining the necessary authorization to put up their sign because of the sign’s content.

89. The Supreme Court has held that content-based speech restrictions must satisfy strict scrutiny, “which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.” *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) (quoting *Ariz. Free Enterprise Club’s Freedom Club PAC v. Bennett*, 564 U.S. 721, 734 (2011)). A restriction on signs is

1 content-based when “[t]he only way to determine” whether a sign is prohibited is “to
2 evaluate the content and substantive message of the sign.” *G.K. Ltd. Travel v. City of*
3 *Lake Oswego*, 436 F.3d 1064, 1078 (9th Cir. 2006).

4 90. Because Defendants must read the content of Plaintiffs’ sign to
5 determine whether it is prohibited, Section 3.15.3(X) of Malibu’s LIP is a content-
6 based speech restriction. If Plaintiffs’ proposed sign read “PUBLIC WELCOME ON
7 BEACH,” it would not run afoul of any prohibition, even if it were the same size,
8 location, and color. It is the message of Plaintiffs’ sign—that their unencumbered
9 private property extends to a particular point, where a public easement begins—that
10 makes it illegal.

11 91. Further, Title 14 California Code of Regulations Section 13166
12 prohibits the executive director and commissioners from issuing amendments or
13 CDPs that would “lessen” the purpose of a previously issued-permit condition.
14 Because Defendants must read the content of Plaintiffs’ sign to determine whether it
15 is prohibited, Title 14 California Code of Regulations Section 13166 is a content-
16 based speech restriction as applied to the Seiders’ situation. The same is true of any
17 Section of the Coastal Act that Defendants might interpret to prohibit the Seiders’
18 sign based on its proposed content.

19 92. Defendants lack a compelling interest in preventing Plaintiffs from
20 posting a true and accurate sign demarcating their private property lines in order to
21 deter trespassers.

22 93. The LIP’s total prohibition of signs describing oceanfront property is
23 not narrowly tailored to any interest Defendants might have, such as promoting
24 public access to the beach. As applied to the Seiders, Section 3.15.3(X), Title 14
25 California Code of Regulations Section 13166, and any provision of the Coastal Act
26 that might be interpreted to prohibit the Seiders’ proposed sign because of its content
27 are content-based speech restrictions not narrowly tailored to further a compelling
28 government interest. The Seiders are therefore entitled to relief in the form of a

1 declaration that these provisions are unconstitutional as applied to their proposed sign
2 demarcating the true and accurate boundaries of their property. The Seiders are also
3 entitled to injunctive relief prohibiting Defendants from enforcing these provisions
4 against them.

5 **SECOND CAUSE OF ACTION**

6 **(Violation of the First Amendment — Prior Restraint)**

7 94. Plaintiffs hereby re-allege each and every allegation contained in the
8 preceding paragraphs as though fully set forth herein.

9 95. The First Amendment to the United States Constitution provides in
10 relevant part that “Congress shall make no law . . . abridging the freedom of speech
11” U.S. Const. amend. I. The Fourteenth Amendment incorporates the First
12 Amendment’s protections against the States. *Gitlow*, 268 U.S. at 666.

13 96. Defendant City of Malibu is a “person” within the meaning of 42 U.S.C.
14 § 1983. *Monell*, 436 U.S. at 690. In denying Plaintiffs’ request for a CDP and
15 enforcing the indemnification clause against Plaintiffs, Defendant acted under color
16 of state law.

17 97. Defendants Executive Director John Ainsworth and the Commissioners,
18 in their official capacities, are persons within the meaning of Section 1983 when, as
19 here, they are sued for prospective relief to enjoin a violation of federal law under *Ex*
20 *parte Young*. In their capacity as Executive Director and Commissioners, these
21 defendants act under color of state law and enforce policies—the Commission-
22 certified Malibu LCP, the Coastal Act, and Title 14 California Code of Regulations
23 Section 13166, that effectively prohibit the Seiders from obtaining the necessary
24 authorization to put up their sign because of the signs content.

25 98. Defendants retain policies, as part of the LIP certified by the Coastal
26 Commission, which grant reviewing officials nearly unbridled discretion to deny a
27 sign CDP even if Plaintiffs’ sign did not run afoul of Section 3.15.3(X) of the LIP or
28 the Coastal Act.

1 99. “Prior restraints on speech present some of the ‘most serious and the
2 least tolerable infringement’ on free speech rights.” *Cuviello v. City of Vallejo*, 944
3 F.3d 816, 831 (9th Cir. 2019) (quoting *Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 559
4 (1976)). A sign permitting scheme is a prior restraint on speech. *Desert Outdoor*
5 *Advert., Inc. v. City of Moreno Valley*, 103 F.3d 814, 818–19 (9th Cir. 1996).

6 100. Sign permitting criteria is an unconstitutional prior restraint on speech
7 when such criteria is not “sufficiently specific and objective so as to effectively place
8 some ‘limits on the authority of City officials to deny a permit.’” *Epona, LLC v.*
9 *County of Ventura*, 876 F.3d 1214, 1222 (9th Cir. 2017) (quoting *Moreno Valley*, 103
10 F.3d at 819).

11 101. Several criteria listed in the Malibu LIP—which either the Commission
12 reviewing an amendment application or the City reviewing a CDP application must
13 apply—require “broadly subjective determinations” on the part of City officials,
14 which renders them invalid prior restraints. *Desert Outdoor Advert., Inc. v. City of*
15 *Oakland*, 506 F.3d 798, 807 (9th Cir. 2007). These criteria are: the sign “is not
16 detrimental to the public health, safety, or welfare,” “the size, shape, color, and
17 placement of the sign is compatible with the neighborhood,” and that “a proposed
18 sign in close proximity to any residential district does not adversely affect the quality
19 or character of such residential area.” LIP § 3.15.4(C).

20 102. Because these three criteria essentially grant reviewing officials
21 “unbridled discretion” to deny a permit based on subjective criteria, a permit
22 requirement subject to such requirements is an unconstitutional prior restraint on
23 speech. *Epona*, 876 F.3d at 1222.

24 103. In order to justify a prior restraint, Defendants must demonstrate that the
25 restraint is justified without reference to the content of the speech, and is narrowly
26 tailored to serve a compelling governmental interest. Such amorphous criteria have
27 little meaning if not to regulate content—objective criteria suffice to limit the place
28

1 and manner of signage—and Defendants have no compelling interest in such
2 regulation.

3 104. Because Defendants may maintain a sign permitting scheme so long as
4 the criteria for obtaining a permit are specific and objective, Plaintiffs seek only a
5 declaration that the three criteria described in Paragraph 56 are unconstitutional both
6 on their face and as applied to Plaintiffs’ proposed sign. Plaintiffs are entitled to
7 injunctive and declaratory relief.

8 **THIRD CAUSE OF ACTION**

9 **(Indemnification Clause — Unconstitutional Condition)**

10 105. Plaintiffs hereby re-allege each and every allegation contained in the
11 preceding paragraphs as though fully set forth herein.

12 106. Defendant City of Malibu is a “person” within the meaning of 42 U.S.C.
13 § 1983. *Monell*, 436 U.S. at 690. In requiring Plaintiff to agree to the indemnification
14 clause, Defendant acted under color of state law.

15 107. The Supreme Court has “held that the Government ‘may not deny a
16 benefit to a person on a basis that infringes his constitutionally protected . . . freedom
17 of speech even if he has no entitlement to that benefit.’” *Agency for Int’l Dev. v.*
18 *Alliance for Open Soc’y Int’l, Inc.*, 570 U.S. 205, 214 (2013) (quoting *Rumsfeld v.*
19 *Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 59 (2006)).

20 108. If the Seiders must apply for a CDP from Malibu, the indemnification
21 clause substantially burdens Plaintiffs’ free speech rights—it effectively prohibits
22 them from even applying for a sign CDP unless they agree to pay a potentially
23 substantial, and certainly unknown, amount of money to defend Malibu against any
24 challenges, even frivolous challenges, that may arise as to its actions regarding the
25 permit. On its face, the indemnification clause applies both to permits grants and
26 denials, meaning that Plaintiffs would be forced to pay for Malibu’s defense of their
27 own suit challenging a permit denial. And even if Malibu granted a permit, Plaintiffs
28

1 may have to pay a significant sum should any third-party challenge Malibu’s decision
2 to grant the permit.

3 109. The potential for substantial liability chills Plaintiffs’ free speech rights
4 to the point of dissuading them from applying for a CDP.

