

CALIFORNIA STATE COASTAL CONSERVANCY

1330 BROADWAY, SUITE 1100
OAKLAND, CA 94612-2530
ATSS 541-1015
TELEPHONE 510/286-1015
FAX 510/286-0470



June 29, 1995

Mr. Jonathan Horne
309 Santa Monica Blvd., Suite 306
Santa Monica, CA 90401

Dear Jonathan:

I understand from Brenda Buxton that you have begun a construction feasibility study of the 13 car parking lot near the intersection of Malibu Cove Colony Drive and Pacific Coast Highway. Before you proceed any further, I would like to clarify the terms under which the Conservancy would consider extinguishing the Mancuso/Wildman easement.

While we do believe the parking area is a way to increase public access to Escondido Beach and might well be a suitable alternative to the Mancuso/Wildman easement, we are willing to seek our Board's approval for exchanging the Mancuso/Wildman easement for the parking lot **only** if the following conditions are met within the next three months:

1. You submit the feasibility study for Conservancy review and approval.
2. You provide evidence of ownership of the site or, at the very least, an option to purchase the site.
3. You provide detailed cost estimates and commit to all of the direct and indirect costs, as well as the administration efforts required, to construct the project.
4. You secure Coastal Commission approval for the exchange and the use of funds previously dedicated for construction of the Mancuso/Wildman easement.

Once these conditions were met, we would seek the approval of our Board for the exchange. The proposal we would take to our Board would require you to assure construction of the parking area, including securing permits, designing the facilities (subject to our approval), supervising construction, and funding construction. We are willing to work with you on the permit applications but

Mr. Jonathan Horne
June 29, 1995
Page Two

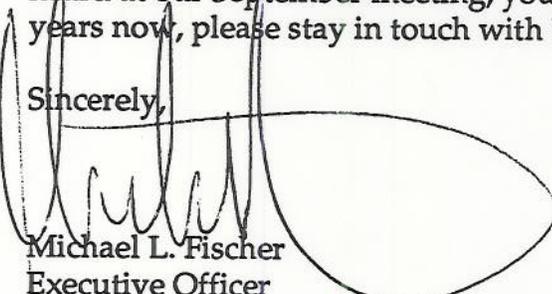
you will be responsible for the permit and extinguishment of the Mancuso/Wildman easement would be contingent upon permit approval for the alternative project. We would also expect this to be done within a reasonable amount of time, such as one to two years.

You have told Brenda Buxton of our staff that constructing parking lots is beyond the expertise of your client and for this reason you do not want to construct the parking lot. However, I hope you understand our position; we simply do not have the staff resources necessary to accomplish such an effort. Furthermore, we are not going to agree to extinguish the Mancuso/Wildman easement unless we are guaranteed something significantly better and there is no guarantee until the parking lot is built. As we have stated before, we will only consider a "turn-key" arrangement with no risk to us.

If these terms are not acceptable to you, please let me know.

In the meantime, we are proceeding with our topographical mapping and construction feasibility analysis of the Mancuso/Wildman easement. As you know, we will seek our Board's approval to enter into an agreement with MRCA for the operation and maintenance of the Mancuso/Wildman easement and other vertical accessways to Escondido Beach. (This item was re-scheduled and will be heard at our September meeting; you will be notified.) As you have for several years now, please stay in touch with Brenda Buxton. Thanks.

Sincerely,



Michael L. Fischer
Executive Officer

cc: Susan McCabe

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October 3, 1994

Jonathan S. Horne, Esq.
309 Santa Monica Blvd. Suite 307
Santa Monica, California 94105

Re: Donahue Wildman
Wildman/Chiate Easement

Dear Mr. Horne:

I am writing to thank you for the August 4 tour of the Conservancy's access easement over your client's property to Escondido Beach, and to summarize my thoughts and intentions arising out of that visit and our meeting of last Friday.

First, it is my judgement that the easement, while difficult, is in fact buildable. Although I had suggested that you might retain the services of a neutral party to exhaustively search for alternative accessways and property owners willing to sell the necessary interests, a review of our files and discussions with staff members familiar with the area has convinced me that such a search is likely to be fruitless. (In fact, previous correspondence indicates that you reached the same conclusion yourself.)

While the alternate proposal at Paradise Cove which you outlined at our meeting last Friday is very attractive, we think the owners are unlikely to agree, so that, without discouraging any efforts you can make in that regard, I am not optimistic about the outcome. That being the case, I have directed our staff to move forward with plans to develop the accessway and open it for public use. We will, within the immediate near-term, take steps to survey the property and prepare the necessary construction plans.

This brings me to my second concern: that of private improvements to Mr. Wildman's property that impede use and development of the accessway. As you know, the Conservancy's staff has long regarded the existing driveway configuration and related fencing and landscaping as violating the provisions of the dedicated vertical and parking easements. We have worked with your client since at least April of 1986, when Sherman

Jonathan S. Horne
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Stacey proposed a realignment of both the driveway improvements and the easement in order to accommodate both uses, through an extensive series of negotiations from 1989 through early 1992 to obtain equivalent alternative access, to resolve this problem -- always with the understanding that if and when the existing easement were developed, the private improvements would have to be relocated to permit public use of the easement. Thus, while we acknowledge that the location of these improvements does not currently conflict with the use of our easements, we do expect that they will be removed prior to construction of the accessways.

