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SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

FRANK MANCUSO, SR., an individual,  
Petitioner,  
v.  
CALIFORNIA STATE COASTAL CONSERVANCY, an agency of the State of California, CALIFORNIA STATE COASTAL CONSERVANCY BOARD, the governing body of the California State Coastal Conservancy, CALIFORNIA DEPARTMENT OF GENERAL SERVICES, an agency of the State of California, and DOES 1 through 100,  
Respondents.

CASE NO. BS 040197  
[PROPOSED] ALTERNATIVE WRIT OF MANDATE  
[Code Civ. Proc. § 1087]

RECEIVED  
JUL 12 1996  
STATE COASTAL CONSERVANCY  
OAKLAND, CALIF.

TO RESPONDENTS CALIFORNIA STATE COASTAL CONSERVANCY, CALIFORNIA STATE COASTAL CONSERVANCY BOARD, AND CALIFORNIA DEPARTMENT OF GENERAL SERVICES:

Good cause appearing, you are commanded, immediately after receipt of this writ, to stay the commencement or continuation of any study, including, but not limited to, the study authorized by the Conservancy Board on May 16, 1996 into the feasibility of

1 opening or developing the "Chiate/Wildman" easement located at  
2 27900-10 Pacific Coast Highway, Malibu, Los Angeles County  
3 (Conservancy File No. 88-46), until Petitioner has been provided  
4 with notice and an opportunity to be heard regarding the scope of  
5 any such feasibility study.

6 You are further commanded to develop and implement procedures  
7 to comply with the notice requirements of Section 31107.1 of the  
8 Public Resources Code.

9 Finally, you are commanded to include environmental factors,  
10 including, but not limited to, the factors identified in Paragraph  
11 18 of the Petition for Writ of Alternative Mandate, within the  
12 scope of any feasibility study (as that term is used in Section  
13 21102 of the Public Resources Code) regarding the opening and/or  
14 development of the "Chiate/Wildman" easement located at 27900-10  
15 Pacific Coast Highway, Malibu, Los Angeles County (Conservancy  
16 File No. 88-46) as required by Section 21102 of the Public  
17 Resources Code.

18 If you have not fully complied with the commands of this writ  
19 by \_\_\_\_\_, 1996 you are commanded to appear on  
20 that date at \_\_\_\_:\_\_\_\_\_ \_\_\_\_\_, in Department \_\_\_\_\_, of the above-  
21 entitled Court, located at: 111 North Hill Street, Los Angeles,  
22 California 90012, and then and there to show cause why you have  
23 fully complied with the commands of this writ.

24

25 Dated: \_\_\_\_\_

26

27

28

\_\_\_\_\_  
Superior Court Judge

COPY

1 IRELL & MANELLA LLP  
Allan J. Abshez (Bar No. 115319)  
2 Michael S. Lowe (Bar No. 173664)  
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3 Suite 900  
Los Angeles, California 90067-4276  
4 Telephone: (310) 277-1010  
5 Attorneys for Petitioner Frank  
Mancuso, Sr.  
6  
7

8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES  
10

11 FRANK MANCUSO, SR., an )  
individual, )  
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Petitioner, )  
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v. )  
14 )  
CALIFORNIA STATE COASTAL )  
15 CONSERVANCY, an agency of the )  
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16 STATE COASTAL CONSERVANCY BOARD, )  
the governing body of the )  
17 California State Coastal )  
Conservancy, CALIFORNIA )  
18 DEPARTMENT OF GENERAL SERVICES, )  
an agency of the State of )  
19 California, and DOES 1 through )  
100, )  
20 )  
Respondents. )  
21

CASE NO. BS 040197  
PETITIONER'S APPLICATION FOR A  
STAY PENDING HEARING ON  
PETITION FOR WRIT OF MANDATE  
[L.A. County Superior Court  
Local Rule 9.31(f)]

RECEIVED  
JUL 12 1996  
STATE COASTAL CONSERVANCY  
OAKLAND, CALIF.

22 TO THE HONORABLE JUDGE OF THE SUPERIOR COURT:  
23 Having petitioned this Court for a writ of mandate pursuant  
24 to section 1085 of the Code of Civil Procedure, Petitioner Frank  
25 Mancuso, Sr. hereby applies for a stay pending the Court's hearing  
26 on the Petition.  
27 By this application, Petitioner respectfully requests that  
28 the Court order Respondents to refrain from commencing or

1 continuing any study or studies, including, but not limited to,  
2 the study authorized by the Conservancy Board on May 16, 1996 into  
3 the feasibility of opening or developing the easement known as the  
4 "Chiate/Wildman" easement located at 27900-10 Pacific Coast  
5 Highway, Malibu, Los Angeles County (Conservancy File No. 88-46),  
6 until after the hearing on the Petition.