5 110. Because the indemnification clause unconstitutionally conditions
6 Plaintiffs’ receipt of—and even application for—a permit to speak on such uncertain
7 and potentially substantial future liability, it is an unconstitutional condition as
8 applied to them. Plaintiffs are therefore entitled to injunctive and declaratory relief.

9 **FOURTH CAUSE OF ACTION**

10 **(Indemnification Clause — Infringement on First Amendment Rights)**

11 111. Plaintiffs hereby re-allege each and every allegation contained in the
12 preceding paragraphs as though fully set forth herein.

13 112. Defendant City of Malibu is a “person” within the meaning of 42 U.S.C.
14 § 1983. *Monell*, 436 U.S. at 690. In requiring Plaintiff to agree to the indemnification
15 clause, Defendant acted under color of state law.

16 113. Aside from being an unconstitutional condition on the ability to apply
17 for a CDP, the indemnification clause is also an unconstitutional infringement on
18 Plaintiffs’ free speech rights. Even content-neutral infringements like the
19 indemnification clause may pose First Amendment problems. Such “time, place, and
20 manner” restrictions must be narrowly tailored to further a significant government
21 interest. *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984); *Long*
22 *Beach Area Peace Network v. City of Long Beach*, 574 F.3d 1011, 1039–40 (9th Cir.
23 2009).

24 114. The City of Malibu may have a significant interest in protecting itself
25 from financial liability in the form of lawsuits, but the indemnification clause is not
26 narrowly tailored to protect that interest. Instead, it burdens far more speech than
27 necessary and chills expression by exposing Plaintiffs to an “unknown amount of
28 liability” *iMatter Utah v. Njord*, 980 F. Supp. 2d 1356, 1381 (D. Utah. 2013). Such

1 liability could result merely from organizations opposed to private ownership of the
2 beach deciding to sue Malibu should it grant the permit. *Cf. id.* (“The organization is
3 required to defend the State against all third-party claims alleging some action by a
4 member of the organization, even if those claims are frivolous. Third parties who
5 disagree with the content of the organization’s speech could use this tactic to punish
6 an organization after the event.”).

7 115. The indemnification clause is also overbroad because it would require
8 Plaintiffs to pay for the City’s defense of *their own suit* challenging Malibu’s decision
9 to deny a sign CDP.

10 116. Because the indemnification clause limits Plaintiffs’ free speech and is
11 not narrowly tailored to further a significant government interest, it is
12 unconstitutional. Plaintiffs are thus entitled to injunctive and declaratory relief.

13 **PRAYER FOR RELIEF**

14 1. An entry of judgment declaring that Section 3.15.3(X) of the Malibu
15 LIP, which restricts signs that “purport to identify the boundary between State
16 tidelands and private property,” is an unconstitutional content-based speech
17 restriction, and thus any reliance upon that section by Defendants to prohibit the sign
18 is unenforceable.

19 2. An entry of judgment declaring that the provisions of Title 14 California
20 Code of Regulations Section 13166 and the public access portions of the Coastal Act
21 are unconstitutional as applied to the Seiders to the extent they require Defendants to
22 engage in content-based speech restriction to prohibit the Seiders from posting a
23 legally-accurate sign describing their property.

24 3. An entry of a permanent injunction prohibiting Defendants from
25 enforcing LIP Section 3.15.3(X) as well as provisions of Title 14 California Code of
26 Regulations Section 13166 and the public access portions of the Coastal Act against
27 Plaintiffs, to the extent they require Defendants to engage in content-based speech
28

1 restriction to prohibit the Seiders from posting a legally-accurate sign describing their
2 property.

3 4. An entry of judgment declaring that the provisions of Section 3.15.4(B)
4 requiring the Malibu Planning Director—or the Commission in its capacity
5 reviewing an amendment application—to determine whether a sign “is not
6 detrimental to the public health, safety, or welfare,” that “the size, shape, color, and
7 placement of the sign is compatible with the neighborhood,” and that “a proposed
8 sign in close proximity to any residential district does not adversely affect the quality
9 or character of such residential area,” transform Malibu’s sign permitting process into
10 an unconstitutional prior restraint and therefore are facially unconstitutional.

11 5. An entry of judgment declaring that the provisions of Section 3.15.4(B)
12 referenced in the previous paragraph are unconstitutional as applied to Plaintiffs.

13 6. An entry of a permanent injunction prohibiting Defendants from
14 enforcing the challenged provisions of LIP Section 3.15.4(B) against Plaintiffs.

15 7. An entry of judgment declaring that the indemnification clause
16 contained in the City of Malibu’s CDP application form imposes an unconstitutional
17 condition on Plaintiffs’ free speech rights.

18 8. An entry of judgment declaring that the indemnification clause
19 unconstitutionally infringes Plaintiffs’ First Amendment rights.

20 9. An entry of a permanent injunction prohibiting Defendant from
21 requiring Plaintiffs to agree to the indemnification clause as a condition of applying
22 for a CDP.

23 10. An award of attorneys’ fees and costs in this action pursuant to 42
24 U.S.C. § 1988.

25 11. An award of any further legal or equitable relief this Court may deem
26 just and proper.

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DATED: October 20, 2022.

Respectfully submitted,
JEREMY TALCOTT
CHRISTOPHER M. KIESER

By s/ Jeremy Talcott
JEREMY TALCOTT

Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Central District of California by using the Court’s CM/ECF system.

I certify that the participants in the case who are registered CM/ECF users will receive service through the Court’s CM/ECF system.

I certify that the following is not registered and will be served via first-class U.S. Mail:

Trevor L. Rusin
Best Best & Krieger LLP
300 South Grand Ave., 25th Floor
Los Angeles, CA 90071
Counsel for Defendant City of Malibu

s/ Jeremy Talcott
JEREMY TALCOTT

CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION
SOUTH COAST REGIONAL COMMISSION
1000 BOGAN BOULEVARD, SUITE 3107
LOS ANGELES, CALIFORNIA 90001
(714) 846-0648
SAC-5071



RESOLUTION OF APPROVAL AND PERMIT

FILE COPY

Application Number: P-10-1-76-9059

Name of Applicant: Alexander Keith, 20475 Roca Chica Dr., Malibu,
CA, 90265

Permit Type: Standard
 Emergency

Development Location: 26642 Latigo Shore
Malibu, CA 90265

Development Description: 2-story SFD with 2-car garage

Commission Resolution:


- I. The South Coast Conservation Commission finds that the proposed development:
 - A. Will not have a substantial adverse environmental or ecological effect.
 - B. Is consistent with the findings and declarations set forth in Public Resources Code Sections 27001 and 27302.
 - C. Is subject to the following other resultant statutory provisions and policies:
County of Los Angeles ordinances
 - D. Is consistent with the aforesaid other statutory provisions and policies in that:
approval in concept has been issued.
 - E. The following language and/or drawings clarify and/or facilitate carrying out the intent of the South Coast Regional Zone Conservation Commission:
application, site map, plot plan and approval in concept.

Torrance by a unanimous vote hereby approves
(location)

the application for Permit Number P-6-17-76-8152/9059 pursuant to the California Coastal Zone Conservation Act of 1972, subject to the following conditions imposed pursuant to the Public Resources Code Section 27203: Prior to issuance of permit, applicant shall submit:
1. evidence that a deed restriction has been recorded granting lateral public access up to 25 inland from the mean high tide line, however, in no case will said dedication be nearer than 5 feet to the proposed development; and 2. revised plans indicating that no part of the proposed structure shall be built out to a point seaward of an imaginary string line drawn between the corners of the adjoining structures, a similar string line shall be used to limit the build out of any decks.

Condition/s Met On _____ By GL

- III. Said terms and conditions shall be perpetual and bind all future owners and possessors of the property or any part thereof unless otherwise specified herein.
- IV. The grant of this permit is further made subject to the following:
 - A. That this permit shall not become effective until the attached verification of permit has been returned to the South Coast Regional Conservation Commission upon which copy all permittees have acknowledged that they have received a copy of the permit and understood its contents. Said acknowledgement should be returned within ten working days following issuance of this permit.
 - B. Work authorized by this permit must commence within 360 days of the date accompanying the Executive Director's signature on the permit, or within 180 days of the date of the Regional Commission vote approving the project, whichever occurs first. If work authorized by this permit does not commence within said time, this permit will automatically expire. Requests for permit extensions must be submitted 30 days prior to expiration, otherwise, a new application will be required.
- V. Therefore, said Permit (Standard, Emergency) No. P-10-1-76-9059 is hereby granted for the above described development only, subject to the above conditions and subject to all terms and provisions of the Resolution of Approval by the South Coast Regional Conservation Commission.
- VI. Issued at Long Beach, California on behalf of the South Coast Regional Conservation Commission on November 26, 1976.


