

CALIFORNIA STATE COASTAL CONSERVANCY

1330 BROADWAY, SUITE 1100
OAKLAND, CA 94612-2530
ATSS 561-1015
TELEPHONE 415/464-1015
FAX 415/464-0470



November 5, 1991

Jonathan S. Horne, Esq.
309 Santa Monica Blvd. Suite 307
Santa Monica, California 90401

Re: Escondido Beach Public Access Agreement

Dear Jonathan:

Brenda and I have reviewed your comments on the draft agreement and incorporated many of them in the revised draft enclosed, which is substantially the same as the redlined draft she sent to you by FAX. We discussed several of these in our telephone conversation, but I thought it would be helpful to reiterate our understanding of the proposed arrangements.

As we discussed, the draft contemplates a fairly specific "Exhibit B" showing the location of easement areas to be acquired as well as pathway and beach areas now in public ownership, which would also constitute part of the proposed public accessway and would provide the necessary connection between Pacific Coast Highway, the parking area, and the public tidelands. Before a recommendation can be made to the Conservancy's board to enter into the agreement, we will need to agree upon this accessway plan, as well as review documentation supporting the public's right and ability to use portions of the accessway not within the "Alternative Easement" for this purpose. With that understanding, we are amenable to your changes to the draft limiting the "Alternative Easement" to those areas over which the owners will actually acquire easement interests, and granting the Executive Officer of the Conservancy the discretion to determine whether "reasonable public access" has been provided from the Alternative Easement to the mean high tide line of the Pacific Ocean.

Regarding the references to the "Alternative Easement" in Paragraphs 1 and 2, most of your changes have been incorporated with minor revisions. I have also added a requirement to subparagraph 4(b) that the "reasonable public access" determination be a condition of close of escrow.

The change you proposed to make to Paragraph 1(b) has been incorporated in a new Paragraph 6, which clarifies that while the Conservancy and others will cooperate in the permit application process, the costs of obtaining all permits and approvals are to be borne by the owners. The Conservancy is not in a position to contribute funds or staff time to this effort.



Jonathan Horne, Esq.
November 5, 1991
Page two

We have not changed Paragraph 1(e), providing for management funds to be paid to the Surfrider Foundation, pending full review of project cost estimates (see also Recital VIII). You will recall that we requested a review of detailed cost information for the project before a recommendation can be made to the Conservancy board, as indicated in Peter Grenell's letters to you (dated June 17, 1991) and to Roger Wolk (dated December 20, 1990). However, it should not be assumed that the Surfrider Foundation can rely on funds and other resources dedicated to the nearby "Mintz" accessway, since this project is still the subject of a coastal enforcement action, and therefore the assumptions underlying your discussion with David Saltman may well not apply.

We are amenable to discussing a different arrangement for the payment of Edwards Trust Funds prior to the close of escrow, and have included some language in the revised draft that may be a useful starting point (please see paragraphs 3, 4 and 7 of the revised draft). I have some concerns about the disbursement of these funds as described in the revised draft, in that if escrow fails to close for any reason, that amount would need to be reimbursed to the Conservancy to be used in accordance with the permit condition. Perhaps some sort of a surety bond could be purchased to protect against this contingency. Regarding your proposed use of Edwards Trust Funds, my reading of the Edwards Trust permit condition suggests that these funds may only be used for "construction" or "physical development of improvements" at an alternative easement, not for acquisition. You may wish to clarify this with Coastal Commission staff.

We have yet to receive comments on this proposed agreement from the Coastal Commission, and both Commission and Conservancy staff will need to review specific plans and cost estimates for the accessway, as described above. However, it is my understanding that we will be prepared to present a recommendation for board action at the January Conservancy meeting if all the parties are in agreement on these matters. Please feel free to call Brenda or me if you have any questions or wish to discuss this further.