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Dated: July 9, 1996

IRELL & MANELLA LLP  
Allan J. Abshez  
Michael S. Lowe

By:   
Allan J. Abshez  
Attorneys for Petitioner Frank  
Mancuso, Sr.

1 IRELL & MANELLA LLP  
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 3 Suite 900  
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 4 Telephone: (310) 277-1010  
 5 Attorneys for Petitioner Frank  
 Mancuso, Sr.

**COPY**  
**ORIGINAL FILED**  
 JUL 11 1996  
 LOS ANGELES  
 SUPERIOR COURT

8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
 9 FOR THE COUNTY OF LOS ANGELES

11 FRANK MANCUSO, SR., an )  
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 Respondents. )  
 21 )

CASE NO. BS040197.  
 PETITION FOR ALTERNATIVE WRIT  
 OF MANDATE  
 [Code Civ. Proc. § 1085]

**RECEIVED**  
 JUL 12 1996  
 STATE COASTAL CONSERVANCY  
 OAKLAND, CALIF.

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8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES

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California, and DOES 1 through )  
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Respondents. )

CASE NO. BS 040197  
PETITION FOR ALTERNATIVE WRIT  
OF MANDATE  
[Code Civ. Proc. § 1085]

22 TO THE HONORABLE JUDGE OF THE SUPERIOR COURT:

23 Petitioner Frank Mancuso, Sr. petitions this Court for an  
24 alternative writ of mandate pursuant to section 1085 of the Code  
25 of Civil Procedure to vacate the California Coastal Conservancy's  
26 ("Conservancy") May 16, 1996 action with respect to Conservancy  
27 File No. 88-46 (the "May 16 Action") for the Conservancy's failure  
28 to provide due process and statutorily required notice and

1 opportunity to be heard to Petitioner and other affected members  
2 of the public, and for failure to comply with the California  
3 Environmental Quality Act. Petitioner, by this verified petition,  
4 alleges as follows:

5 INTRODUCTION

6 1. This action is necessitated by the Conservancy's failure  
7 to provide Petitioner and other affected members of the public  
8 with notice and an opportunity to be heard regarding specific  
9 actions authorized by the Conservancy Board ("Board") on May 16,  
10 1996 as part of the Conservancy's ongoing efforts to open and  
11 develop an easement for general public use to an area commonly  
12 known as Escondido Beach. The easement traverses certain real  
13 property and various physical improvements which are owned by  
14 Petitioner and which are utilized as his personal residence. The  
15 Conservancy's failure to provide notice and opportunity to be  
16 heard violated the well-established due process rights of  
17 Petitioner and other members of the public as identified by the  
18 California Supreme Court in Horn v. County of Ventura, 24 Cal. 3d  
19 605, 156 Cal. Rptr. 718 (1979). Such lack of notice was also due  
20 in part to the Conservancy's related failure to develop and  
21 implement notice procedures as statutorily required by section  
22 31107.1 of the Public Resources Code.

23 2. Petitioner and other members of the public face  
24 irreparable injury in that unless they are afforded notice and an  
25 opportunity to be heard, numerous public concerns pertaining to  
26 the opening, operation and maintenance of the easement will be  
27 improperly excluded from the Board's consideration.

28



1 are unknown to Petitioner, who names these DOES by said fictitious  
2 names and who will seek leave of court to amend this Petition to  
3 show their true names and capacities when the same have been  
4 ascertained.

5 FACTUAL ALLEGATIONS

6 The Easement

7 9. The Conservancy currently holds title to an easement  
8 which is commonly known as the "Chiate/Wildman easement"  
9 (hereinafter the "Easement") which traverses a portion of  
10 Petitioner's property. The Easement also burdens a second  
11 residential property adjacent to petitioner's.

12 10. Although no easement existed across Petitioner's  
13 Residence historically, such Easement was extracted at the  
14 insistence of the California Coastal Commission ("Commission") in  
15 1978 as a condition for granting permits to develop Petitioner's  
16 Residence and the single family home on the property adjacent to  
17 Petitioner's Residence. Such requirement was imposed prior to the  
18 United States Supreme Court's 1987 holding in Nollan v. California  
19 Coastal Commission, 483 U.S. 825, 107 S. Ct. 3141 (1987), that  
20 involuntary extractions (akin to the Commission's extraction of  
21 the Easement in question) by governmental agencies as a condition  
22 of issuing development permits constitute "takings" in the absence  
23 of an essential nexus.