M. J. Carpenter
Executive Director



CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST DISTRICT OFFICE
89 SOUTH CALIFORNIA STREET, SUITE 200
VENTURA, CA 93001-2801
VOICE (805) 585-1800
FAX (805) 641-1732



**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT
VIA E-MAIL**

April 29, 2020

Dennis & Leah Seider
26642 Latigo Shore Drive
Malibu, CA 90265-4508

Subject: Notice of Violation¹ of the Coastal Act (V-4-19-0117)

Location: 26642 Latigo Shore Drive, Malibu, Los Angeles County,
California; APN 4460-020-007

Violation Description²: Placement of two "Private Beach" signs on the subject property that discourage public access to the beach and purport to identify the boundary between private property and state tidelands, without the benefit of a coastal development permit ("CDP") and in non-compliance with CDP No. P-10-76-9059.

Dear Dennis and Leah Seider:

It has come to the attention of California Coastal Commission ("Commission") staff that there are signs on your property that discourage public access and purport to identify the boundary between private property and state tidelands on Latigo Beach. Commission staff has confirmed that there are two signs on the property that claim the beach is private. An archival search was conducted, and no CDP for such signs were found. Thus, to the knowledge of Commission staff, both signs have been installed on your property without the benefit of a CDP from the City of Malibu or the Commission. Additionally, the public has the right to lateral access to areas of the beach above the mean high tide line, which was required as a condition of Commission CDP No. P-10-76-9059. Thus, the signs constitute non-compliance with Condition No. 1 of CDP No. P-10-

¹ Note that the term, "violation" as used throughout this letter, refers to alleged violations of the Coastal Act/City of Malibu Local Coastal Program, as determined by Commission staff.

² The description herein of the violation at issue is not necessarily a complete list of all development on the subject property that is in violation of the Coastal Act and/or City of Malibu LCP that may be of concern to the Commission. Accordingly, you should not treat the Commission's silence regarding (or failure to address) other development on the subject property as indicative of Commission acceptance of, or acquiescence in, any such development.

76-9059, in addition to being unpermitted.

The California Coastal Act³ was enacted by the State Legislature in 1976 to provide long-term protection of California's 1,260-mile coastline through implementation of a comprehensive planning and regulatory program designed to manage conservation and development of coastal resources. The California Coastal Commission is the state agency created by, and charged with administering, the Coastal Act of 1976. In making its permit and land use planning decisions, the Commission carries out Coastal Act policies, which, amongst other goals, seek to protect and restore sensitive habitats; protect natural landforms; protect scenic landscapes and views of the sea; protect against loss of life and property from coastal hazards; and provide maximum public access to the coast. The City of Malibu implements coastal resource protection policies through its Local Coastal Program ("LCP"), which was certified by the Commission in 2002. The subject property is located within the Coastal Zone in the City of Malibu, and all development in the Coastal Zone requires a CDP unless otherwise exempt, which is not the case here.

Unpermitted Development

Development is broadly defined by Section 30106 of the Coastal Act and Section 2.1 of the City of Malibu LCP:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973. [Underlining added for emphasis]

Installation of the subject signs constitutes placement of solid material. Additionally, these signs, which are affixed to the side of the residence facing Latigo Beach, a public beach, discourage public access. Discouraging access to public tidelands at Latigo Beach has resulted in a change in the intensity of use and access to state tidelands. Therefore, these signs constitute development for this reason as well. Commission staff has conducted a search of permit records and could not locate a CDP for the subject "Private Beach" signs affixed to the property

³ The Coastal Act is codified in sections 30000 to 30900 of the California Public Resources Code. All further section references are to that code, and thus, to the Coastal Act, unless otherwise indicated.

at 26642 Latigo Shore Drive along the beach fronting the public lateral access of Latigo Beach. As such, these signs are unpermitted.

Permit Violation

On November 26, 1976, the Commission approved CDP No. P-10-1-76-9059, which authorized the construction of a two-story single-family residence with a two-car garage at 26642 Latigo Shore Drive. CDP No. P-10-1-76-9059 included a condition of approval requiring recordation of a document that provides public lateral access on the beach. CDP No. P-10-1-76-9059 states, in relevant part:

Prior to the issuance of permit, applicant shall submit: (1) evidence that a deed restriction has been recorded granting lateral public access up to 25' inland from the mean high tide line, however, in no case will said dedication be nearer than 5 feet to the proposed development.

The deed restriction, which was recorded on the property title on October 7, 1976, granted public lateral access in perpetuity, 25 feet landward of the mean high tide line with a 5-foot privacy buffer from the deck dripline. The requirements for the provision of public lateral access on your property are in perpetuity and do not expire. The "Private Beach" signs discourage public access and purport to identify the boundary between private property and public beach at Latigo Beach. Accordingly, Commission staff has determined that the above-mentioned "Private Beach" signs are in violation of condition No. 1 of CDP No. P-10-1-75-9059.

Development is Inconsistent with the Coastal Act and Malibu LCP Public Access Policies

Even if a CDP for the signs had been applied for (which was not the case here), it is unlikely that Commission staff would recommend approval of the signs since the signs are inconsistent with the Coastal Act and City of Malibu LCP public access policies⁴, including, but not limited to the following sections:

Coastal Act Section 30210:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. [Emphasis added]

Coastal Act Section 30211:

⁴ Malibu LCP Local Implementation Plan Chapter 12 – Public Access Ordinance states its purpose is to achieve the basic state goals of maximizing public access to the coast and public recreational opportunities, as set forth in the California Coastal Act codified at sections 30000 through 30900 of the California Public Resources Code (PRC).

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Coastal Act Section 30213

Lower cost visitor and recreational facilities shall be protected, encouraged, and where feasible, provided. Developments providing public recreational activities are preferred.

Coastal Act Section 30220

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Coastal Act Section 30221

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Moreover, pursuant to Section 13166 of the California Code of Regulations, Commission staff must reject an application to amend a previously issued CDP if that amendment would lessen the intended effect of the previously issued CDP, as an application to authorize the signs at issue would do, since the signs interfere with public use of beach area required by a previously issued CDP to be open to the public.

Preserving the public's right of access is a high priority for the Coastal Commission. Section 30210 of the Coastal Act requires that "maximum access...and recreational opportunities shall be provided for all the people" and Section 30211 requires that "[d]evelopment shall not interfere with the public's right of access to the sea." Sections 30213, 30220, and 30221 of the Coastal Act further require coastal areas that provide recreational use be protected. The posted "Private Beach" signs deter the public from utilizing the available beach area below the mean high tide line, which is guaranteed for public use, and above the mean high tide line where public rights exists. Thus, this case of unpermitted development, specifically signage placed on the subject property discouraging use of the beach, conflicts with the policies of the Coastal Act Sections 30210, 30211, 30213, 30220, and 30221 and the City of Malibu LCP that ensure the public has coastal access and recreation opportunities.

Additionally, the City of Malibu LCP contains specific provisions about signs, including Section 3.15.3 (X), which states:

Signs which restrict public access to State tidelands, public vertical or lateral access easement areas, or which purport to identify the boundary between State tidelands, and private property shall not be permitted.

Here, two “Private Beach” signs restrict access to state tidelands that may be used by members of the public. In addition, the signs restrict access to an area that is deed restricted for public use as required by CDP No. P-10-1-75-9059. These types of signs are expressly prohibited by the LCP. By making the representation that the beach next to the residence is private, the subject signs discourage the public from using the beach area that is deed restricted for public access and the beach area at and below the mean high tide line, thus restricting public access to public beach and state tidelands, an activity prohibited by Section 3.15(X) of the Malibu LCP. Furthermore, the same LCP section prohibits signs that purport to identify the boundary between state tidelands and private property. The subject signs, in representing that the beach seaward of the property is private, purport to represent the boundary between the state tidelands and the adjacent private property, and thus violate Section 3.15.3 (X). Malibu’s LCP Section 3.15.2 (J) states that the goals of the regulations on signs include, “to protect and provide for public access to and along the shoreline. . . .” Public access to beaches, including Latigo Beach, should be protected. For these reasons, the unpermitted “Private Beach” signs are a violation of both the City of Malibu’s LCP and the Coastal Act.

Enforcement Remedies for Violations of the Coastal Act

The entire City of Malibu is within the Coastal Zone, and the City has permit and enforcement jurisdiction over all matters in the City extending landward from the mean high tide line. Though the signs have been placed on property that is within the jurisdiction of the City of Malibu, the Commission may assume primary responsibility for enforcement of Coastal Act violations that restrict access to state tidelands and that constitute non-compliance with a Commission-issued CDP, as is the case here.

