

# Memorandum

To : The Conservancy  
The Advisory Committee

Date: February 25, 2013

From :   
Joseph T. Edmiston, FAICP, Hon. ASLA, Executive Director

Subject: **Agenda Item 10(c): Consideration of resolution authorizing a comment letter to California Coastal Commission regarding Cease and Desist Order Amendment No. CCC-09-CD-01-A, Lisette Ackerberg Trust, including for beach access easements, 22466 and 22500 Pacific Coast Highway, Carbon Beach, City of Malibu.**

Staff Recommendation: That the Conservancy adopt the attached resolution authorizing the Chairperson to send a comment letter to California Coastal Commission regarding Cease and Desist Order Amendment No. CCC-09-CD-01-A, Lisette Ackerberg Trust, including for beach access easements, 22466 and 22500 Pacific Coast Highway, Carbon Beach, City of Malibu, and to make subsequent changes to the letter if new factors in the California Coastal Commission staff report for the March 7, 2013 meeting warrant any changes.

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

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

**8. Commission Cease and Desist Order Amendment No. CCC-09-CD-01-A (Ackerberg – Malibu, Los Angeles Co.)** Public hearing and Commission action on proposed amendment to a previously issued Cease and Desist Order to modify existing language of the Order to address all Coastal Act related claims, including the removal of unpermitted development from vertical and lateral public access easements, opening up of the easements, and resolution of civil liabilities, among other things; directed to Lisette

Ackerberg, in her individual capacity and as trustee of the Lisette Ackerberg Trust; for property located 22466 and 22500 Pacific Coast Highway, Malibu, Los Angeles County.

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

According to a press release issued by the Coastal Commission on August 29, 2012, a California Court of Appeals upheld an action by the California Coastal Commission to provide this new access at Carbon Beach. The 2<sup>nd</sup> District Court of Appeals affirmed a Superior Court decision that the Commission properly ordered the Lisette Ackerberg Trust to remove unpermitted development blocking a public access easement on Ackerberg's property. The Commission had originally issued two permits for development of two beach-front lots, and those permits required two public access easements across the property. The Ackerbergs had sued the Commission in an attempt to avoid opening the easement. The upcoming Coastal Commission action follows this history.

At the time that this Conservancy staff report was prepared, the staff report for the upcoming Coastal Commission agenda item was not available. According to Coastal Commission staff, the staff report will be posted online soon at <http://www.coastal.ca.gov/mtgcurr.html>.

Staff of MRCA has been consulting with Coastal Commission staff regarding the terms of the proposed amendment to the order. As Conservancy and MRCA staffs understand it, the amendment to this order includes valuable terms to provide and enhance beach access in the Malibu area. Per Coastal Commission staff, there will be a monetary component provided by the applicant to address construction of the beach access, as well as operation and maintenance costs. More specific details will be available in the Coastal Commission staff report, once it becomes available. Tonight's action would authorize the Conservancy Chairperson to make subsequent changes to the attached draft letter if new factors in the Coastal Commission staff report for the March 7, 2013 meeting warrant any changes.