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September 12, 1990

*Grenda / Nellie  
FBI.  
R*

VIA FACSIMILE

Mr. Peter Douglas  
Executive Director  
California Coastal Commission  
631 Howard Street, Fourth Floor  
San Francisco, California 94105

Re: Application No. 5-89-1197 (Edwards)  
(Formerly Black-Tor (Hrg: 9/13/90))

Dear Mr. Douglas:

As you know, Dr. Roger Wolk, who owns 27920 Pacific Coast Highway with me, appeared at the July 12, 1990 hearing in connection with this application and was prepared to oppose it for all the reasons set forth in my letter of July 11, 1990, a copy of which is attached for your easy reference. However, based on your discussions with Jonathan Horne before the hearing, Dr. Wolk did not oppose the application. (Jonathan Horne, in his letter of September 11, 1990 to Peter Grenell refers to those discussions. A copy of Jonathan's letter is attached.)

Dr. Wolk and I joined Jonathan for his meeting with Peter Grenell and his staff on September 11 in Oakland. At that time we were able to discuss at length (several hours) both the settlement with Black-Tor as well as the objections we have to utilizing Black-Tor's settlement funds for the theoretical easement improvement on our property.

Based on the various discussions with you, as well as discussions with Peter Grenell and other members of the Coastal Conservancy staff at the September 11 meeting, we believe it is not necessary for us to oppose the proposed revised findings on the above application set for hearing September 13, 1990. We have already made our position very clear. The improvements contemplated by your settlement with Black-Tor cannot be

Mr. Peter Douglas  
September 12, 1990  
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constructed on our property. However, by not opposing the proposed revised findings, we are obviously not waiving our objections to the improvements proposed to be made to the easement on our property. We specifically note from the proposed revised findings (and the original findings) that an appropriately noticed public hearing will be required before any improvement on the easement could occur.

We are very pleased that the initial dialogue with you on July 12 has led to very productive and meaningful discussions with the Coastal Conservancy, and that it now appears that with mutual cooperation between ourselves, you and your staff, and Mr. Grenell and his staff, this matter will ultimately be resolved in a manner acceptable to all concerned.

Thank you for your past and expected future cooperation.

Very truly yours,

*Kenneth R. Chiate*  
(K)

Kenneth R. Chiate

KRC/jl  
Enclosure

cc: Jonathan Horne, Esq. (BY FACSIMILE)  
Peter Grenell  
Marcia Grimm, Esq.  
Reed Halderman  
Don Wildman  
Roger Wolk

September 11, 1990

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Peter Grenell  
Executive Director  
California State Coastal Conservancy  
1330 Broadway  
Suite 1100  
Oakland, California 94612

Re: 27910 Pacific Coast Highway, Malibu, California  
Rebecca and Donahue Wildman

Dear Mr. Grenell:

I appreciate your courtesy in meeting with the concerned parties regarding our common interest in pursuing the most appropriate public access at Escondido Beach. In anticipation of tomorrow's meeting I thought it might be helpful to recount some of the history of this matter.

By way of background, Wendy Watanabe and I represent Rebecca and Don Wildman who own the above-referenced property which is currently encumbered by a pedestrian access easement held by the Conservancy. Recently the Coastal Commission approved the terms of a settlement with the J. A. Edwards Trust (aka "Black Tor") wherein the Commission essentially required Black Tor to fund a \$337,928 account as a mitigation condition for the approval of a subdivision of the Black Tor property. The funds would be restricted for use to construct access improvements on the Wildman easement "unless the Executive Director of the State Coastal Conservancy and the Executive Director of the Commission determine that an alternative easement could be developed with the same funds that provides equivalent access to [the beach area between Paradise Cove and Escondido Creek]."

The Wildmans intended to take a vigorous stand in opposing the proposed Black Tor settlement on the grounds, among others, that development of the Wildman easement was demonstrably unfeasible and would be a conspicuous waste of public funds. On behalf of the Wildmans I prepared a letter opposing the proposed settlement and included a quick overview of the most significant of the many difficult problems in developing the Wildman easement. Enclosed for your consideration is an excerpt from my draft letter which sets forth some of these development problems on the site.