In 2014, the legislature amended the Coastal Act to add Section 30821, which authorizes the Commission to administratively impose penalties for access-related violations of the Coastal Act, up to \$11,250 per day for each violation. Please be aware that in addition to this ability to impose administrative fines, there are a number of remedies available to the Commission to address violations of the Coastal Act.

Section 30809 states that if the Executive Director of the Commission determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit, or is inconsistent with any permit previously issued by the Commission, the Executive Director may issue an order directing that person to cease and desist. Section 30810 states that the Coastal Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. Section 30821.6 states that intentionally or negligently violating a cease and desist order can result in fines of up to \$6,000 per day.

Section 30820(a)(1) provides that any person who performs development in violation of any provision of the Coastal Act may be subject to a penalty amount that shall not exceed \$30,000 and shall not be less than \$500 per violation. Section 30820(b) states that, in addition to any other penalties, any person who “knowingly and intentionally” performs or undertakes any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 per violation, per day for each day in which the violation persists.

An Amicable Resolution is Preferred

To avoid formal enforcement action, we are requesting that you remove the “Private Beach” signs and submit photos and written confirmation that the signs have been removed **by May 13, 2020**. We would prefer to resolve this situation amicably, however, should you decline to remove the unpermitted “Private Beach” signs voluntarily, Commission staff will consider beginning formal proceedings (1) for issuance of a cease and desist order compelling removal of subject signs, and (2) to assess administrative penalties pursuant to Section 30821 and/or civil penalties under Section 30820 of the Coastal Act.

Thank you in advance for your prompt attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at An.Nguyen@coastal.ca.gov or my supervisor, Andrew Willis, at Andrew.Willis@coastal.ca.gov. Given that public counter hours for all Commission offices are currently suspended in light of COVID-19, we request that you respond to this letter by email to An.Nguyen@coastal.ca.gov. Please confirm your receipt of this letter by email by May 6, 2020.

Sincerely,



An Nguyen
South Central Coast District Enforcement Officer

cc:

Tina Segura, Enforcement Officer, CCC
Andrew Willis, Enforcement Supervisor, CCC
Lisa Haage, Chief of Enforcement, CCC
Steve Hudson, Deputy Director, CCC
Barbara Carey, District Manager, CCC
Linda Locklin, Coastal Access Program Manager CCC
Doug Cleavenger, City of Malibu Code Enforcement

Re: Question re: CDP for a sign on the beach

Dennis Seider <dennisseider1@gmail.com>

Wed 6/17/2020 6:51 PM

To: Bonnie Blue <bblue@malibucity.org>

Hi Bonnie

Still hoping my suggested wording avoids the issues you raised; I am waiting for your further response.

While I was waiting I printed a copy of the planning department application for what I think would be a CDP to post a sign and in the application I saw that there was a provision to indemnify the city if any lawsuit was brought either as a result of granting or denying the permit. I certainly don't have the money to engage in that kind of litigation. Is an agreement to indemnify the city a necessary part of the application for a CDP regarding a beach property sign?

Thanks for your help.
Dennis

Sent from my iPhone
DENNIS J SEIDER

On Jun 10, 2020, at 10:12 AM, Dennis Seider <dennisseider1@gmail.com> wrote:

Hi Bonnie:

Thanks for getting back to me, even belatedly.

I thought the sign was worded so as to not offend the language of the LIP prohibition as it does not restrict access to tidelands or lateral access nor does it identify a boundary between our property and the tidelands but does indicate instead delineate the boundary between our unburdened property and that part of our property burdened by a public lateral access; perhaps you can think of wording you like better because we have quite a few folks that have come to sit under our house or on the beach immediately in front of our house and when we come down to use the beach they sometimes abusive in their refusal to move, asking "...Where does it say this is private property; this is the Republic of California---I know my rights---I can sit wherever I want...etc." Without a sign giving fair notice it is hard to blame the beach goer; on the other hand if our own City law prohibits giving fair notice what are we to do?

Thanks for your considered response.
Dennis

On Tue, Jun 9, 2020 at 11:47 PM Bonnie Blue <bblue@malibucity.org> wrote:

Exhibit 4 - 29

Hi Dennis,

I'm sorry for the delay in responding to you. According to the LCP, a sign like this is not allowed. I've included the code section below. If you wanted to apply anyway, a CDP would be needed.

Here is the section:

Local Implementation Plan Section 3.15.3(X):

3.15.3 Prohibited Signs

Except for those signs allowed under the provisions of Section 3.15.4 (E) of the Malibu LIP, "Special permits," the following signs are prohibited:

- X. Signs which restrict public access to State tidelands, public vertical or lateral access easement areas, or which purport to identify the boundary between State tidelands, and private property shall not be permitted.

Bonnie Blue

Planning Director

310-456-2489 ext. 258

From: Dennis Seider <dennisseider1@gmail.com>
Sent: Monday, June 1, 2020 3:46 PM
To: Bonnie Blue <bblue@malibucity.org>
Subject: Re: Please do not cede Malibu City enforcement jurisdiction to the California Coastal Commission

Hi Bonnie:

Hope you are well and staying safe. I look forward to more stable and sane times. Malibu feels like an oasis for which I am grateful.

Exhibit 4 - 30

I would like to apply for a permit to put up a sign on our house saying something like "PRIVATE PROPERTY FROM THIS SIGN ___ FEET SEAWARD AFTER WHICH THE PUBLIC HAS A LATERAL ACCESS ALONG THE SHORE" or something similar that is unambiguous and is still useful to the beach going public. I will have the property surveyed so the sign is accurate. How is getting the permit best done?

Thanks you,

Dennis

--

DENNIS SEIDER

Re: Question re: property signs on the beach

Dennis Seider <denniseider1@gmail.com>

Fri 7/17/2020 2:56 PM

To: Karen Farrer <kfarrer@malibucity.org>
Cc: Bonnie Blue <bblue@malibucity.org>

Dear friends:

I hope you guys are well and are managing under the case and application loads that you are both dealing with now on a daily basis.

Have you had any news or feedback regarding our proposed amendment to the LIP which would allow coastal residents to post signs on their property showing the true dimensions of their property?

Thank you,
Dennis

Sent from my iPhone
DENNIS J SEIDER

On Jun 15, 2020, at 2:31 PM, Karen Farrer <kfarrer@malibucity.org> wrote:

Thank you, Dennis.

I forwarded your email to city manager Reva Feldman the moment I read it, about an hour ago. Thank you for keeping us in the loop. Will circle back ASAP.

Karen Farrer

Mayor
City of Malibu

On Jun 15, 2020, at 12:24 PM, Dennis Seider <denniseider1@gmail.com> wrote:

Dear Bonnie and Council Members:

Thanks again for your service.

My neighbors and I have had an unusually large number of folks coming to the beach at Latigo by walking down our private street and using Tivoli Condominiums private stairs to access the sand, a series of private beaches with some deeded lateral access, because the nearest public access is blocked by the MRCA who states that it is being blocked at the order of the Los Angeles County Board of Supervisors.

Years ago I posted a sign, as we and others on our street have for over 70 years, which advised beach goers of what part of the beach was private. Recently I was mailed a notice of violation that my sign was un-permitted, among other things, and had to be taken down or I would be subject to various penalties amounting to several thousand dollars a day up to \$5,000,000.00.

I took the signs down and asked Bonnie Blue if she would counsel me on the procedure to follow in order to get a permit (CDP) to allow the signs:

"I would like to apply for a permit to put up a sign on our house saying something like "PRIVATE PROPERTY FROM THIS SIGN ___ FEET SEAWARD AFTER WHICH THE PI LATERAL ACCESS ALONG THE SHORE" or something similar that is unambiguous and is still useful to the beach going public. I will have the property surveyed so the sign How is getting the permit best done?"

Her response was that such a permit could not be given because:

"I'm sorry for the delay in responding to you. According to the LCP, a sign like this is not allowed. I've included the code section below. If you wanted to apply anyway, a

Exhibit 5 - 32

CDP would be needed.

Here is the section:

Local Implementation Plan Section 3.15.3(X):

3.15.3 Prohibited Signs

Except for those signs allowed under the provisions of Section 3.15.4 (E) of the Malibu LIP, "Special permits," the following signs are prohibited:

- X. Signs which restrict public access to State tide lands, public vertical or lateral access easement areas, or which purport to identify the boundary between State and private property shall not be permitted.