24 11. The Easement is 10 feet in width and commences at  
25 Pacific Coast Highway. The Easement is currently unimproved, not  
26 open to the public, and impassable due to severe natural  
27 landforms, dense natural vegetation, and private improvements.  
28 Upon entering the property which comprises Petitioner's Residence,

1 the Easement overlays a portion of Petitioner's private driveway,  
2 passes through Petitioner's front and side yard improvements  
3 adjacent to his house, through portions of Petitioner's rear yard,  
4 and then drops steeply down to Escondido Beach, which is  
5 approximately 130 feet below Pacific Coast Highway.

6 Conservancy's Failure to Provide Petitioner with  
7 Notice or an Opportunity to Be Heard

8 12. In order to open the Easement, the Conservancy must,  
9 among other things, determine that the benefits of public use are  
10 not outweighed by the costs of development and maintenance.

11 Public Resources Code Section 31404. On May 16, 1996 the Board  
12 agendized a proposed action regarding the scope, budget and  
13 authority for a study of opening and developing the Easement.

14 13. Despite the fact that Petitioner owns property over  
15 which a portion of the Easement runs, the Conservancy failed to  
16 provide Petitioner with notice of the May 16, 1996 Action and an  
17 opportunity to be heard regarding the appropriate scope of the  
18 proposed study.

19 14. On information and belief, Petitioner's neighbors and  
20 other area residents who also would be adversely affected by the  
21 development of the Easement were not provided with notice or an  
22 opportunity to be heard regarding the proposed May 16 Action.

23 15. As a result of the lack of notice, the Board failed to  
24 obtain required property owner and public input, and improperly  
25 excluded from the study consideration of all of the issues which  
26 must be evaluated in connection with determining the actual cost  
27 of developing and maintaining the Easement for public use so as to

28

1 enable a fully informed determination to be made pursuant to  
2 Section 31404.

3 16. Specifically, in its May 16, 1996 Action, the Board  
4 improperly limited the scope of the study of the Easement to  
5 construction issues only. (See, Exhibit B at pages 6, 7 and 11 to  
6 Administrative Record.) In addition, the Board limited the budget  
7 for the study to an amount sufficient to examine construction  
8 issues only, which as a practical matter ensures that the issues  
9 which concern Petitioner and other members of the public will not  
10 be analyzed. (See, Exhibit B at pages 6 and 7 to Administrative  
11 Record.)

12 17. Opening the Easement to public use will require, among  
13 other things, the demolition of existing improvements which  
14 comprise portions of Petitioner's Residence, dramatic alteration  
15 of existing landforms, and the construction of substantial  
16 improvements to make the Easement usable. Furthermore, and on  
17 information and belief, as demonstrated by the opening of similar  
18 access points along Pacific Coast Highway, opening the Easement  
19 may attract hundreds and perhaps thousands of visitors on a daily  
20 basis to a location which is not provided with even the most basic  
21 infrastructure and services to serve the general public, which in  
22 turn will result in life-safety hazards, unmitigatable  
23 environmental impacts and adverse effects to property owned by  
24 Petitioner and neighboring residents. All of such issues should  
25 have been, but were not, included as items to be addressed in the  
26 study authorized by May 16, 1996 Action.

27 18. As a result of the Conservancy's failure to provide  
28 notice and opportunity to be heard, Petitioner and other members

1 of the public were prevented from presenting the following  
2 specific issues to the Board for inclusion in the authorized scope  
3 of the study:

4 (a) the Conservancy's ability to mitigate, and the cost  
5 of mitigating, traffic hazards resulting from the opening of the  
6 Easement entrance, which is situated along a high speed blind-  
7 curve of Pacific Coast Highway;

8 (b) the Conservancy's ability to provide, and the cost  
9 of providing, sufficient off-street parking to serve the Easement;

10 (c) the Conservancy's ability to provide, and the cost  
11 of providing, life-safety facilities, such as lifeguards,  
12 emergency communication, and rescue and evacuation services to the  
13 remote location of the Easement;

14 (d) the Conservancy's ability to provide, and the cost  
15 of providing, sanitary facilities, such as toilets and changing  
16 rooms to the remote location of the Easement;

17 (e) the Conservancy's ability to provide, and the cost  
18 of providing, police services to the remote location of the  
19 Easement;

20 (f) the Conservancy's ability to mitigate, and the  
21 costs of mitigating, environmental impacts resulting from the  
22 intensification of the use of the beach in an area without  
23 sufficient infrastructure to support general recreational use.