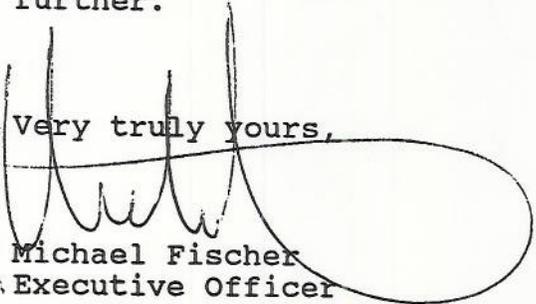
When the Conservancy does authorize development of the accessways, we will of course give you advance notice of our plans and the anticipated date of construction, in order to provide a reasonable period of time to undertake the necessary relocations.

We are also agreeable to working with you to develop revised plans for the driveway, fencing, and accessways (such as those suggested by Mr. Stacey in 1986) to more sensitively accommodate both private and public uses, and I would welcome such a discussion at any time.

In any case, please be advised that we continue to regard development of the easements as feasible and removal of the existing obstructions as necessary to the exercise of our rights as an easement holder; we expect that they will be removed within the next six months or, at the latest, by the time we need to obtain access for our contractors and the public.

Again, I thank you for your time and welcome your assistance to resolve the easement violations in a manner acceptable to your client. Please feel free to contact Brenda Buxton or Marcia Grimm of my staff (both of whom, as you know, are familiar with the project) or myself if you wish to discuss these matters further.

Very truly yours,



Michael Fischer
Executive Officer

cc: Susie McCabe
Joseph T. Edmiston
Peter Douglas

Marcia Grimm
Brenda Buxton
Joan Cardellino

MEMORANDUM OF UNDERSTANDING
CONCERNING
REAL PROPERTY TRANSACTIONS

WHEREAS, the State Coastal Conservancy (the "Conservancy") is an agency of the State of California, established under Division 21 of the Public Resources Code (commencing with Section 31000) with responsibility for implementing a program of agricultural protection, area restoration, and resource enhancement in the coastal zone within policies and guidelines established under the California Coastal Act of 1976, Public Resources Sections 30000 et seq. (the "Coastal Act"); and

WHEREAS, pursuant to Public Resources Code Section 31104.1, the Conservancy serves as a repository for lands whose reservation is required to meet the policies and objectives of the Coastal Act or a certified local coastal plan or program, and may accept dedication of fee title, easements, development rights, or other interests in lands; and

WHEREAS, pursuant to Public Resources Code Section 31104, the Conservancy may accept gifts and donations from public and private sources; and

WHEREAS, Public Resources Code Section 31105 authorizes the Conservancy to acquire, pursuant to the Property Acquisition Law (Part 11 (commencing with Section 15850), Division 3, Title 2 of the Government Code), real property or any interests therein for all of the purposes specified in Division 21 of the Public Resources Code; and

WHEREAS, pursuant to Government Code Sections 11011 et seq., the Department of General Services (both the Department of General Services and the Director of General Services are referred to herein as the "Department") is responsible for disposing of certain proprietary state lands that are determined to be excess, but Government Code Section 11011 exempts lands under the jurisdiction of the Conservancy from these provisions; and

WHEREAS, Public Resources Code Section 31107 provides that, notwithstanding any other provision of law, the Director of General Services shall, when so requested by the Conservancy, lease, rent, sell, exchange or otherwise transfer any real property interest acquired pursuant to Division 21, pursuant to an implementation plan approved by the Conservancy; and

WHEREAS, Government Code Section 11005 provides that contracts for the acquisition or hiring of real property in fee or any lesser interest, entered into by the state, must be approved by the Department; and that gifts to the state of real property in fee or any lesser interest must be approved by the Director of Finance; and

WHEREAS, Government Code Section 11005.2 provides that every conveyance or agreement whereby an interest of the state in any real property is conveyed or leased must be approved by the Department; and

WHEREAS, the Department serves as staff to the State Public Works Board in carrying out the provisions of the Property Acquisition Law, and staff to the Department of Finance in regard to the approval of gifts of interests in real property to the state; and

WHEREAS, Public Resources Code Section 31107.1 directs the Department and the Conservancy to jointly develop and implement appropriate procedures to ensure that land acquisition, leasing, options to purchase, land disposal, and other property transactions undertaken in accordance with Division 21 of the Public Resources Code are carried out efficiently and equitably and with proper notice to the public;

NOW, THEREFORE, the Department and the Conservancy agree as follows:

1. Acquisition of Real Property. In acquiring real property pursuant to the Property Acquisition Law, the Department and the Conservancy shall proceed as follows:

(a) The Department, in consultation with the Administrative Secretary of the State Public Works Board (the "Board"), shall obtain a tentative annual schedule of the Board meetings, and forward it to the Conservancy promptly after publication. The Conservancy shall provide the Department with notice, at least five weeks in advance of the relevant Board meeting, of its intention to schedule an acquisition for Board action, pending authorization of the acquisition by the Conservancy's Board. The notice shall include a copy of the Conservancy Staff Recommendation for the acquisition. The Department shall, upon request of the Conservancy, notify the Conservancy of a cutoff date which shall be the last day on which documents must be received by the Department from all agencies in order for acquisitions to be scheduled for the next meeting of the Board. If the date of a Board meeting is changed from that designated in the tentative schedule, the Department shall notify the Conservancy of the change sufficiently in advance of the then applicable cutoff date to enable the Conservancy to prepare and submit acquisition documents on the cutoff date. If the Conservancy submits the documents specified in subparagraph 1(b) no later than the established cutoff date, the Department shall schedule the acquisition for presentation to the Board at its next meeting.