Bonnie Blue
 Planning Director
 310-456-2489 ext. 258"

Often I am challenged by beach goers in front of our house on what is private and public and the question that arises is "Where does it say that?" and if I have no sign there is I can think of to reference and there is no notice to the innocent beach goer of what is or is not public. This has led to heated exchanges that robs us all of the serenity the sea and beach otherwise provides.

As Bonnie has pointed out such a sign will not be permitted because it "... is not allowed". Can we amend this LIP so that signs giving proper notice of public easements and property can be permitted and posted?

If not I am afraid we may get involved in a matter whose solution will be fashioned by others and at much greater expense.

Thank you,
 Dennis

On Tue, Jun 9, 2020 at 11:47 PM Bonnie Blue <bblue@malibucity.org> wrote:

Hi Dennis,

I'm sorry for the delay in responding to you. According to the LCP, a sign like this is not allowed. I've included the code section below. If you wanted to apply anyway, a CDP would be needed.

Here is the section:

Local Implementation Plan Section 3.15.3(X):

3.15.3 Prohibited Signs

Except for those signs allowed under the provisions of Section 3.15.4 (E) of the Malibu LIP, "Special permits," the following signs are prohibited:

X. Signs which restrict public access to State tidelands, public vertical or lateral access easement areas, or which purport to identify the boundary between State tidelands, and private property shall not be permitted.

Bonnie Blue
Planning Director
310-456-2489 ext. 258

From: Dennis Seider <dennisseider1@gmail.com>
Sent: Monday, June 1, 2020 3:46 PM
To: Bonnie Blue <bblue@malibucity.org>
Subject: Re: Please do not cede Malibu City enforcement jurisdiction to the California Coastal Commission

Hi Bonnie:

Hope you are well and staying safe. I look forward to more stable and sane times. Malibu feels like an oasis for which I am grateful.

I would like to apply for a permit to put up a sign on our house saying something like "PRIVATE PROPERTY FROM THIS SIGN__FEET SEAWARD AFTER WHICH THE PUBLIC HAS A LATERAL ACCESS ALONG THE SHORE" or something similar that is unambiguous and is still useful to the beach going public. I will have the property surveyed so the sign is accurate. How is getting the permit best done?

Thanks you,

Dennis

--
DENNIS SEIDER

From: Bonnie Blue <bblue@malibucity.org>
Date: June 26, 2020 at 1:50:14 PM MDT
To: Dennis Seider <dennisseider1@gmail.com>, Karen Farrer <kfarrer@malibucity.org>
Cc: Reva Feldman <rfeldman@malibucity.org>
Subject: RE: Question re: CDP for a sign on the beach

Hi Dennis,

I'm sorry not to get back to you sooner. I can understand your frustration by the situation you are facing and unfortunately it's going to sound like I have nothing but bad news. Sorry about that.

The indemnification is a standard requirement for filing any type of application with the city and for accepting any permit that is approved by the city. I don't have any flexibility to change that.

In terms of amending the LCP to revise the language, it would be up to the Council to add that amendment to the adopted Work Plan for the staff. That change would also ultimately have to be certified by the Coastal Commission in order to become effective.

Bonnie Blue
Planning Director
310-456-2489 ext. 258

From: Dennis Seider <dennisseider1@gmail.com>
Sent: Friday, June 26, 2020 12:37 PM
To: Bonnie Blue <bblue@malibucity.org>; Karen Farrer <kfarrer@malibucity.org>
Subject: Re: Question re: CDP for a sign on the beach

Hi Bonnie/Karen:

I hope you are staying out of trouble and feeling well. We are fine.

I am at a loss on what to do about private property signage on the beach. You have told me I cannot post private beach property without a CDP but have told me I will not get a CDP because under "the provisions of Section 3.15.4 (E) of the Malibu LIP, "Special permits," the following signs are prohibited:

Exhibit 6 - 35

X. Signs which restrict public access to State tidelands, public vertical or lateral access easement areas, or which purport to identify the boundary between State tidelands, and private property shall not be permitted.

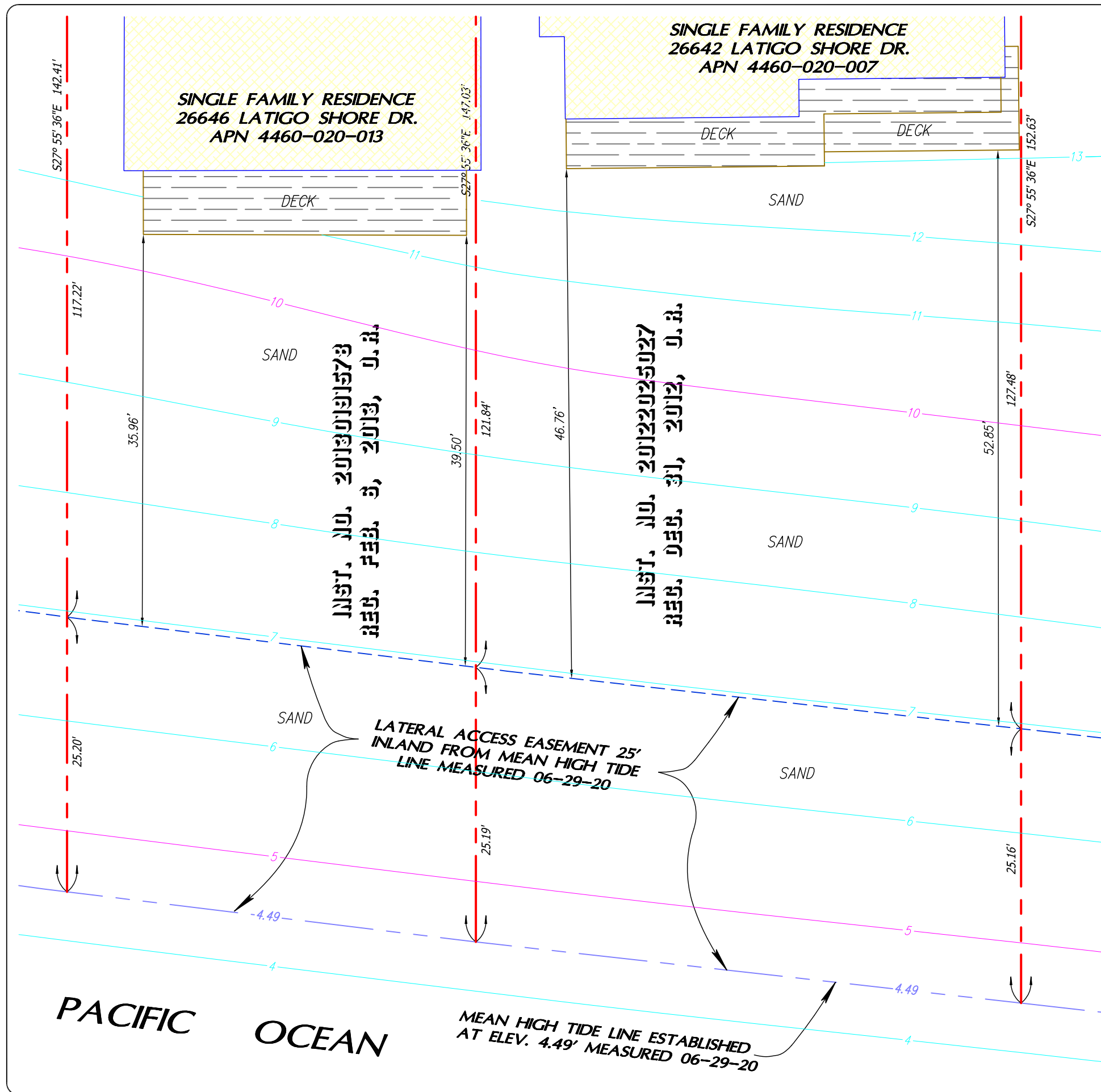
While I was waiting for your further guidance on my proposed language I printed a copy of the planning department application for what I think would be a CDP allowing me to post a private property sign and in the application I saw that there was a provision requiring me to indemnify the city if any lawsuit was brought either as a result of granting or denying the permit. I certainly don't have the money to engage in that kind of litigation. Is an agreement to indemnify the city a necessary part of the application for a CDP regarding a beach property sign?

Finally I asked the City Council if they could amend the cited law so that it allowed posting of private property with an easy to understand reference to the dimensions of the private part and the part reserved for the public to pass and repass so that a futile application would not be needed. I have not heard back.

Please let me know what you as a City will or will not do so I may be guided accordingly.