Sincerely,



Marcia Grimm
Staff Counsel

cc: Brenda Buxton



DRAFT

ESCONDIDO BEACH
PUBLIC ACCESS AGREEMENT

This Public Access Agreement is entered into this ___ day of _____, 1991, by and between the California Coastal Commission, an agency of the State of California existing under the provisions of Division 20 of the California Public Resources Code (the "Commission"); the California State Coastal Conservancy, an agency of the State of California existing under the provisions of Division 21 of the California Public Resources Code (the "Conservancy"); and Donahue Wildman, Kenneth Chiate, and Roger Wolk, who shall hereinafter be referred to collectively as "Owners", with respect to the following facts and circumstances:

I. Owners are owners in fee simple of certain real property in the County of Los Angeles, State of California, more particularly described in the attached Exhibit "A" ("Owners' Real Property").

II. The Commission, in exercising its authority under Division 20 of the Public Resources Code, is charged with responsibility to assure that public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects consistent with the policies set forth in Article 2 Chapter 3 of that Division. Pursuant to that authority, the Commission in 1980 and 1981 approved the development of Owners' Real Property subject to conditions requiring the dedication of easements over portions of Owners' Real Property to provide for public parking and pedestrian access from Pacific Coast Highway to the mean high tide line of the Pacific Ocean, and requiring the recordation of a deed restriction providing for public pedestrian access along the shoreline frontage of Owners' Real Property.

III. In compliance with those conditions, Owners or their predecessors in interest recorded, as No. 83-108579 of Los Angeles County Official Records, an Irrevocable Offer to Dedicate an easement for public access from Pacific Coast Highway to the mean high tide line of the Pacific Ocean (the "Vertical Access Easement"); and as No. 83-108580 of Los Angeles County Official Records, an Irrevocable Offer to Dedicate an easement for public parking (the "Parking Easement"). By their terms, the Vertical Access Easement and the Parking Easement could be accepted on behalf of the people of California by a public agency or private



association acceptable to the Executive Director of the Commission at any time within a period of 21 years from the date of recordation.

IV. The Owners or their predecessors in interest also recorded as No. 80-1161953 of Los Angeles County Official Records, a deed restriction providing for public pedestrian access along the shoreline frontage of Owners' Real Property (the "Lateral Access Restriction").

V. The Conservancy is authorized under Division 21 of the Public Resources Code to serve as a repository for lands whose reservation is required to meet the policies and objectives of the Coastal Act of 1976, including interests required to provide public access to recreation and resource areas in the coastal zone, and to aid public agencies and nonprofit organizations in establishing a system of public coastal accessways. Pursuant to this authority, the Conservancy in 1982 authorized the acceptance of the Vertical Access Easement and the Parking Easement. The Conservancy recorded a Certificate of Acceptance of the Vertical Access Easement as No. 83-374575 of Los Angeles County Official Records.

VI. On July 12, 1990, the Commission approved with special conditions a modified coastal development permit, No. 5-89-1197 (Edwards Trust), requiring, inter alia, that the applicant pay to the Conservancy funds in the amount of \$337,928 for the purpose of constructing public access improvements on the Vertical Access Easement and Parking Easement, or on an alternative easement providing equivalent access to the same beach area, as determined by the Executive Director of the Commission ("the Executive Director") and Executive Officer of the Conservancy ("the Executive Officer.") These funds, which shall hereinafter be referred to as the "Edwards Trust Funds" were paid to the Conservancy and are currently being held by the Conservancy for use in accordance with the requirements of permit No. 5-89-1197.

VII. The Owners are opposed to the development of public access improvements on the Vertical Access and Parking Easements, and wish to provide alternative equivalent access to the same beach area in exchange for the extinguishment of the Vertical Access Easement and the Parking Easement on Owners' Real Property.

VIII. The Owners have proposed to undertake the construction of no less than five (5) parking spaces and related improvements providing public access from the parking area to Escondido Beach, as generally shown on the attached Exhibit B (the "access improvements"); and have provided to the Conservancy written estimates of the cost of constructing such improvements, which is approximately \$_____.