(b) When seeking Board authorization for the acquisition of interests in real property pursuant to the Property Acquisition Law, the Conservancy shall provide the following documentation to the Department:

- (i) Three original copies of a Property Acquisition Agreement executed by the seller and approved on behalf of the Conservancy;
- (ii) A properly executed and acknowledged Grant Deed for the property to be acquired;
- (iii) Proposed Escrow Instructions and Warrant Request;
- (iv) A Certificate of Visual Inspection;
- (v) A preliminary title report on the property to be acquired;
- (vi) A Certificate of Just Compensation and Statement of Owner;
- (vii) A copy of any environmental documentation required by the California Environmental Quality Act, or an explanation of why no such documentation is required;
- (viii) A copy of the minutes and resolution of the Conservancy authorizing the acquisition, accompanying staff recommendation, and other relevant documentation; and
- (ix) A completed Settlement Summary (OREDS Form 108), describing the terms and conditions of acquisition; a full description of title exceptions which the State is taking subject to, with a justification for accepting such exceptions; and a copy of any documents creating liens or encumbrances that adversely affect the State's interest in the property; if the State is taking subject to same.

(c) The Department shall notify the Conservancy, within ten (10) working days of receiving the documentation specified above, of any documents or information needed to present the acquisition to the Board that is missing from the documentation submitted, and of any issues or problems arising from the proposed terms of acquisition. If the Conservancy provides the needed documents or information and/or explains or rectifies problems or issues raised by the Department no later than five (5) working days prior to the Board meeting for which the acquisition is scheduled, then the acquisition shall be presented to the Board at that meeting.

(d) The Conservancy shall provide the Department with four (4) copies of the policy of title insurance and one (1) copy of the final approved closing statement as soon as possible after correct copies are received by the Conservancy. Upon receipt of the title policy, the Department shall add the property to the state real property index and file original documents in the State Archives. The Department shall promptly provide the Conservancy with a copy of the recorded deed and reference to the state real property index number for the Conservancy's files.

2. Acceptance of Gifts or Dedications of Property Interests.

(a) In accepting gifts or dedications of interests in real property pursuant to Public Resources Code Sections 31104 and 31104.1, and in acquiring any interest in real property which is not subject to the Property Acquisition Law, the Conservancy shall provide to the Department the following documentation:

(i) The instrument granting or dedicating the property interest to the State, in form adequate for recording, which shall include a complete and accurate legal description;

(ii) A Certificate of Acceptance, in form substantially complying with the provisions of Government Code Section 27281, duly executed and acknowledged on behalf of the Conservancy;

(iii) A copy of the minutes of a Conservancy board meeting containing the resolution authorizing acceptance of the interest in property, accompanying staff recommendation, and other relevant documentation;

(iv) A preliminary title report for the property, along with copies of documents creating liens or encumbrances that might adversely affect the interest being acquired; subordination agreements or other instruments subordinating such liens or encumbrances to the interest being acquired, or an explanation of why the State should take subject to such liens or encumbrances, if any;

(v) A copy of all environmental documentation required by the California Environmental Quality Act, or an explanation of why no such documentation is required; and

(vi) A map or plat of the property interest to be acquired.

(b) The Department shall approve or disapprove conveyances and agreements accepting the interests in property (other than gifts) not later than sixty (60) days after receiving all of the documents specified in subparagraph 2(a). - If the Department disapproves any such conveyance or agreement, it shall specify in writing the statutory or legal basis for its disapproval. The Department shall approve the conveyance or agreement immediately if the Conservancy takes corrective measures necessary to rectify statutory or legal problems specified by the Department; if the Conservancy is unable to do so, it shall provide the Department with an explanation of why this is so, and may offer alternative solutions. The Department agrees to give prompt, good faith consideration to any such explanation or alternative solution offered by the Conservancy.

(c) The Department shall submit to the Department of Finance for consideration for approval conveyances and/or agreements accepting gifts of interests in property not later than sixty (60) days after receiving all of the documents specified in subparagraph 2(a), or shall specify in writing the statutory or legal basis for its disapproval. The Department shall submit the conveyance or agreement to the Department of Finance immediately if the Conservancy takes corrective measures necessary to rectify statutory or legal problems specified by the Department; if the Conservancy is unable to do so, it shall provide the Department with an explanation of why this is so, and may offer alternative solutions. If agreement cannot be reached as to acceptable changes, the Department and the Conservancy shall submit the issue to the Department of Finance for resolution.