At the time of the hearing the Wildmans were induced not to oppose the proposed Black Tor settlement based upon an explicit recognition by Peter Douglas that development of the

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JONATHAN S. HORNE

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Peter Grenell  
September 11, 1990

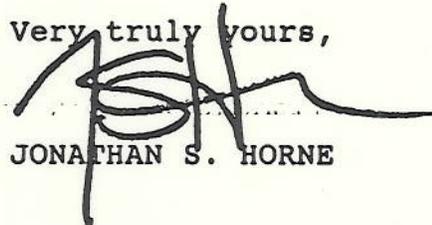
Wildman easement was highly problematic, unlikely to ever occur, and more appropriate alternatives were available for promoting public access to Escondido Beach. Mr. Douglas indicated you concurred with his assessment. Mr. Douglas then indicated the Commission would follow the Conservancy's lead in selecting a more appropriate access site for development with the Black Tor funds which could be combined with a comparable fund created by the Wildmans. Mr. Douglas indicated the funds could be used to develop existing easements or for acquisition of new easement sites.

The Wildmans will take whatever further action would facilitate resolution of this intractable problem. The Wildmans are prepared to cause the preparation of any feasibility studies or other reviews you determine to be appropriate regarding prospective alternative sites. The Wildmans are perfectly willing to utilize your own consultants (e.g. Gary Hayden) or any other reputable analysts. The Wildmans previously obtained a feasibility studies regarding the development of the vertical access easement and parking lot easement on the Wildman property. These studies are available for your review at any time.

I am also enclosing a copy of Ken Chiate's letter to the Coastal Commission which sets forth his concerns regarding the development of the Wildman easement. Ken Chiate is also highly motivated to resolve this matter and will be joining us in tomorrow's meeting.

I am pleased we are finally making progress towards resolving this matter in a way which will be beneficial to all concerned.

Very truly yours,



JONATHAN S. HORNE

cc: Donahue Wildman  
Lee Marsh, Esq.  
Peter Douglas  
Marcia Grimm, Esq.  
Wendy Watanabe, Esq.  
Kenneth Chiate, Esq.  
Linda Locklin

ANALYSIS OF PROBLEMS IN DEVELOPING EXISTING  
PEDESTRIAN ACCESS EASEMENT  
27910 PACIFIC COAST HIGHWAY, MALIBU, CA

A. Location of Easement.

The Wildman easement starts at Pacific Coast Highway and bisects and renders undevelopable a substantial portion of the Wildman Property near Pacific Coast Highway. The easement then passes within 25 feet of the Wildmans' front door and immediately adjacent to the adjoining residence at a remote and unsecured point approximately 350 feet from Pacific Coast Highway. The easement runs alongside the length of the Wildmans' living quarters and then extends directly across the Wildmans' line of sight between their home and the ocean. The easement then continues through a landscaped lawn area, directly through a mature eucalyptus tree and then over a ten foot cliff. The easement then veers over a second cliff, plunges half-way down a steep (2:1) ravine and then skirts precariously along the ravine wall to the sandy beach. At the present time it is impossible to even walk the length of the easement. In short, the easement is in an absolutely terrible location which is neither feasible nor appropriate for development as a pedestrian accessway.

B. Financial Feasibility of Development.

I would be extremely skeptical, to the point of utter disbelief, regarding the ability of any party to develop the Wildman easement for the amounts indicated in the GCH Study. This development project would present a shopping list of potential problems which will unquestionably drive up the actual cost of completion. Most of the easement is unstable, steep, sandy, rugged, remote, and overgrown with dense vegetation. The easement site does not have any provisions for water, power or vehicular access. The project will surely consume considerable pre-development time as hostile neighbors fight the development proposal. Costs will continue to rise on a monthly basis. Uncooperative neighbors will not extend licenses to provide access for heavy equipment or to permit drainage to run over adjoining properties. The construction work thus would have to be done predominately with hand tools and entirely within the narrow, ten-foot width of the easement. All excavated earth would have to be exported off the site.