IX. The Commission and the Conservancy are willing to extinguish the Vertical Access Easement and the Parking Easement in exchange for alternative equivalent access to the same beach area only on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the Commission, the Conservancy and the Owners agree as follows:

1. Extinguishment of Easements. The Conservancy and the Commission hereby agree to execute and record quitclaim deeds and/or other documents adequate to eliminate any effect of the Parking Easement and the Vertical Access Easement on title to Owners' Real Property when all of the following have occurred:

(a) 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");

(b) Construction of no less than five (5) parking spaces has been completed on the Alternative Easement, pursuant to detailed plans and specifications approved by the Executive Officer and in accordance with all necessary regulatory permits and approvals;

(c) It has been demonstrated to the satisfaction of the Executive Officer that reasonable public access is available and has been improved, to the extent the Executive Officer determines necessary, 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 and providing such additional information as the Executive Officer may require;

(d) The Surfrider Foundation, Inc., or other public agency or nonprofit organization (the "Management Agency") whose acceptance of the Alternative Easement has been approved by the Conservancy has entered into a management agreement with the Conservancy for the Alternative Easement in substantially the form of the attached Exhibit C (the "Management Agreement"); and

(e) Funds in the amount of \$_____ (the "Operations and Management Fund") have been provided by the Owners to assist the Management Agency in the ongoing costs of operations and maintenance of the Alternative Easement.

2. Alternative Easement. 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 Officer and the Executive Director and shall include a right of entry providing for the State of California to take title to the Alternative Easement if the existence of the Management Agency is terminated, or if the Management Agency fails to carry out its obligations under the Management Agreement, as determined by the Conservancy in its sole discretion.

3. Use of Edwards Trust Funds. By their signatures to this Agreement, the Executive Officer and the Executive Director certify their determination that the Alternative Easement will provide equivalent access to the same beach area, i.e., the area between Paradise Cove and Escondido Creek, as would be served by the Vertical Access Easement and the Parking Easement, and agree that the Edwards Trust Funds may be used to develop the access improvements provided for in this Agreement. Upon approval by the Executive Officer of invoices documenting the costs of construction of the access improvements and signs described in subparagraphs 9(b) and 1(c) above, the Edwards Trust Funds shall be disbursed from escrow to or at the direction of Owners to pay such costs. Construction of the parking spaces, pathway and signs shall otherwise be completed solely at Owners' expense.

4. Escrow. Concurrently with the execution of this Agreement, the parties are opening an escrow at _____ Title Company, _____ office ("Escrow Holder"). Within thirty days of the opening of escrow, the Conservancy shall deposit the Quitclaim Deed(s) described in Paragraph 1, duly executed and acknowledged on behalf of the State of California. Conservancy shall deposit the Edwards Trust Funds, to be deposited by Escrow Holder in an interest-bearing account from which disbursements may be made at the direction of the Executive Officer in accordance with Paragraph 3 above. The Owners shall deposit the Operations and Management Fund, to be paid to the Management Agency, at the direction of the Executive Officer, at the close of escrow. Escrow Holder shall record the Quitclaim Deed and distribute the Management Fund only when all of the above have been deposited in escrow, and when the following shall have occurred:

(a) Escrow Holder can record the Alternative Easement and insure title in favor of the Management Agency free and clear of all prior liens and encumbrances, except those approved by the Executive Officer and the Executive Director;

(b) The Executive Officer determines that reasonable public access has been provided, and all construction has been satisfactorily completed in accordance with the requirements of subparagraphs 1(b) and 1(c) above; and

(c) a Management Agreement has been entered into between the Conservancy and the Management Agency.

All costs of escrow shall be paid by the Owners.

5. Lateral Access Restriction. It is understood and agreed that the extinguishment of Vertical Access and Parking Easements pursuant to this agreement shall have no effect on the Lateral Access Restriction, which shall remain binding on the Owners and their successors in interest to the extent provided therein.

6. Construction Permits and Approvals. All regulatory permits and approvals necessary for the construction of access improvements, as required pursuant to subparagraph 1(b) above, shall be obtained with the cooperation and on behalf of the Conservancy, Commission, and Management Agency, but at Owners' sole expense.