(d) During the 60-day period specified in subparagraphs (b) and (c) above, the Department may recommend changes or corrections to documents submitted by the Conservancy, or may request further information or additional supporting data regarding the proposed conveyance or agreement. The Conservancy shall respond promptly to any such inquiries, and shall incorporate all reasonable changes or corrections recommended by the Department, unless either (i) to do so would be inconsistent with the Conservancy's statutory responsibilities or with the authorizations and directives of the Conservancy board; or (ii) other parties to the conveyance or agreement are unable or unwilling to make the requested changes.

(e) Upon approval by the Department of a standard form of easement, offered for dedication under provisions of the California Coastal Act for the purposes of public access and/or preservation of coastal resources, Conservancy acceptance of such easements shall be exempt from Department approval as provided in Section 1378 of the State Administrative Manual.

(f) The Conservancy shall within sixty (60) days of receiving any approved agreement which is not to be recorded, and within sixty (60) days of recording of any approved conveyance or agreement, return the original executed document to the Department. Upon receipt, the Department shall add the property to the state real property index and file original documents in the State Archives. The Department shall provide the Conservancy with a reference to the state real property index number for the Conservancy's files.

3. Property Disposition Procedures. When the Conservancy deems it necessary to dispose of interests in real property acquired under Division 21 of the Public Resources Code, the Department and the Conservancy shall follow the Property Disposition Procedures which are attached hereto as Exhibit A and incorporated herein by reference. Prior to publishing a Request for Offers as provided in the Property Disposition Procedures, the Conservancy shall submit its proposed Request for Offers and advertising plan to the Department for review and comment. The Department shall offer its comments to a proposed Request for Offer no later than sixty (60) days after receiving the Conservancy's proposed Request for Offers and advertising plan. The Department shall approve the conveyance of property or any interest therein, or any contract to convey interests in such property, provided the contract or conveyance is consistent with the requirements of the Property Disposition Procedures and other applicable provisions of law, no later than sixty (60) days after the Conservancy has requested such conveyance.

4. Extensions and Reductions of Time Periods in Particular Instances. The Conservancy acknowledges that there may be instances in which the Department is unable to complete its review of real estate transactions within the time periods specified in this Memorandum of Understanding, and the Department acknowledges that there may be instances in which Conservancy transactions must be completed in shorter periods of time than are provided for in this Memorandum of Understanding. In any instance in which the Department finds that it will not be able to complete its review within the time period specified herein, the Department shall promptly notify the Conservancy and specify the period of time required to complete its review. The Department agrees to make good faith efforts to complete the review as expeditiously as possible.

In any instance in which a Conservancy transaction must be completed within a time period less than that specified herein, the Conservancy shall provide the Department with notice and information concerning the transaction and its time constraints at the earliest possible opportunity, and the Department shall make best efforts to cooperate with the Conservancy and complete the transaction review within the earlier period of time specified.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding as of the last named date below.

DEPARTMENT OF GENERAL SERVICES

STATE COASTAL CONSERVANCY

By: 
William G. Anthony
Director

By: 
Peter Grenell
Executive Officer

Date: 8/28/90

Date: 9/4/90

EXHIBIT A

PROPERTY DISPOSITION PROCEDURES

The following procedures shall be followed when the State Coastal Conservancy (Conservancy) deems it necessary to dispose of interests in real property.

Preparation of Property Disposition Plan

1. Prior to requesting the Director of General Services (both the Director of General Services and the Department of General Services are referred to herein as the "Department") to dispose of property, the Conservancy shall adopt a Property Disposition Plan, which shall consist of, or be an element of, an implementation plan adopted pursuant to Public Resources Code Section 31107. The Property Disposition Plan shall include:

- A. A finding that the property disposition is necessary to implement a plan approved by the Conservancy in accordance with Division 21 of the Public Resources Code or to meet any other provisions of that division; and
- B. A detailed statement of the specific terms of the property disposition, including the terms of sale or transfer; the specified transferee, if any, or selection criteria for acceptance of offers; the time period within which the disposition must be completed; and such other information as is deemed appropriate by the Conservancy.

Publication of a Request for Offer

1. The Conservancy shall publish a Request for Offer (RFO) that has been approved by the Department. If so directed by the Conservancy Board, the Conservancy may instead request that the Department publish the RFO and market the property; in that event, the Department shall publish an RFO that has been approved by the Executive Officer of the Conservancy. RFO's shall conform to the terms of transfer specified in the Property Disposition Plan and, in addition, to the following criteria:

- A. Contents -- The RFO shall contain the following items:
 - i. A description of the real property or interest in real property (herein referred to as the "property") to be disposed of;
 - ii. A statement of the authority under which the property was acquired;
 - iii. A statement of the Conservancy's specific purposes for disposing of the property;
 - iv. A statement that the property is being sold "as is" without

- warranty as to title or as to toxic substances;
- v. A general statement of the conditions under which an offer will be entertained including minimum sales price, refundable earnest money requirement, and other items as may be appropriate;
 - vi. A statement of the date by which offers must be received by the Conservancy. Such date may be no sooner than thirty days from the date of first publication;
 - vii. A statement of the date, time and place that sealed offers will be publicly opened by the Executive Officer of the Conservancy or his designee;
 - viii. A statement of the address to which offers are to be submitted;
 - ix. A statement that offers will be reviewed and that one will be selected at a properly noticed meeting of the Conservancy;
 - x. A statement that the Conservancy reserves the right to reject all offers submitted, and to conduct an oral auction following the opening of offers;
 - xi. A statement that acceptance of any offer is subject to approval by the Director of General Services.