The Wildmans previously submitted to the Coastal Conservancy a feasibility study prepared by ASL Consulting Engineers which looked at these difficult development issues in considerable detail. The ASL report concluded the development of the Wildman easement would cost a minimum of \$1,320,000 without any contingencies and \$1,518,000 with a

conservative 15% contingency. It is important to bear in mind these cost projections included only "hard" development costs and did not factor in all the "soft" predevelopment costs which even a state agency would be forced to incur. Furthermore, the ASL report was dated July 1988 and would have to be adjusted considerably upwards to compensate for intervening increases in all aspects of development costs. Finally, the ASL report notes their cost estimate was based upon construction of a stair system which would not provide a barrier-free access to many citizens. A copy of the ASL report is available for your review at any time.

C. Overburdening of Easement.

The Wildmans and Chiate/Wolk maintain the Coastal Conservancy lacks the legal authority to overburden the Wildman Property with the huge concrete caissons and other substantial improvements contemplated by the CGH Group feasibility study. The Wildmans' predecessors (Chiate/Wolk) dedicated a portion of the Wildman Property for the purpose of public pedestrian access. It is fair and reasonable to assume that when Chiate/Wolk made the offer to dedicate they contemplated a minimal pathway could eventually burden their property. There can be no question Chiate/Wolk never anticipated the wholesale tearing up of their property to construct suspension bridges with huge concrete caissons. The Wildmans are confident an impartial trier of fact would concur the proposed improvements greatly exceed the scope of the rights extended to the public by Chiate/Wolk. Chiate/Wolk agreed to endure a footpath, not the Brooklyn Bridge. The Commission should be extremely sensitive to not overburdening private property in this post-Nollan judicial climate.

D. Public Safety.

The configuration of the proposed Wildman accessway poses a direct and substantial public safety problem. The accessway would be extremely long (over 1,100 feet) and narrow (10 feet) with limited points of entry or escape. The accessway would be entirely unsupervised. The accessway would have minimal public presence because of the scarcity of parking. The Wildman Property is located at the westerly extreme of the local police jurisdiction and a considerable distance from the Malibu substation. All the essential elements are present for criminals to prey on unsuspecting beach users. Furthermore, it is precisely because the accessway would be so remote that law enforcement officials can anticipate the area will attract individuals who are predisposed to break the law.

E. Traffic Hazards.

The Wildman Property is located along an open stretch of Pacific Coast Highway approximately one-half mile east/downcoast from the traffic light at Paradise Cove. The Wildman Property is situated just over the crest of a vertical curve for eastbound traffic. This configuration substantially reduce the available sight distance for eastbound drivers on PCH in the vicinity of the Wildman Property.

Caltrans records confirm the great majority of vehicles at this location is exceeding the speed limit, particularly due to the downward incline of the eastbound traffic. Caltrans records also indicate most motorists are commuters who are not attentive to local and recreational users who travel at considerably lower rates of speed. This disparity in speeds is further magnified when beach users are required to pull out at a standing start from the shoulder of the road into oncoming traffic. There is no indication any road improvements or vehicular road devices or signs are proposed as part of the development of this easement.

These various factors combine to create a substantially increased risk of high-speed traffic accidents for prospective users of the Wildman easement. These risks would not be significantly reduced even in the unlikely event a parking lot were ever constructed to service the site. There are more appropriate sites for providing public access which pose less of a traffic hazard.

F. Disruption of Natural Landforms.

Standard No. 1 of the Commission and Conservancy's Standards for Access Location and Development provides in relevant part that accessways should "minimize alteration of natural landforms and be subordinate to the setting's character". The renderings of the proposed developed accessway are completely inconsistent with this standard. The easement site is located on a pristine bluff and ravine. The complex system of bridges and stairs would create an entirely conspicuous and incongruous eyesore. The seaward views of at least four private property owners (Wildman, Chiate/Wolk, Sparks, Sunset Properties) would be assaulted on a daily basis with this awful development. This is precisely what Standard No. 1 was intended to discourage.