7. Liability. The Conservancy and the Commission shall hold harmless Owners for any claim of damages arising from the construction, ownership, maintenance, operation and use of the Alternative Easement and related improvements after the close of escrow, except for any claims that are the result of the Owners' active negligence in construction or management of the Alternative Easement and/or access improvements prior to the close of escrow.

8. Term of Agreement. This agreement shall remain in effect for a term of two (2) years from its effective date, unless extended by written agreement of the parties. If the events described in Paragraph 2 have not occurred as of the termination date of this agreement, escrow shall be canceled, all documents and monies shall be returned to the party having deposited them, and the parties shall have no further obligations to one another under this agreement; provided, however, that in the event of such

cancellation, Owners shall reimburse the Conservancy to the extent of any of the Edwards Trust Funds that have been disbursed from escrow.

9. Additional Approvals. This agreement is subject to approval by the State Director of General Services pursuant to Section 11005.2 of the Government Code.

10 . Counterparts. This agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first set forth above.

STATE COASTAL CONSERVANCY

CALIFORNIA COASTAL
COMMISSION

BY:

BY:

Approved:
DIRECTOR OF GENERAL SERVICES

BY:

Donahue Wildman, Owner

Kenneth R. Chiate, Owner

Roger Wolk, Owner

EXHIBITS

- A. Legal description: Owners' Real Property
- B. Alternative Easement and Access Improvements
- C. Management Agreement



EXHIBIT C
MANAGEMENT AGREEMENT

**AGREEMENT TO PROVIDE PUBLIC ACCESS
AND TO QUALIFY NONPROFIT ORGANIZATION FOR
LIMITED PUBLIC ENTITY TORT IMMUNITY**

**Escondido Beach/Sycamore Canyon Access
Malibu, Los Angeles County**

THIS AGREEMENT is entered into in California this ____ day of _____, 1991 by the State Coastal Conservancy, an agency of the State of California (the "State"), and the Surfrider Foundation, a California nonprofit corporation (the "Management Agency"). The Management Agency will provide public access as specified, and in consideration will receive operations funding and limited tort immunity under Government Code Sections 831.5, 831.2, 831.25, 831.4 and 831.7.

RECITALS

A. California Public Resources Code Division 21 and Government Code Section 831.5 authorize the Conservancy to enter into agreements with public land trusts having among their purposes development and operation of public accessways along the California coast.

B. The Management Agency is a nonprofit organization existing under the provisions of Section 501(c)(3) of the United States Internal Revenue Code, and having among its principal charitable purposes the conservation of land for scientific, historical, educational, recreational, agricultural, scenic or open space opportunities, including the acquisition, development and operation of public accessways along the California coast.

C. Pursuant to an agreement among the Conservancy, the California Coastal Commission, and owners of certain real property in Malibu, Los Angeles County (the "Escondido Beach Agreement"), easements for public parking and pedestrian access to the public tidelands and/or other public shoreline property, as described in the attached Exhibit A, and funds for the operation and management of that public accessway, are being made available to the Management Agency subject to the terms and conditions of this agreement.

D. The Management Agency has agreed to own and operate the public accessway described in Exhibit A and Recital C above, and seeks limited tort immunity.

E. The purpose of this Agreement is to provide for management of the property and funds made available to the Management Agency under the Escondido Beach Agreement, and to comply with Government Code Section 831.5(b)(3) concerning agreements to provide nondiscriminatory public access consistent with the protection and conservation of coastal and natural resources.

NOW, THEREFORE, in consideration of the facts and circumstances set forth above, and for other good and valuable consideration, the Management Agency and the Conservancy agree as follows:

1. The Management Agency agrees to accept title to the easements provided under the Escondido Beach Agreement and described in the attached Exhibit A (the "real property") and to manage the real property and all improvements constructed thereon for public parking and pedestrian access to the shoreline. The Management Agency shall provide nondiscriminatory public access over the real property, consistent with the protection and conservation of coastal and natural resources, and pursuant to the terms and conditions of this agreement.