B. Frequency and Location of Publication - The RFO shall be published once a week for two consecutive weeks in a newspaper of general circulation published in the following locations:

- i. The county in which the property is located;
- ii. The general geographic region in which the property is located;
- iii. The major metropolitan centers of the state, when appropriate.

C. Mailing -- The RFO shall be mailed to any other potential offerors who have expressed their interest in the property in writing to the Conservancy.

D. Posting -- Notice of the sale and contact for additional information shall also be posted on the property.

Offers

1. Completed responses to an RFO (offers) shall be accompanied by earnest money payment if required and shall contain the following:
 - A. An offer to purchase the property, specifying price, terms, and all other pertinent purchase details;
 - B. If the sale is not to be by cash, a statement of the financial qualifications of the offeror, including appropriate references;
 - C. If for an agricultural preservation program, a statement describing the farming or other relevant agricultural experience of the offeror; or, where the Property Disposition Plan calls

for offerors to demonstrate other specified qualifications required to meet the Conservancy's objectives in disposing of the property, a statement of the relevant qualifications of the offeror;

- D. A statement of the identity, mailing address, and telephone number of the offeror.

Selection of Offeror and Notification of Offerors

1. The Conservancy shall make the selection of an offer at a properly noticed board meeting, affording the public adequate opportunity to comment on the selection. The selection shall be based on the Conservancy's determination of which offer will best serve the needs of Division 21 of the Public Resources Code which necessitate the disposition.
2. As soon as possible after such selection is made, but in no event more than seven days thereafter, the Conservancy shall notify all offerors of which offer was chosen.

Disposition to Specified Transferees

1. Where the Conservancy authorizes the acquisition of property as a part of an approved project which identifies a specific transferee as a necessary element for the project, the provisions of this paragraph shall apply.
2. Determination by the Conservancy that the project requires a specified transferee and the selection of such a transferee shall be made at a properly noticed meeting of the Conservancy board. The determination and selection shall be based upon the specified transferee's unique ability to achieve the project goals. Such uniqueness may be based on the transferee's extraordinary professional skills or knowledge, on the transferee's ability to convey other property essential to the completion of the project or on other criteria which clearly distinguish as unique the specified transferee's ability to achieve the project goals from that of other potential transferees.
3. Transfer of property to a specified transferee shall be made pursuant to an agreement with the Director of General Services satisfactory to the Executive Officer of the Conservancy, which obligates the specified transferee to fulfill the project goals.
4. The provisions of this section apply equally to projects in which the Conservancy designates a specified transferee subsequent to its authorization for the acquisition of the property.

Coordination with Project Sponsor Selection Procedures

Where disposition of property is an integral component of project sponsor selection, the Conservancy procedures for each function may be combined. In such an event, the RFO under the project sponsor selection procedures may be the same as the RFO under these procedures, and the notice, publication, hearing, selection, and other procedures may be similarly unified.

Limitation of Applicability of Procedures

These Property disposition Procedures are not designed for disposition of Conservancy property to governmental agencies. In the event of transfer of property to another agency of the state, transfer shall be accomplished according to the ordinary procedures for a transfer of jurisdiction and control of state proprietary lands. In the case of disposition of property to local governmental agencies, terms of transfer may be established by the Conservancy and the local government, in accordance with Public Resources Code Section 31354, or other applicable provisions of Division 21 of the Public Resources Code. In the case of disposition of property to the United States Government, disposition shall be pursuant to the terms of an agreement mutually satisfactory to the Director of General Services, the Conservancy and the United States Government. In all cases, however, the Conservancy must adopt an appropriate Property Disposition Plan. When determined by the Conservancy to be appropriate, property may be disposed of to governmental agencies as specified transferees under these procedures.

Construction of the Chiate/Wildman Beach Access Easement, Malibu CA

Project Description

The Coastal Conservancy owns a ten-foot wide public access easement at 27900-10 Pacific Coast Highway, Malibu. The easement currently is not available for public use. This easement was generated by a Coastal Commission permit for a subdivision. The easement runs from the PCH shoulder, through a driveway, past two houses, down a short bluff, along the edge of a ravine, and down a cliff face to the beach. A survey and other descriptive information is enclosed. The easement of concern is the "modified beach easement" on the survey.

The project is to construct any necessary improvements so that the easement may be used by the public. Due to the topography of the site, the easement will not be wheelchair accessible. Construction is expected to involve: 1) removal of barricades including wrought iron fencing, shrubs and trees, concrete curbs and gutters; 2) grading and paving (material to be decided) of relatively flat areas; 3) installation of stairs, decks, and other structures to negotiate slopes; and 4) installation of fencing and landscaping to screen easement from property owners.

The construction contractor may not be able to mobilize outside of the ten-foot wide easement. This needs to be taken into consideration when designing the improvements and estimating construction costs.

