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October 16, 1991

Brenda Buxton
California State Coastal Conservancy
Suite 1100
Oakland, California 94612-2530

Re: Escondido Beach Public Access Agreement

Dear Brenda:

I have the following comments regarding the draft Agreement:

1. Recital II. The Commission approved the development on Owner's Real Property in two separate permits issued in 1980 and 1981.

2. Recital V. Please verify the Conservancy adopted a resolution authorizing the acceptance of both the Vertical and Parking Easements. I was not aware the Conservancy had accepted the Parking Easement.

3. Recital VIII. For reasons explained below, please change the language "and a pathway" to "and related improvements".

4. Paragraph 1(a). As we discussed, it is quite possible we will develop the parking spaces at an alternative location on the seaward side of PCH or at some mutually agreeable third location. In such case we may or may not have to construct any pathways or other off-site improvements. We will be able to describe the specific site and the scope of related improvements by incorporating a specific description of the Alternative Easement in Exhibit "B". We should delete references to the specific description of the Alternative Easement in the body of the Agreement and delete all references to the pathway.

I thus propose Paragraph 1(a) be revised as follows:

"Easement(s) in perpetuity have been recorded in favor of the Surfrider Foundation, Inc., or another public agency or nonprofit organization approved by the Conservancy, for public use of not less than five (5) parking spaces as shown on the attached Exhibit B and described in Paragraph 3 below (the "Alternative Easement")"

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5. Paragraph 1(b). As we discussed, it will be important that all permit applications be sought in the combined names of the Conservancy, Commission, and the Surfrider Foundation in addition to the private parties. Please add the following language at the end of Paragraph 1(b):

" . . . which will be obtained with the cooperation and on behalf of the Conservancy, Commission, Surfrider Foundation and the Owners."

6. Section 1(c). For the reasons noted in Section 4 above, I propose Section 1(c) be revised as follows:

"It is demonstrated to the satisfaction of the Executive Director that reasonable access is available from the Alternative Easement to the mean high tide line of the Pacific Ocean and signage has been installed indicating public rights of access between the Alternative Easement and the beach, including such additional information as the Executive Director may require."

7. Section 1(e). In my discussions with David Saltman of the Surfrider Foundation he indicated the operational costs related to the parking lot should be rather minimal since the Foundation will already have an employee working in the immediate vicinity, minimal work would be involved in operating the parking lot and the Foundation already had pretty extensive liability insurance. He stated a voluntary contribution in any amount would be adequate. I indicated the Owners would be willing to make a one-time contribution of approximately \$5,000 or \$10,000 to cover these additional incremental costs. He seemed to agree this would be more than adequate. If you feel compelled to include a specific amount in this section it should not exceed the previously agreed limitations for the Owners' contribution to the Foundation.

8. Paragraph 2. We all agree the Owners could never grant an easement over any portion of Caltrans property. It is therefore unduly complicated and confusing to include any Caltrans property, or any other property not controlled by the Owners, in the description

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of the Alternative Easement in Exhibit B. Pursuant to my proposed Section 1(c), the Owners will be required to demonstrate to the satisfaction of the Executive Director that adequate access to the beach is available. As noted previously, Caltrans has already clarified that pedestrians have the right to use its rights-of-way and any development in the rights-of-way will require Caltrans approval. The Conservancy will therefore be assured of the public's right of access to the beach. I propose Paragraph 2 be modified as follows:

"The Alternative Easement shall have priority over all other liens and encumbrances except for taxes and any other matters as may be approved by the Executive Director and Executive Officer. The Alternative Easement shall be approved by the Executive Director and shall include . . . "

9. Paragraph 3. Your proposal to release the Edwards Funds only after construction is completed creates a serious problem. The simple fact is part of the Edwards Funds may be necessary to acquire the Alternative Easement in addition to constructing the improvements. I always anticipated the Edwards funds would be available for acquisition prior to commencing construction. In effect, you are now asking the private parties to advance the Edwards Funds for the months between acquisition of the easement and the close of escrow for this agreement. This could create an unfeasible financial burden on the private parties.

I propose alternatively the Edwards Funds be deposited into escrow and disbursed as incurred on a 50/50 basis, up to the limits of the Edwards funds, for all costs associated with the acquisition and development of the Alternative Easement. We can discuss this arrangement and more specific language for the Agreement if this concept is acceptable.

10. Paragraph 4. The second sentence should be revised as follows:

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"Within thirty days of the opening of escrow, the Conservancy shall deposit the Quitclaim Deeds described more particularly in Paragraph 1, duly executed and acknowledged on behalf of the Conservancy and Commission.

11. Paragraph 6. Insert the following at the end of the first sentence:

". . . unless extended by written consent of the parties hereto.

12. Since the Owners will not be in a position to manage, operate or otherwise control the Alternative Easement after its construction, an acceptable form of release and indemnification should be included in the Agreement. I suggest the following simple language:

"After the close of escrow, the Conservancy and Commission shall indemnify and hold harmless Owners for any claim of damages arising from the construction, ownership, maintenance, operation and use of the Alternative Easement and related improvements."

13. Signature Page. Donahue Wildman is the sole owner of his property.

14. Exhibit C. Recital C. Delete the phrase "and pedestrian access to the shoreline".

Please let me know your response to my proposed revisions.

As you know, there is currently a moratorium on development in Malibu which will continue, at a minimum, until March 1992. It is quite possible the moratorium, or other severe development restrictions, will be extended even further. We would obviously like the option to proceed with construction sooner than that if possible.

Section 4 of the City of Malibu Moratorium Ordinance has several classes of exemption from the moratorium including the following:

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"(d) Construction of recreational facilities on public property."

In my opinion it would not require a terrific stretch to include our proposed project within this class of exemption. First, the parking lot is clearly an ancillary facility to promote public recreational activities at Escondido Beach. As such it could be considered a "recreational facility." Secondly, the site will ultimately be owned by a management agency to be held for the benefit of the public trust. The site could thus be considered "public property" for all practical purposes.

It will be necessary for us to marshall our forces to make our most effective possible argument to the City of Malibu to grant us our exemption. This could involve directly contacting the Planning Director, individual Councilmembers, the City Attorney or a combination of all of the above. David Saltman has previously indicated he might be able to help us in dealing the Malibu. I would appreciate any cooperation the Conservancy and Commission could offer in this sensitive matter. Let me know how the State Agencies would most effectively be involved.

I contacted Caltrans to request a staffperson meet us at the site on October 28th or 29th to discuss improvements in the right-of-way. I was directed to Paul Matsuyama who unfortunately is out of town until October 28th. I will call him that morning to see if he would be available to meet with your landscape architect on October 29th. If I can set up the meeting on such notice would your landscape architect be available? If not, I need some alternative dates.

Finally, I have reviewed the draft Agreement and it seems flexible enough to accomodate the possibility of the Mintz people joining with us to construct a seven space parking lot. Keep this issue in mind when reviewing the final language.

I am very pleased with our progress to date. We are getting close.

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I appreciate your courtesy and cooperation.

Very truly yours,



JONATHAN S. HORNE

cc: Lee Marsh, Esq.
Roger Wolk
Steven Thomas

RECEIVED
OCT 16 1991
STATE COURTS CLERK'S OFFICE
JULIO GARCIA