Thank you both,
Dennis

DENNIS J SEIDER



BASIS OF BEARINGS:

BASIS OF BEARINGS FOR THIS SURVEY IS TRANSIT LINE OF PACIFIC COAST HIGHWAY, AS SHOWN ON THE RECORD OF SURVEY, BOOK 119 PAGE 69 AS N 55°33'59\"/>

BENCH MARK:

B.M. NO. DY11691 NAVD 1988 LOS ANGELES COUNTY PUBLIC WORKS

L&BR IN S CB CORRAL CYN RD 300MM (1') E/O BCR 8.5M (28') S/O C/L & 26.5M (87') ELY/O C/L PACIFIC COAST HWY @ PP#X8807E

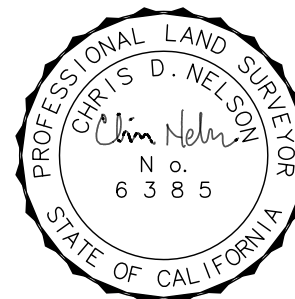
ELEVATION = 34.824 FEET (ADJUSTMENT 2008)

NOTES:

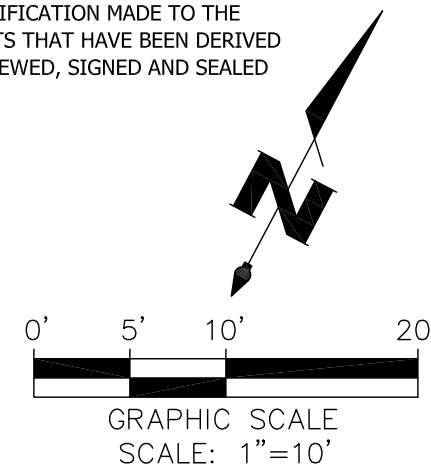
1. THE BOUNDARIES SHOWN HEREON ARE PER INST. NO. 20122025027, RECORDED DECEMBER 31, 2012, AND PER INST. NO. 20130191578, RECORDED FEBRUARY 6, 2013.
2. THIS MAP WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT. EXISTING EASEMENTS (IF ANY) ARE NOT SHOWN HEREON.

ATTENTION:

IF THIS MAP IS PROVIDED IN AN ELECTRONIC FORMAT (IE: CAD) AS A COURTESY TO A CLIENT, THE DELIVERY OF THE ELECTRONIC FILE DOES NOT CONSTITUTE THE DELIVERY OF OUR PROFESSIONAL WORK PRODUCT. ONLY THE SURVEYOR'S SIGNED AND SEALED PAPER PRINT OR PDF FORMATTED DRAWING CONSTITUTES OUR PROFESSIONAL WORK PRODUCT. IN THE EVENT THAT THE ELECTRONIC FILE IS ALTERED, THE SURVEYOR'S SIGNED AND SEALED PRINT OR PDF FORMATTED DRAWING MUST BE REFERRED TO FOR THE ORIGINAL AND CORRECT SURVEY INFORMATION. CHRIS NELSON AND ASSOCIATES, INC., SHALL NOT BE RESPONSIBLE FOR ANY MODIFICATION MADE TO THE PROVIDED CAD FILE, OR FOR ANY PRODUCTS THAT HAVE BEEN DERIVED FROM THE CAD FILE, WHICH ARE NOT REVIEWED, SIGNED AND SEALED BY US.



DATED: 07/06/2020



JOB NO. 20-5361
SCALE: 1" = 10'
DATE: JULY, 2020
SHEET: 1 OF 1

PREPARED FOR:
DENNIS SEIDER
26642 LATIGO SHORE DR.
MALIBU, CA 90265

SITE SURVEY
A PORTION OF LOT 6
OF THE RANCHO TOPANGA MALIBU SEQUIT
26642 & 26646 LATIGO SHORE DRIVE,
CITY OF MALIBU, COUNTY OF LOS ANGELES

Chris Nelson
SURVEYORS AND ENGINEERS & ASSOCIATES, INC.
31238 Via Colinas Suite H, Westlake Village, CA. 91362
P: 818.991.1040 F: 818.991.0614
www.chrisnelsonassociates.com

While I was waiting for your further guidance on my proposed language I printed a copy of the planning department application for what I think would be a CDP allowing me to post a private property sign and in the application I saw that there was a provision requiring me to indemnify the city if any lawsuit was brought either as a result of granting or denying the permit. I certainly don't have the money to engage in that kind of litigation. Is an agreement to indemnify the city a necessary part of the application for a CDP regarding a beach property sign?

Finally I asked the City Council if they could amend the cited law so that it allowed posting of private property with an easy to understand reference to the dimensions of the private part and the part reserved for the public to pass and repass so that a futile application would not be needed. I have not heard back.

Please let me know what you as a City will or will not do so I may be guided accordingly.

Thank you both,
Dennis

DENNIS J SEIDER

Re: request to correct beach access errors in the "Our Malibu Beaches" on line guide

Dennis Seider <dennisseider1@gmail.com>

Thu 9/15/2022 12:51 PM

To: Locklin, Linda@Coastal <Linda.Locklin@coastal.ca.gov>

Cc: JJ <stopsavingthepianet@gmail.com>; info@western-sound.com <info@western-sound.com>; George Lange <glange@crpd.org>; JOE EDMISTON <edmiston@smmc.ca.gov>; Kailyn Brown <kailyn.brown@latimes.com>

Thanks; much appreciated.

Dennis

Sent from my iPhone

DENNIS J SEIDER

On Sep 15, 2022, at 11:29 AM, Locklin, Linda@Coastal <Linda.Locklin@coastal.ca.gov> wrote:

I will discuss this information with State Lands Commission staff and let you know what I find out.

From: Dennis Seider <dennisseider1@gmail.com>

Sent: Wednesday, September 14, 2022 1:59 PM

To: Locklin, Linda@Coastal <Linda.Locklin@coastal.ca.gov>

Cc: JJ <stopsavingthepianet@gmail.com>; info@western-sound.com; George Lange <glange@crpd.org>; JOE EDMISTON <edmiston@smmc.ca.gov>; Kailyn Brown <kailyn.brown@latimes.com>

Subject: Re: request to correct beach access errors in the "Our Malibu Beaches" on line guide

Hi Linda

I have not asked anyone yet but found this explanation on the NOAA website suggesting it has delineated the littoral property boundary throughout the United States, including Malibu.

Here is what NOAA said:

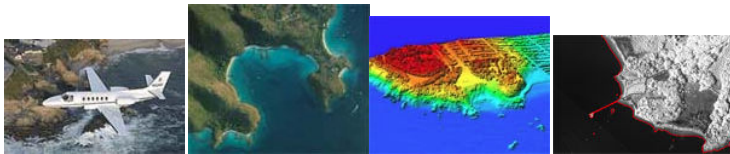
"Coastal Mapping Program

The United States has approximately 95,000 miles of coastline (as compiled from 1:80,000-scale charts). One of the missions of NOAA's National Geodetic Survey (NGS) is to survey these coastal regions and to provide the Nation with accurate, consistent, up-to-date national shoreline.

The national shoreline provides the critical baseline data for demarcating America's marine territorial limits, including its Exclusive Economic Zone, and for the geographic reference needed to manage coastal resources and many other uses. These shoreline data are considered authoritative when determining the official shoreline for the United States. Until recently, acceptance of NOAA's shoreline data as a legal authority has been based upon NOAA's recognized expertise and court cases, but the public law passed by the U.S. Congress in 1998 provides NOAA with explicit authority to promulgate national standards for all information acquired for nautical charting purposes. The shoreline depicted on NOAA's nautical charts approximates the line where the average high tide, known as Mean High Water (MHW), intersects the coast. NGS' shoreline mapping also provides the line where Mean Lower Low Water (MLLW) intersects the coast.

At present, several different shoreline definitions are in use by various Federal, state, and local authorities. The use of inconsistent shoreline definitions between maps, charts, Geographic Information Systems (GIS), and other products can lead to confusion by users and can contribute to ill-informed decision making. Broader adoption of the NOAA-provided national shoreline is encouraged to help alleviate this problem.

The method used today by NGS to delineate the shoreline is stereo photogrammetry using tide-coordinated aerial photography controlled by kinematic Global Positioning System (GPS) techniques. This process produces a seamless, digital database of the national shoreline and a database of aerial photography.



I believe this means we now have a Federally mandated national shoreline which would include my private property line, giving both the public and private property owners the certainty they need to conduct themselves in a predictable and friendlier manner. I respectfully renew my request that you correct the various beach blogs which look to you when misdescribing the beach as belonging to everyone.