G. Privacy.

Standard Nos. 1 and 4 of the Commission and Conservancy's Standards for Accessway Location and Development provide the design and placement of accessways should "ensure the privacy of adjoining residences." The Wildman easement is highly intrusive into the privacy of both the Wildman family and their adjoining neighbors. The Wildman residence was designed to provide a maximum degree of openness to take advantage of its relative isolation and its extraordinary views to the east and south. The privacy and security of the Wildmans would be particularly compromised by an easement located immediately adjacent to the east and south sides of their residence.

#### H. Geologic Hazards.

As more evidence is discovered daily, it is becoming increasingly clear the Pacific Coast Highway area of Malibu is subject to an active and complex matrix of geologic faults. This geologic fault system poses the greatest dangers in steep slope areas such as the steep ravine area underlying the Wildman easement. Thus the proposed Wildman accessway could be constructed in an area riddled with substantial risks of hazard to public users. There is no indication the GCH study or any other "special study zone" analysis has been conducted to quantify this risk and to inquire whether the site is appropriate for public use. Until such analysis occurs it would be reckless to commit or earmark public funds for the development of the Wildman accessway.

#### I. Flood Hazards.

The Wildman easement runs in part near the floor of a ravine which extends from Pacific Coast Highway to the ocean. The mouth of this ravine contains a drainage ditch which channels rainwater runoff down to the ocean. The ravine is also a designated flood hazard zone. The Wildmans can attest from personal experience that a veritable torrent of water frequently rages through this ravine during heavy winter rains. Expensive storm drain improvements would be required in the lower canyon areas to protect the improvements and public safety. It is difficult to conceive how this system could be constructed within the above-described development constraints posed by the site.

#### J. Support Facilities.

There have been considerable problems at existing public

facilities which do not provide adequate support facilities including trashcans, toilets, and lifeguards. These problems are magnified when, as here, the public facilities are far from public roads and inaccessible to vehicles for periodic maintenance and clean-up. It would be extremely imprudent to consider developing this remote easement without a comprehensive inquiry into the ability to operate the facility in a safe and sanitary manner.

K. Excessive Grades.

The proposed easement is well in excess of the preferred maximum gradients for access trails as set forth in the Coastal Access Standards Element of the California Recreation Plan. The easement will be required to traverse steep and irregular 2:1 slopes.

L. Development and Opening of Existing Easements.

There are presently far more appropriate and desirable public accessways in this immediate area which remain closed today because of the inability to provide funds and a suitable management entity for development, maintenance, operation, and assumption of liability. It therefore makes absolutely no sense to commit an exorbitant amount of money to construct the expensive Wildman easement while more suitable resources remain undeveloped or unmaintained.

At a minimum, this dilemma compels a more thorough analysis of the most appropriate manner to expend public funds to provide a maximum of public access to Escondido Beach. The Wildmans remain convinced that money would be more effectively spent in opening less problematic easements in this area rather than pouring cash into the black hole of the Wildmans' ravine.

IRA S LILLICK (1875-1907)  
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July 11, 1990

California Coastal Commission  
631 Howard Street  
4th Floor  
San Francisco, California 94105

Re: Application No. 5-89-1197 (Edwards)  
(Formerly Black-Tor)

Gentlemen:

I am currently in New York and write in response to the above-application. I respectfully request that the hearing (about which I learned on July 9.) be postponed until I receive proper notice of the application and hearing, and have an opportunity to explore with the Coastal Commission and applicant an alternative approach to providing access to the beach area involved in this application.

PROPER NOTICE NOT RECEIVED BY ME

Since September 25, 1989, when the deed was recorded, I have been the general partner of a limited partnership which owns the adjacent parcel (to the east) at 27930 PCH. I also own the property adjacent to that one, 27920 PCH. I have not received a copy of the Coastal Commission application for this sub-division, nor any of the correspondence between the applicant and the commission. On July 9 my office received the staff report and notice of the hearing scheduled for July 12, 1990. (It was mailed July 6, 1990.) Unfortunately, I am in New York and unable to attend the scheduled hearing. Obviously, it does neither the applicant nor the Commission any benefit to approve this application in the absence of adequate notice to me as the adjacent property owner. This is particularly so since the current application so directly affects my property at 27920 PCH.