The easement, once constructed, will be operated and maintained by the Mountains Recreation and Conservation Authority, which maintains other parks and beach accessways in the area.

Work Products:

I. Construction feasibility investigation

- a. Assessment of site conditions (e.g. soil stability, obstacles to be removed, etc.)
- b. Preliminary Design (in consultation with other involved parties)
- c. Construction cost estimates
- d. Other analysis to be determined by permit requirements or CEQA.

If Conservancy elects to proceed with project, the next tasks would be:

II. Construction

- a. Final design
- b. Bid package/specifications
- c. Construction supervision

Construction may be completed by a private contractor, the Mountains Recreation and Conservation Authority, the California Conservation Corps, or all three.

STANDARD AGREEMENT

STD. 2 (REV.5-91)

APPROVED BY THE
ATTORNEY GENERAL

CONTRACT NUMBER 95-029	AM. NO.
TAXPAYER'S FEDERAL EMPLOYER IDENTIFICATION NUMBER	

THIS AGREEMENT, made and entered into this 28 day of June, 1996, in the State of California, by and between State of California, through its duly elected or appointed, qualified and acting

TITLE OF OFFICER ACTING FOR STATE Executive Officer	AGENCY State Coastal Conservancy	, hereafter called the State, and
CONTRACTOR'S NAME Charles I. Rauw Consulting Engineers , hereafter called the Contractor.		

WITNESSETH: That the Contractor for and in consideration of the covenants, conditions, agreements, and stipulations of the State hereinafter expressed, does hereby agree to furnish to the State services and materials as follows: *(Set forth service to be rendered by Contractor, amount to be paid Contractor, time for performance or completion, and attach plans and specifications, if any.)*

SCOPE OF AGREEMENT

Charles I. Rauw, Consulting Engineers ("the contractor") shall provide environmental, architectural, engineering, land-surveying, and geotechnical engineering services and shall perform tasks for the State Coastal Conservancy ("the Conservancy") as follows:

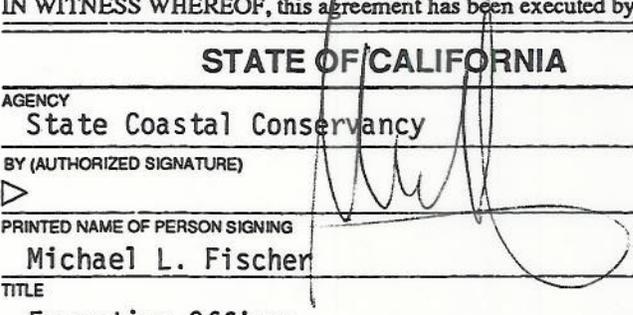
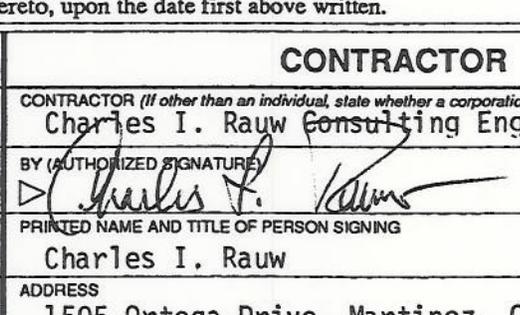
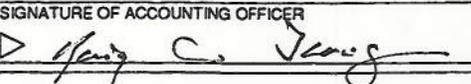
1. Conduct a topographic survey of the parking lot easement and adjacent features.
2. Assess geologic and geotechnical conditions, including drainage, bluff erosion and slumping, existing grades, and general features, including obstacles and obstructions to construction of the parking and vertical easements. Prepare a brief report summarizing how these conditions and features would impact construction of vertical and parking easements.

(Continued on the following pages)

CONTINUED ON _____ SHEETS, EACH BEARING NAME OF CONTRACTOR AND CONTRACT NUMBER.

The provisions on the reverse side hereof constitute a part of this agreement.

IN WITNESS WHEREOF, this agreement has been executed by the parties hereto, upon the date first above written.

STATE OF CALIFORNIA				CONTRACTOR					
AGENCY State Coastal Conservancy				CONTRACTOR (If other than an individual, state whether a corporation, partnership, etc.) Charles I. Rauw Consulting Engineers					
BY (AUTHORIZED SIGNATURE) 				BY (AUTHORIZED SIGNATURE) 					
PRINTED NAME OF PERSON SIGNING Michael L. Fischer				PRINTED NAME AND TITLE OF PERSON SIGNING Charles I. Rauw					
TITLE Executive Officer				ADDRESS 1505 Ortega Drive, Martinez, CA 94553					
AMOUNT ENCUMBERED BY THIS DOCUMENT \$ 38,500.00	PROGRAM/CATEGORY (CODE AND TITLE) Other Local Assistance		FUND TITLE Special Deposit Fund		Department of General Services Use Only Certify that this grant agreement/ contract/amendment is exempt from Department of General Services approval 				
PRIOR AMOUNT ENCUMBERED FOR THIS CONTRACT \$	(OPTIONAL USE) Chiate/Wildman Feasibility Study								
TOTAL AMOUNT ENCUMBERED TO DATE \$ 38,500.00	ITEM 3760-607-942067	CHAPTER	STATUTE 1945	FISCAL YEAR 45/46					
OBJECT OF EXPENDITURE (CODE AND TITLE) Access									
I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.				T.B.A. NO.	B.R. NO.				
SIGNATURE OF ACCOUNTING OFFICER 				DATE 6-28-96					

SCOPE OF AGREEMENT (Continued)

Vertical and parking easements are described in the Irrevocable Offers to Dedicate recorded January 26, 1983 as No. 83-108579 and No. 83-108580 respectively in the Official Records in the Office of the Recorder of Los Angeles County.