Thanks,
Dennis

Sent from my iPhone

DENNIS J SEIDER

On Sep 14, 2022, at 1:14 PM, Dennis Seider <dennisseider1@gmail.com> wrote:

Hi Linda

Can you refer me to someone you know there?

Dennis

Sent from my iPhone

DENNIS J SEIDER

On Sep 14, 2022, at 12:56 PM, Locklin, Linda@Coastal <Linda.Locklin@coastal.ca.gov> wrote:

Dennis

Like you, I don't understand this data. Why don't you send this onto State Lands Commission and see if they can interpret it for you?
Linda

From: Dennis Seider <dennisseider1@gmail.com>
Sent: Wednesday, September 14, 2022 10:37 AM
To: Locklin, Linda@Coastal <Linda.Locklin@coastal.ca.gov>
Cc: JJ <stopsavingtheplanet@gmail.com>; info@western-sound.com; hello@minmi.net; George Lange <glange@crpd.org>; JOE EDMISTON <edmiston@smmc.ca.gov>; Kailyn Brown <kailyn.brown@latimes.com>
Subject: Re: request to correct beach access errors in the "Our Malibu Beaches" on line guide

Hi Linda:

You're asking an amateur to do the work of a more seasoned researcher but I did find an established line from the NGS which I believe The State Lands Commission may use. Would you please take a look at it ([NOAA's Shoreline Data Explorer](#)) and let me know what you think?

Thanks
Dennis

NOAA Shoreline Data Explorer

In recent years shoreline data have been produced in digital form. Many of the older hardcopy shoreline manuscripts have also been converted to digital form, mostly by projects managed by the NOAA Coastal Services Center. These digital data sets are thought to have value beyond the application to nautical charts, especially for those users conducting GIS analysis and producing special purpose maps in the coastal zone.

NGS is building a database of its digital shoreline holdings. Functions accessible through this location will support geographic browsing of the data base, selection of projects of interest by location or other attributes, viewing of selected projects, and downloading of selected projects to the user's computer.

Historical and contemporary vector shoreline data can be freely downloaded from [NOAA's Shoreline Data Explorer](#).

Sent from my iPhone
DENNIS J SEIDER

On Sep 8, 2022, at 2:12 PM, Locklin, Linda@Coastal <Linda.Locklin@coastal.ca.gov> wrote:

Dennis

I am not aware that the State Lands Commission has surveyed this area and delineated a fixed Mean High Tide Line. Do you have this documentation?

Linda

*Linda Locklin
California Coastal Commission
Coastal Access Program Manager
831-427-4875*

From: Dennis Seider <dennisseider1@gmail.com>
Sent: Wednesday, September 7, 2022 6:28 PM
To: Locklin, Linda@Coastal <Linda.Locklin@coastal.ca.gov>
Cc: JJ <stopsavingtheplanet@gmail.com>; info@western-sound.com; hello@minmi.net; George Lange <glange@crpd.org>; JOE EDMISTON <edmiston@smmc.ca.gov>; Kailyn Brown <kailyn.brown@latimes.com>
Subject: Re: request to correct beach access errors in the "Our Malibu Beaches" on line guide

Hi Linda

I agree that the State Lands Commission has faithfully conducted this survey for many years and that the point where the MHTL intersected the shore was fixed so we would all know where the boundaries were, notwithstanding that beach elevation changed. Does the CCC use something else to guide them?

Thanks
Dennis

Sent from my iPhone
DENNIS J SEIDER

On Aug 29, 2022, at 4:58 PM, Locklin, Linda@Coastal <Linda.Locklin@coastal.ca.gov> wrote:

Hi

What I meant by the MHTL moves every day is that there is no way to identify where that line is as only the State Lands Commission can officially conduct this kind of survey.

From: Dennis Seider <dennisseider1@gmail.com>

Sent: Monday, August 29, 2022 4:40 PM

To: Locklin, Linda@Coastal <Linda.Locklin@coastal.ca.gov>

Cc: JJ <stopsavingtheplanet@gmail.com>; info@western-sound.com; hello@minmi.net; George Lange <glange@crpd.org>; JOE EDMISTON <edmiston@smmc.ca.gov>; Kailyn Brown <kailyn.brown@latimes.com>

Subject: Re: request to correct beach access errors in the "Our Malibu Beaches" on line guide

Hi Linda:

Thanks for your thoughtful response. May I ask for your authority for the proposition that:

" the Mean High Tide Line moves every day and any survey that you perform only provides a HTL for one point in time. It does not identify or fix the seaward boundary of your property, as that line is a moving line. Thus it is not possible to set a specific line in the sand to delineate the public/private line."

As I understood it MHTL has always meant an 18.6 year average (the word 'mean' signifies an arithmetic average) and thus is always in the same place until resurveyed by the State Lands Commission. This had the advantage of certainty; it might change over time, particularly as sea levels rise, but very slowly and we at least had the certainty of knowing where the MHTL was for 18.6 years. Why is your conclusion that the MHTL moves every day and therefore all beaches on private land are now public not just a government seizure?

I thank you for helping me to understand and for the authorities upon which you base your conclusions.

Thanks again,
Dennis

Sent from my iPhone
DENNIS J SEIDER

On Aug 29, 2022, at 2:27 PM, Locklin, Linda@Coastal <Linda.Locklin@coastal.ca.gov> wrote:

Dennis-

Attached is the Deed Restriction that your predecessor in interest recorded, granting the public a permanent right to use the beach 25 ft in width, measured inland from the Mean High Tide Line, up to 5 ft from the edge of the house.

As described below, the Mean High Tide Line moves every day and any survey that you perform only provides a HTL for one point in time. It does not identify or fix the seaward boundary of your property, as that line is a moving line. Thus it is not possible to set a specific line in the sand to delineate the public/private line.

The language used in the app is correct.

And as stated in the Deed Restriction, the Public has the legal right to use the beach for "passive recreational use". The Coastal Commission has defined the term "passive recreational use" as those uses normally associated with beach use, eg walking, sunbathing, fishing, etc. See attached adopted guidelines.

I hope this clears up the issue of the ambulatory Mean High Tide Line.

Linda

*Linda Locklin
California Coastal Commission
Coastal Access Program Manager
831-427-4875*

From: Dennis Seider <dennisseider1@gmail.com>

Sent: Monday, August 29, 2022 7:42 AM

To: JJ <stopsavingtheplanet@gmail.com>

Cc: info@western-sound.com; hello@minmi.net; George Lange <glange@crpd.org>; JOE EDMISTON <edmiston@smmc.ca.gov>; Locklin, Linda@Coastal <Linda.Locklin@coastal.ca.gov>; Kailyn Brown <kailyn.brown@latimes.com>

Subject: Re: request to correct beach access errors in the "Our Malibu Beaches" on line guide

Hi Folks:

Thanks so much for your understanding and quick response.

Getting to the heart of the matter it is the difference of mistakenly describing as public the approximately 45' of our private beach between the MHTL and the 5' buffer as set out in the survey. In other words "Our Malibu Beaches" describes what is public in front of my house as 45' more than what it is. Although most of our public guests are very understanding, some have threatened us physically and been verbally abusive, quoting sources such as yours that " the beach belongs to everyone". I think that it might have been wiser to have reserved all beaches as public as in Panama and Costa Rica but that is not what our forbearers did in California. We use the average of the MHTL over 18.6 years so we have the certainty in the law necessary to smoothly guide behavior. Suggesting the MHTL change every day promotes anger and confrontation which is what I think we were trying to avoid. As I had mentioned to Ms. Lochlin years ago the Keith family that granted the easement told us that they were advised the easement was only "a right to pass and repass". Declaring private property as public and open when it is not does not promote the tranquility we hope to find when we go to the beach.

Please advise what steps you are taking to correct your guide and let me know your schedule.

Thank you very much,
Dennis

Sent from my iPhone
DENNIS J SEIDER

On Aug 29, 2022, at 12:01 AM, JJ <stopsavingtheplanet@gmail.com> wrote:

Dear Dennis (if I may):

Thank you for contacting us at Our Malibu Beaches, as we try hard to make the app as accurate as we possibly can—and I am cc'ing Linda Locklin at the Coastal Commission, which has the official records on lateral easements for all coastal properties.

What I can say from here is that the app says "up to" 5 ft—so the public must respect a 5-foot buffer zone when the high tide line on any given day is less than 30 feet from your house.

Also, the MHTL (as we explain in the app) is, as you say, an average high tide—for the last 18.6 years. However, no one can possibly know where that is on any given day, so the accepted on-the-ground boundary is the last high tide line, i.e. you can walk on the wet sand. The HTL will be above the MHTL on some days, and below it on others.