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ADJACENT PARCEL

More than ten years ago the Coastal Commission approved my sub-division of a 5.3 acre parcel into two parcels of 2.6 and 2.7 acres each on the parcel adjacent (to the east) of the applicant's property. As a condition of granting the sub-division, the staff required an offer of dedication of a vertical easement for public pedestrian access. There were extensive negotiations concerning the exact location of the easement. Ultimately it was recorded in the exact location desired by the Coastal Commission. The location was contrary to where we wanted the easement, was impractical then and is still impractical, if not impossible. Since that time, at least three separate studies of the easement have been undertaken by various agencies to consider a possible design of the pedestrian access. One study was undertaken by P.O.D. on behalf of the Mountains Restoration Trust in 1983. It resulted in the conclusion the dedicated easement posed so many privacy, security and feasibility problems that an alternative and less environmentally disruptive easement should be sought. Other studies have reached the same conclusion. More recently, at the request of applicant's attorney and the Coastal Commission, the Coastal Conservancy arranged for a landscape architect to study the easement and estimate the cost to open it. (No opinion was sought as to the feasibility or desirability of the easement!) The cost, including construction of a long swinging bridge across a 100 foot ravine was estimated to be in excess of \$400,000. The easement would be nearly 1000 feet long, pose security and privacy problems, be impractical and would likely be unacceptable to any agency for ongoing maintenance and supervision responsibility.

REASONS FOR CONTINUING HEARING

The hearing on this matter should be continued for several reasons:

(1) Inadequate notice of the application and the hearing. Any action on July 12 would be reversible and a waste of everyone's time and effort.

(2) Since there is no actual, open, operating or feasible access within 2000 feet of the subject parcel, public access is required by LUP P51 for the subject property and can't be waived unless an alternative available and existing developed access way can be shown to exist. As of now, there is no viable alternative access way.

(3) Even assuming the offer to dedicate on 27920 PCH (which is the focus of applicants' cost estimate) was lawfully demanded by the Coastal Commission initially, it can not be developed or opened as presently configured. There is nothing that gives the Coastal Conservancy, Mountains Restorations Trust, Coastal Commission or the Applicant the right to bring onto the affected properties bulldozers and drilling equipment necessary to erect and construct a lengthy swinging bridge in the middle of the dedicated easement; nor would any such improved easement ever be acceptable to any public agency. The liability would be enormous and the benefits not worth the cost.

(4) The amount proposed to be paid by applicant is far from sufficient to construct the improvement necessary to open the easement at 27920 PCH, even if it were feasible, environmentally acceptable, authorized by the offer to dedicate or lawfully demanded initially.

#### SUGGESTION

The undersigned respectfully suggests that the hearing on the subject application be postponed for at least sixty (60) days. During that time, the undersigned will meet with members of the Coastal Commission, Mountains Restoration Trust, Coastal Conservancy and applicant and will work toward a mutually agreeable alternative to what has been proposed by applicant. For example, it makes considerably more sense for the applicant's contribution to be used in conjunction with a contribution to be made by the undersigned (and perhaps others) to achieve a fund sufficient to enforce and open up another more feasible easement. For example, a fund of \$500,000 could likely be raised and would provide sufficient money to:

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(1) Employ private legal counsel to enforce existing offers to dedicate where obstacles have been created to the opening of easements;

(2) Construct improvement for necessary accessways (where permitted by the offers to dedicate); and

(3) Purchase an annuity providing for monthly payments for ten to fifteen years to assure funds necessary to maintain and keep open the accessway.

The undersigned has proposed the foregoing approach to members of the Coastal Conservancy and representatives of the applicant. Regrettably, no one has yet taken a leadership role in getting all the involved parties together, and thus nothing has yet been accomplished. However, the undersigned is anxious to contribute his fair share of a fund necessary to accomplish the above, in return for eliminating the existing unusable easement on his property at 27920 Pacific Coast Highway, and will actively pursue such efforts if there is sufficient inclination on behalf of the parties involved.

In any event, the undersigned respectfully requests that the hearing in this matter be continued for at least sixty (60) days.

Very truly yours,

[DICTATED ONLY]

Kenneth R. Chiate

cc: Roger S. Wolk  
Don Wildman