3. In consultation with the Conservancy and any parties designated by the Conservancy, evaluate alternative concepts for parking and vertical easement development. Concepts for easement development shall integrate the parking and vertical easement into one public access facility. Present alternatives to the Conservancy.
4. Prepare a preliminary design of the alternative preferred by the Conservancy using an Autocad format and showing plan and section views of easements. Also prepare a report summarizing design, assumptions, and recommendations. Provide the Conservancy with a vellum copy, suitable for making blueprint reproductions, of the preliminary design.
5. Develop a probable construction cost of preliminary design that considers limited equipment access to the site. Estimate shall include specific line items of construction with unit and/or lump-sum prices and quantities as appropriate as well as a design and construction contingency.

The contractor shall perform all services in close consultation with Conservancy staff.

All materials and work products produced by the contractor as a result of this agreement shall become the property of the Conservancy.

TERM OF AGREEMENT AND EARLY TERMINATION

This agreement shall take effect when signed by both parties.

The term of this agreement is from its effective date through April 30, 1997. However, all work shall be completed by January 31, 1997 (the completion date").

During this term, either party may terminate this agreement for any reason by providing thirty days written notice to the other party. Upon termination, the contractor shall take whatever measures are necessary to prevent further costs to the Conservancy under this agreement. The Conservancy shall be responsible for any reasonable and non-cancelable obligations incurred by the contractor in the performance of this agreement up to the date of notice to terminate, but only up to the unpaid balance of total funds authorized under this agreement.

COSTS AND DISBURSEMENTS

The total amount of funds disbursed under this agreement shall not exceed thirty-five thousand dollars (\$35,000). Disbursements shall be made to the contractor on the basis of services rendered and costs incurred to date, less ten percent, upon satisfactory progress in accordance with schedules, budgets, and other provisions of this agreement, and upon submission of an invoice, which shall be submitted no more frequently than monthly but no less frequently than quarterly. Disbursement of the ten percent withheld shall be made upon completion of all tasks to the satisfaction of the Conservancy.

Services shall be billed at no more than the standard billing rate for the following personnel of contractor and its subcontractors:

Charles I. Rauw, Consulting Engineers

Principal Engineer	\$115/hr
Geotechnical Engineer	\$125/hr
Structural Engineer	\$ 95/hr
Landscape Architect	\$ 80/hr
Staff Engineer/Designer	\$ 70/hr
Drafting/Technician	\$ 60/hr
Clerical	\$ 45/hr

Hyden Associates, Landscape Architects

Principal Landscape Architect	\$ 70/hr
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Robertson Geotechnical Inc.

Principal Geologist	\$200/hr
Registered Geologist	\$125/hr
Field Geologist-Engineer	\$ 98/hr
Staff Geologist	\$ 82/hr
Engineer Technician	\$ 68/hr
Draftperson	\$ 59/hr

Expenses will be reimbursed as follows:

The contractor shall be reimbursed for necessary travel expenses, when documented by appropriate receipts, at actual costs not to exceed the rates provided in Title 2, Division 1, Chapter 3, Subchapter 1, Article 2 of the California Code of Regulations. The contractor's headquarters for purposes of computing such expenses is 1505 Ortega Drive, Martinez, CA 94553. All travel other than automobile travel within the Counties of Contra Costa, Alameda, and Los Angeles, must be approved in advance by the

COSTS AND DISBURSEMENTS (Continued)

Executive Officer of the Conservancy ("the Executive Officer").

All other out-of-pocket expenses shall be reimbursed at cost.

Overhead on subcontractors shall be reimbursed at 15%.

Each invoice shall include the contractor's name and address, the number of this agreement, the contractor's authorized signature, the date of submission, the amount of the invoice, a brief description of the services rendered and work products completed, and an itemized description of all work done for which disbursement is requested, including time, materials and expenses incurred. The contractor shall submit the final invoice within thirty days after the completion date provided in the "TERM OF AGREEMENT AND EARLY TERMINATION" section, above.

DISCLOSURE OF FINANCIAL INTEREST

The contractor shall complete and return all financial disclosure forms within ten days of receipt from the Conservancy, including those disclosure forms received at the termination of the contract.

FUNDING AUTHORIZATION

The signature of the Executive Officer on the first page of this agreement certifies that at its May 16, 1996 meeting the Conservancy adopted the resolution included in the staff recommendation attached as Exhibit A. This agreement is executed pursuant to that authorization.