And finally, the MHTL is a vertical, rather than a horizontal, measurement—which simply specifies the vertical height of the tide, rather than where the tide has actually hit the sand, over the last 18.6 years. As the beach erodes, the MHTL, just like the HTL, will move closer to the beach houses—as has happened historically on Latigo and other beaches.

I'm sure Linda can address any further issues you'd like to raise or questions you may have.

All best—

Jenny

Writer & public artist // jennyjprice.net
Research Fellow, Sam Fox School, Washington University-St. Louis
Co-creator, Our Malibu Beaches app

On Aug 29, 2022, at 1:39 AM, Dennis Seider <dennisseider1@gmail.com> wrote:

----- Forwarded message -----

From: **Dennis Seider** <dennisseider1@gmail.com>
Date: Sun, Aug 28, 2022 at 5:33 PM
Subject: request to correct beach access errors in the "Our Malibu Beaches" on line guide
To: <stopsavingthe@gmail.com>, <info@western-sound.com>, <hello@minmi.net>, George Lange <glange@crpd.org>, JOE EDMISTON <edmiston@smmc.ca.gov>

Dear Jenny Price, Ben and John Adair, Joe and George:

I am a homeowner on the beach at Latigo Shore Dr. in Malibu. Your above-referenced guide mistakenly (in part) describes my property as "2d house-high, wood, A-shaped roof--can use dry sand for 25 ft from HTL [truth is from the Mean High Tide Line, an average of all high tides], up to 5 ft from the house [truth--public can use the first twenty-five feet above the Mean High Tide but that still leaves over 45 feet of private sand between the public easement and the house]. Your invitation to the public based on these mistakes has been re-published in the Los Angeles Times today. I had the property surveyed to be sure where the public and private beach was divided and a copy of that survey is attached. Please correct your beach guide so that it is accurate and advise the LA Times newspaper. Please also confirm your receipt of this email and your advice on whether or not you agree with my statements and if so when you will correct your easement advice. If you do not agree with me please tell me how I am in error.

Thank you,
Dennis

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DENNIS SEIDER

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DENNIS SEIDER
<Survey of Latigo beach access2020-07-06_20-5361_26642-26646 Latigo Shore Dr_TOPO.pdf>

From: [caed_ecfmail@caed.uscourts.gov](mailto:cacd_ecfmail@caed.uscourts.gov)
To: noreply@ao.uscourts.gov
Subject: Activity in Case 2:20-cv-08781-SPG-MRW Dennis Seider et al v. City of Malibu Amended Complaint/Petition
Date: Thursday, October 20, 2022 3:32:07 PM

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Notice of Electronic Filing

The following transaction was entered by Talcott, Jeremy on 10/20/2022 at 12:31 PM PDT and filed on 10/20/2022

Case Name: Dennis Seider et al v. City of Malibu
Case Number: [2:20-cv-08781-SPG-MRW](#)
Filer: Dennis Seider
Leah Seider

Document Number: [45](#)

Docket Text:

First AMENDED COMPLAINT against defendants City of Malibu, John Ainsworth, Donne Brownsey, Caryl Hart, Dayna Bochco, Effie Turnbull Sanders, Sara Aminzadeh, Linda Escalante, Mike Wilson, Catherine Rice, Steve Padilla amending Complaint (Attorney Civil Case Opening),, [1], filed by plaintiffs Dennis Seider, Leah Seider (Attachments: # (1) Exhibit 1 - 1976 Permit, # (2) Exhibit 2 - photo of crossbeams, # (3) Exhibit 3 - CCC Notice of Violation, # (4) Exhibit 4 - June emails, # (5) Exhibit 5 - June 15 2020 email, # (6) Exhibit 6 - June 26 2020 email, # (7) Exhibit 7 - Seider survey, # (8) Exhibit 8 - Sept 10 2020 email, # (9) Exhibit 9 - Locklin emails)(Talcott, Jeremy)

2:20-cv-08781-SPG-MRW Notice has been electronically mailed to:

Christi Hogin christi.hogin@bbklaw.com

Christopher M Kieser ckieser@pacificlegal.org, incominglit@pacificlegal.org

Jeremy Brennan Talcott jtalcott@pacificlegal.org, cpiett@pacificlegal.org,
incominglit@pacificlegal.org, tdyer@pacificlegal.org

John C Cotti jcotti@securitypaving.com

Kathy Shin kathy.shin@sfcityatty.org

2:20-cv-08781-SPG-MRW Notice has been delivered by First Class U. S. Mail or by other means BY THE FILER to :

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:C:\fakepath\FINAL Seider First Am Complaint.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=10/20/2022] [FileNumber=34768513-0] [4b85cfe222359b81d1cee47cf81fe23a453948f94fd1138bc65f946a20c2f01b05b3026defad4f04463763b7b6de6819d0fc9391debc88fbd90afab543fafc63]]

Document description:Exhibit 1 - 1976 Permit

Original filename:C:\fakepath\Seider FAC Exh 1 1976 Permit.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=10/20/2022] [FileNumber=34768513-1] [83bc8f0c71e6e10c1195d559211ab005d4a125dd3afeabf5aff2bca4800ef36a61eeab9c953ebececb9b10da2c942098601b9e493984d9fdc7a5ccff508f385f]]

Document description:Exhibit 2 - photo of crossbeams

Original filename:C:\fakepath\Seider FAC Exh 2 picture of crossbeams.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=10/20/2022] [FileNumber=34768513-2] [50b4a2070681995ec0693b288354bc3d346bd363bc74f0b9403fe4f6417f58bbb341998c2a74e97becc96ee3006facb6be6b2027915304957929e61cf02e177d]]

Document description:Exhibit 3 - CCC Notice of Violation

Original filename:C:\fakepath\Sedier FAC Exh 3 CCC Notice of Violation.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=10/20/2022] [FileNumber=34768513-3] [3278a8ebe0a853c161bc47e6895c9c52ae49bde91336a81a9f9765b3bb3ba186ae49548d7056e618b10ff603bc4bd50b115ead1bdeaba28bb6894175bd074131]]

Document description:Exhibit 4 - June emails

Original filename:C:\fakepath\Seider FAC Exh 4 June emails.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=10/20/2022] [FileNumber=34768513-4] [6fb5eb2cc60c93f5b05166afc62a610c84a36f15fa6bcc064b8804957d053aad7deb3f708fef485f077760951f896a49166af802fc642a458d550b608e63aa2]]

Document description:Exhibit 5 - June 15 2020 email

Original filename:C:\fakepath\Seider FAC Exh 5 June 15 2020 email.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=10/20/2022] [FileNumber=34768513-5] [58e0f8394ee8bb2ae4deaf483b997b865b9eba11827c1e86c21fb4a554b6fcb5879c3c14bdaa43c28ee9842eec2918f2684a8f41a83e9fde330f4b0b56ed88c9]]

Document description:Exhibit 6 - June 26 2020 email

Original filename:C:\fakepath\Seider FAC Exh 6 June 26 2020 emails.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=10/20/2022] [FileNumber=34768513-6] [8f81103abb2dfd532e37c175854840b034f6ce83b67a4d9c461859d7264aefc06f]]

001c378102aed550398f674c7955e595ab599497ad3fc9f5f72c74da7559ba]]

Document description:Exhibit 7 - Seider survey

Original filename:C:\fakepath\Seider FAC Exh 7 Seider survey.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=10/20/2022] [FileNumber=34768513-7] [49e54ef8f0a6164c868ae4879accfc5fd2e1626e499b5933d14eb672df9ffba0419323a6687ba2cc343efe08301ed23d773ad134213ab0612df15c2367b7d4c]]

Document description:Exhibit 8 - Sept 10 2020 email

Original filename:C:\fakepath\Seider FAC Exh 8 Sept 10 2020 email.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=10/20/2022] [FileNumber=34768513-8] [2fab08501c409954b2c2f87a7090292f06f69e5a49b56faf40c9af58e5bdbf206846a5a599f89c67d1601296a411ed2a7826a7435660a44ebb27cabea830a246]]

Document description:Exhibit 9 - Locklin emails

Original filename:C:\fakepath\Seider FAC Exh 9 Locklin Emails.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=10/20/2022] [FileNumber=34768513-9] [02100fb1189ffa2745476f640bf39cdfc01e7b69755de3c41f7680a179c6129c37c672f1fdd12a1055193efd943b1a28682487ebaf97c6bb7650c1a28eb25e2]]