2. Upon transfer of the real property to the Management Agency, funds in the amount of \$_____ shall be paid to the Management Agency for use in accordance with the provisions of this Paragraph. All such funds shall be deposited by the Management Agency in an interest-bearing account (the "Management Fund") and used solely for the purpose of assisting the Management Agency in paying the costs of ongoing operation, maintenance and management of the real property and related improvements, pursuant to the terms and provisions of a Management Plan reviewed and approved by the Executive Officer of the Conservancy. The Management Agency shall account on an annual basis to the Conservancy for all expenditures from the Management Fund throughout at least the first ten years of this Agreement.

3. The Management Agency shall maintain the real property and improvements and the adjacent beaches to which the public has access, and shall exercise reasonable diligence in supervising members of the public who use the real property. The Management Agency shall not conduct its program in any manner that would jeopardize public safety or damage the real property. In particular, but without limiting the foregoing, the Management Agency shall

(a) maintain signs informing the public of the local telephone number of the Management Agency, hours of operation of the parking lot (sunrise to sunset), directions to Escondido Beach, and police and emergency services phone numbers;



(b) inspect the real property on a daily basis and open and close the gate, if necessary, according to the posted hours; and take appropriate action to remedy any hazards;

(c) conduct general maintenance including trash pick-up on an as-needed basis; and

(d) keep accurate records of problems and complaints and how they were responded to and present this information to the Conservancy upon written request.

4. The Management Agency may restrict or deny public access to the property if an emergency exists which threatens public health and safety or the natural resources of the property. In that event, all reasonable measures shall be taken to immediately inform the Conservancy's Executive Officer, remedy the emergency conditions, and restore the public's right of access.

5. In consideration for providing access as set forth above, the Management Agency is hereby qualified with limited status as a public entity for purpose of statutory immunity under Government Code Sections 831.5, 831.2, 831.25, 831.4 and 831.7. Failure of the Management Agency to provide access over any portion(s) of the real property which is the subject of this agreement shall disqualify the Management Agency from treatment as a "public entity" with regard to that property or portion of the real property as to which access is not provided. Determination of any such failure shall be by majority vote of the State Coastal Conservancy following a duly noticed public hearing, and disqualification shall not take effect until such a vote has been cast.

6. This agreement shall remain in effect until and unless terminated for cause by the State or at will by the Management Agency. Cause for termination means failure by the Management Agency to provide access in accordance with this agreement. This agreement shall terminate only upon a majority vote of the State Coastal Conservancy or at the will of the Management Agency.

7. If, for any reason, including but not limited to the dissolution and winding up of the Management Agency, the Management Agency is unwilling or unable to meet its obligations under this agreement, the Conservancy shall have the right to designate another public entity or nonprofit corporation to assume the responsibilities of the Management Agency under this agreement. Additionally, the Conservancy shall have the right of entry to take title to the real property pursuant to provisions of the deed conveying the real property to the Management Agency. In either event, the Management Agency shall be liable for



payment to the Conservancy of all monies in the Management Fund except that which has been legitimately expended in management of the real property, as determined by the Executive Officer of the Conservancy.

8. The Management Agency shall permit the Conservancy, its agents or employees, to visit the real property and determine whether access is being provided to the public on a nondiscriminatory basis in accordance with this agreement.

9. The Management Agency shall be responsible for, indemnify and save harmless the Conservancy, its officers, agents, and employees from any and all liabilities, claims, demands, damages or costs resulting from, growing out of, or in any way connected with or incident to the property and improvements on it, except for active negligence of the Conservancy, its officers, agents or employees. The duty to indemnify and save harmless includes the duty to defend as set forth in Civil Code Section 2778. The Management Agency waives any and all rights to any type of express or implied indemnity or right of contribution from the Conservancy, its officers, agents, or employees, for any liability resulting from, growing out of, or in any way connected with or incident to the property and improvements on it.

10. If any provision of this agreement is held by any court to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

11. Notices issued pursuant to this agreement shall be sent to the following addresses (or to a subsequent address of which notice has been provided in writing):

State Coastal Conservancy
1330 Broadway, Suite 1100
Oakland, CA 94612

The Surfrider Foundation
Box 2704 #86
Huntington Beach, CA 92647

This agreement is entered into in the County of Alameda.