Standard Provisions

EXPENDITURE OF FUNDS AND ALLOCATION OF FUNDING AMONG BUDGET ITEMS

The contractor shall expend funds in the manner described in the approved project budget. The allocation of funds among the items in the project budget may vary by as much as ten percent without approval by the Executive Officer. Any difference of more than ten percent must be approved in writing by the Executive Officer. The Conservancy may withhold payment for changes in particular budget items which exceed the amount allocated in the project budget by more than ten percent and which have not received the approval required above. The total amount of this contract may not be increased except by amendment to this agreement. Any increase in the funding for any particular budget item shall mean a decrease in the funding for one or more other budget items unless there is a written amendment to this agreement.

LIABILITY

The contractor waives all claims and recourse against the Conservancy, including the right to contribution for any loss or damage arising from, growing out of or in any way connected with or incident to this contract, except claims arising from the active negligence of the Conservancy, its officers, agents, and employees.

The contractor shall indemnify, hold harmless, and defend the Conservancy, its officers, agents, and employees, against any and all claims, demands, damages, costs, expenses, or liability arising out of this agreement, to the extent caused by the contractor's acts, errors, or omissions constituting negligence, gross negligence, or intentional misconduct in the performance of professional services under this agreement.

NONDISCRIMINATION

During the performance of this agreement, the contractor and its subcontractors shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of sex, race, religion, color, national origin, ancestry, physical disability, medical condition, marital status, age or denial of family-leave care. The contractor and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. The contractor and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.) and the applicable regulations (California Code of Regulations, Title 2, Section 7285.0 et seq.). The regulations of the Fair Employment and Housing Commission regarding contractor Nondiscrimination and Compliance

NONDISCRIMINATION (Continued)

(Chapter 5 of Division 4 of Title 2 of the California Code of Regulations), are incorporated into this agreement. The contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. This nondiscrimination clause shall be included in all subcontracts entered into by the contractor to perform work provided for under this agreement.

INDEPENDENT CONTRACTOR STATUS

The contractor shall maintain its status as an independent contractor as defined in Section 3353 of the California Labor Code. To this end, the contractor shall be under the control of the State, acting through its agent, the Conservancy, but only as to the results of its work and not as to the means by which the results are accomplished.

NATIONAL LABOR RELATIONS BOARD

By signing this agreement, the contractor states under penalty of perjury that, during the two-year period immediately preceding the date of the agreement, no more than one final unappealable finding of contempt of court has been issued against the contractor for failure to comply with an order of the National Labor Relations Board.

SETTLEMENT OF DISPUTES

If any dispute arises out of this agreement, the contractor shall file a "Notice of Dispute" with the Executive Officer within ten days of discovery of the problem. Within ten days of such notification, the Executive Officer shall meet with the contractor and designated Conservancy staff members for the purpose of resolving the dispute. If the Executive Officer is unable to resolve the dispute to the contractor's satisfaction, the contractor may proceed under Government Code Sections 900 et seq. with any claims against the Conservancy arising out of this agreement.

CONTRACTOR IDENTIFICATION AND EVALUATION

Within thirty days of completion of all work described in the "Scope of Agreement," the contractor shall be evaluated by Conservancy staff. The evaluation shall be kept with records of this agreement at the Conservancy's

CONTRACTOR IDENTIFICATION AND EVALUATION (Continued)

offices. If negative, a copy shall be sent (as required by law) to the Department of General Services, Legal Office. The evaluation shall be made available to the contractor upon request.

AUDITS/ACCOUNTING/RECORDS

The contractor shall maintain standard financial accounts, documents, and records relating to the agreement. The contractor shall retain these documents for three years following the date of final disbursement by the Conservancy under this agreement, regardless of the termination date. The documents shall be subject to examination and audit by the Conservancy and the Bureau of State Audits during this period. The contractor may use any accounting system which follows the guidelines of "Generally Accepted Accounting Practices" published by the American Institute of Certified Public Accountants.

Additionally, the Conservancy or its delegate may review, obtain, and copy all records relating to performance of the contract. The contractor shall provide the Conservancy or its delegate with any relevant information requested and shall permit the Conservancy or its delegate access to its premises, upon reasonable notice, during normal business hours for the purposes of interviewing employees and inspecting and copying books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with Public Contract Code Section 10115 et seq. and Title 14, California Code of Regulations, Section 13870 et seq. The contractor shall maintain these records for a period of three years after final payment under the contract.

EXECUTIVE OFFICER'S DESIGNEE

The Executive Officer shall designate a Conservancy project manager who shall have authority to act on behalf of the Executive Officer with respect to this agreement. The Executive Officer shall notify the contractor of the designation in writing.

AMENDMENT

This agreement may be modified only upon written agreement of the parties; provided, however, that the completion date may be modified by written letter of contractor countersigned by the Executive Officer and such modification shall have the same force and effect as if included in the text of this agreement.

ASSIGNMENT, SUBCONTRACTING AND DELEGATION

The contractor has been selected to provide the services and perform the tasks of this agreement because of its unique skills and experience. Except as expressly provided in this agreement, the contractor shall not assign, subcontract or delegate any of the services and tasks to be performed, without written authorization by the Executive Officer.

TIMELINESS

Time is of the essence in this agreement.

LOCUS

This agreement is deemed entered into in the County of Alameda.