

CALIFORNIA STATE COASTAL CONSERVANCY

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MEMORANDUM

To: Peter Douglas, California Coastal Commission

From: Michael L. Fischer, Executive Officer,
 Coastal Conservancy

About: ACCESS EASEMENT TO ESCONDIDO BEACH OVER THE
 CHIATE/MANCUSO-WILDMAN PROPERTIES

On August 4, 1994, I toured the access easement between Escondido Beach and PCH in the company of Susan McCabe, whose clients include both Wildman and Mancuso as well as with John (an attorney whose last name I forget) whose client is Mr. Wildman.

In tracing--or attempting to trace--the easement through the two properties, I learned three things:

First, the original subdivider located the easement in the least viable of all possibilities within his property. The easement goes along the edge of a ravine (on a highly erodable, steep slope) at its seaward end, up and over several small "clifflets" in its middle reach; the roadward reach presents no topographical difficulties.

Second, my judgement is the accessway, while difficult, is in fact buildable. It will require some handgrading to notch a trail into the side of the ravine and would require several small staircases. But I'm confident that the Conservation Corps could successfully undertake the work. One challenge, however, would be to successfully complete the work without straying outside the boundary of the ten foot easement. I assume that we would have to stay within the easement because the construction would have the active opposition of the property owners on both sides. However, I'm not sure whether the Coastal Commission condition (or our easement instrument) gives the Conservancy access to the adjacent property in order to construct retaining walls, fences, stairs or the trail itself.

Third, I learned that the homeowners on both sides of the easement have acted as though the easement does not exist. There are gates, driveways, parking areas, fences, and landscaping (including lawn areas as well as hedges) within our easement. I'm concerned that we may not have aggressively asserted our

facilities within our property. We will check the files to see if we've done so in order that we not lose either our rights or our bargaining chip. Indeed, it may be necessary for us to begin charging the neighbors for their use of our property in order to retain our rights.

But what do we do about all of this? It seems that me that we have three options:

One. We can do nothing. In essence, that's what's happening now. The \$325,000 which Black Tor was required to pay is in our account. Unfortunately, any interest that it's drawing is going into the general fund. Therefore, the value of that money is eroding away and no public access is being provided.

Two. We can build the easement. I'm not at all certain that \$325 thousand would be sufficient to do so, but (especially if we use the Conservation Corps) it could well be sufficient. Building on the easement, I would hunch, will require some legal effort up-front to get the adjacent property owners to remove all of their fences, gates, parking areas and hedges from the right of way. I can't imagine that work should be our responsibility; but neither can I imagine the neighbors responding to such a demand promptly or willingly.

And there's another problem: should we move to use the Black Tor monies to construct the accessway, I would expect Wildman's attorney to sue based on the statements which you are said to have made just before the public hearing on the Black Tor item seeking to dissuade John from opposing the in-lieu fee condition on the Black Tor permit. I'm told that you assured John that the Wildman access would never be built at that point. With that assurance, John did not oppose the Black Tor permit condition.

Three. We could, as you have already suggested, assemble the two resources we have at hand (the Black Tor in-lieu fee and the value of the Wildman Easement) and acquire and construct another easement to Escondido Beach. Frankly, it appears to our staff and to John that such a search will be a fruitless one. So then the question becomes: do we go beyond the boundaries of Escondido Beach in our search for other access possibilities?

Before we're to go beyond Escodido Beach, I believe that both Conservancy and Commission need to be assured that there are no other viable sites. I suggested to John and Susan that they retain the services of a neutral party (a group of landscape architectural students and their professor, together with several real estate students and their professor?) to exhaustively analyze the topography, locate reasonable access ways and then have a realtor solicit the interest of property owners in selling such accessways. Only after such an exhaustive, professional and independent search of Escondido Beach should you or I consider moving the money to another location.

But, assuming for the moment that we decline to undertake the construction of the Wildman easement as it stands, I believe that option one is unacceptable. We have resources at hand which will total approximately three quarters of a million dollars. Those resources should be employed toward the end to which they are intended: the provision of public access in the central Malibu area. If, after an exhaustive search of Escondido Beach, we can't find another viable location, then I believe we should go beyond Escondido Beach.

But, as I say, that assumes that we're not interested in constructing the Wildman easement as it now stands. I believe we ought to re-examine that prospect. Toward that end, I propose that the Conservancy use one of its landscape architectural consultants to re-examine the initial work we did to come up with our original cost estimate. If nothing else, our acting as though construction were a real possibility may spur the Mancuso/Wildman agents to a more vigorous search for alternatives. I'm told that both you and Peter Grenell assured the parties that this easement simply won't be built--in retrospect and in strategic terms, I believe that was an error. Because I really think the CCC could do the job for that amount, let's act as though that's our plan! (After, of course, we get the results from our landscape architect.)

Finally, Neil Fishman has made a creative suggestion: use the \$750,000 (or so) to endow the operation of a Zodiac shuttle to Escondido Beach from the nearest parking lot. Such an endowment would spin off about \$35,000/year; together with a modest fare (\$1 per), that might be enough to interest a concessionaire. And what a neat precedent to set!

Before sharing any of these thoughts with Susan and before taking any further action, I would like to hear from the five of you-- what are your thoughts?

MLF:sgc

cc: Brenda Buxton
Linda Locklin
Joan Cardellino
Marcia Grimm