

CALIFORNIA STATE COASTAL CONSERVANCY

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April 1, 1996

Mr. Jonathan Horne
309 Santa Monica Blvd., Suite 307
Santa Monica CA 90401

Dear Jonathan:

This letter outlines various issues raised at the March 5, 1996 public meeting in Malibu and in the "Option and Purchase/Sale Agreement" document received February 28, 1996. Before the Conservancy proceeds with the proposed easement exchange, these concerns would need to be addressed. Resolution of these issues is necessary to meet our condition that at a minimum the exchange offers the State the same rights and privileges that it has under the Chiate/Wildman easement. Until we are assured that it is, we will be continuing with the construction feasibility study for the Chiate/Wildman easement. Brenda Buxton will be contacting you shortly to arrange a convenient time for access to Wildman's and Mancuso's properties.

The concerns that we have identified as are follows, in order of importance:

1. Covenants, Conditions, and Restrictions:

Please provide in writing more information for your statement that the single-family development restrictions discovered in the title search would not hinder the Conservancy's ability to develop the property for public access purposes.

2. Use of Black Tor permit funds.

Several years have passed since issuance of the Black Tor permit. Therefore, there may be issues with respect to that permit which must be addressed to the Coastal Commission in order for funds to be applicable to the alternative accessway. As you know, one of the major advantages of the alternative accessway is that it would likely be less expensive to build, enabling us to use left-over funds for operation and maintenance. In order for one of the attractions of the alternative to apply, you must work with Coastal Commission staff to discuss and resolve any issues through appropriate Commission process. I recommend that you discuss the appropriate steps with the Coastal Commission.

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3. CCC Approval

In light of the various environmental concerns that have been raised, we believe that the best way to proceed with this project (if the above concerns are addressed) is for you to secure your Coastal Commission permit amendment before seeking approval from the Conservancy. As you know, the Coastal Commission will undertake an extensive environmental review based on the project's consistency with the Coastal Act. The Conservancy would like to see this analysis before proceeding with the exchange. If you contact Commission staff for more information on the permit amendment process.

4. Option/Purchase Agreement

Below are the various problems we have with the current draft of the proposed Option/Purchase Agreement:

a. Description of trail to beach:

The Conservancy must have more flexibility in determining what the final alignment of the trail will be. Instead of being given one of the options, we would like to identify the general area where the final alignment will go. For example, this general area could be described as "within fifteen feet of trail option A or B". We would finalize the location at a later date.

The acknowledgment on p. 2 that the alternative easements may need to be revised is not a sufficient guarantee for our purposes.

b. Easement terms:

As described on pp. 1 and 2, the easement "shall provide that the Conservancy will not interfere with public recreational use of the beach...". This is not satisfactory easement language. The proposed easement should grant the same rights and privileges as those in the Offer-to-Dedicate. Key words to include would be "an easement in gross and perpetuity".

c. Escrow instructions:

We would like to see the escrow instructions and we would have to approve them before proceeding.

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d. Condemnation:

The easement must be permanent, regardless of future land use changes. We cannot agree to Section 11 B.

e. Owner's use of property:

The State cannot agree to the clause (p. 10) "the prospective holder of the easements to the Property shall agree not to oppose any aspect of the redevelopment of Owner's property provided...".

f. Owner's right to relocate easement:

The State cannot agree to the condition described on p. 11 as follows: "The State...shall be subject to the right of Owner, at its cost, to relocate portions of the Property or to construct or reconstruct any improvements...and any such relocation may be necessary or convenient for the development of Owner's adjoining properties." Such relocation, while quite possibly acceptable, would have to be at the Conservancy's discretion.

g. Construction access:

The right of the State to access outside of the easement area for construction purposes is not specified.

h. Existing trail:

What rights/responsibilities does the property owner want to retain on that portion of the easement that is on the existing trail? What are the rights/responsibilities? This whole issue of "joint ownership" needs to be examined.

i. Title report:

We need to review the title report for the property.

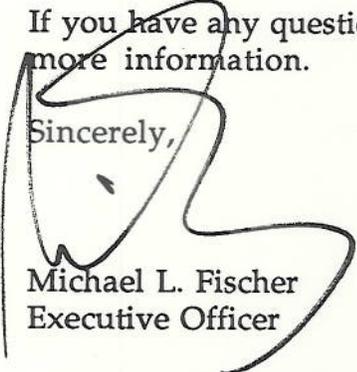
As you are aware, all speakers at the public meeting and all letters received by the Conservancy have been opposed to the project. While the Conservancy is aware that access projects in Malibu are controversial, the complete lack of public support makes it difficult for the Conservancy or the Commission to

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proceed with the alternative easement. We expect that you will address this issue effectively as you bring the matter to the Commission for their consideration.

If you have any questions, please contact Brenda Buxton at 510-286-0750 for more information.

Sincerely,



Michael L. Fischer
Executive Officer

cc: Susan McCabe, Rose and Kendel
Peter Douglas, California Coastal Commission
Joseph T. Edmiston, Santa Monica Mountains Conservancy