24 (g) the Conservancy's ability to mitigate, and the  
25 costs of mitigating, environmental impacts resulting from the  
26 disruption of coastal bluffs, sensitive plant and animal species,  
27 the protected Monarch Butterfly habitat, and other issues required  
28 to be addressed and mitigated to comply with CEQA and the Coastal Act;

1 (h) the Conservancy's ability to mitigate, and the  
2 costs of mitigating, erosion and geologic hazards resulting from  
3 development of the Easement and its use by the public;

4 (i) the costs of maintaining the Easement subsequent to  
5 development;

6 (j) the ability to develop the Easement, and the cost  
7 of developing the Easement in a manner which will not infringe  
8 upon the privacy of Petitioner's Residence and adjoining  
9 residential property; and

10 (k) reasonable arrangements for the Conservancy's  
11 vendors and contractors to enter upon Petitioner's Residence to  
12 conduct studies of the Easement without the disruption of  
13 Petitioner's privacy and quiet enjoyment of his residence.

14 19. Unless the issues identified in Paragraphs 17 and 18  
15 above are considered as part of the study, the Conservancy will  
16 not be provided with any analysis of all of the costs associated  
17 with developing and maintaining the Easement and hence cannot  
18 fully comply with its responsibilities under Section 31404 of the  
19 Public Resources Code.

20 20. On May 14, 1996, Petitioner became apprised of the  
21 impending Conservancy meeting and the proposed action item  
22 regarding the Easement study. Petitioner's counsel thereupon  
23 wrote and called the Conservancy to request that the Conservancy  
24 continue the matter until after Petitioner and other members of  
25 the public were provided with due notice and opportunity to be  
26 heard. (See, Exhibit C at pages 16 and 17 to Administrative  
27 Record.) This reasonable request was rejected by the Conservancy  
28 staff; instead the Board acted and authorized the study as

1 described in Paragraph 16, above. (See, Exhibit D at page 18 to  
2 Administrative Record.)

3 21. Upon becoming informed of that the matter had not been  
4 continued as requested, Petitioner requested that the Conservancy  
5 stop all work being undertaken pursuant to the May 16 Action until  
6 after a duly noticed public hearing had taken place. (See,  
7 Exhibit E at page 21 to Administrative Record.)

8 22. Conservancy staff summarily and improperly denied  
9 Petitioner's request without presenting the same to the Board.  
10 Upon becoming aware of staff's ultra vires denial of his request,  
11 Petitioner objected and demanded that the Board be presented with  
12 Petitioner's request for notice and opportunity to be heard.  
13 Despite Petitioner's demand, staff failed and refused to present  
14 such request to the Board (See, Exhibit I at page 29 to  
15 Administrative Record.)

16 FIRST CAUSE OF ACTION - WRIT OF MANDATE

17 VIOLATION OF DUE PROCESS

18 (Against the Conservancy and the Board)

19 (Cal. Civ. Proc. Code. § 1085)

20 23. Petitioner realleges and incorporates herein by this  
21 reference as though the same were fully set forth herein each and  
22 every allegation set forth above in Paragraphs 1 through 22,  
23 inclusive, of this Petition.

24 24. Petitioner has exhausted all administrative remedies  
25 available to him, as alleged in Paragraphs 20 through 22, above by  
26 requesting on numerous occasions that the Conservancy suspend  
27 activity pursuant to the May 16 Action until Petitioner has been  
28 provided with notice and an opportunity to be heard regarding the

1 issues which should be included in the study of the Easement.  
2 Petitioner's repeated requests for notice and an opportunity to be  
3 heard have been denied, and indeed, Conservancy staff refused to  
4 present such requests to the Conservancy Board (See, Declaration  
5 of Allan J. Abshez at ¶¶ 8, 9 and 10.) The Conservancy's actions  
6 therefore demonstrate that, not only has Petitioner exhausted his  
7 administrative remedies, but it would have been futile for him to  
8 do anything other than file the instant Petition.

9       25. Pursuant to Horn v. County of Ventura, 24 Cal. 3d 605,  
10 156 Cal. Rptr. 718 (1979), the Conservancy had a ministerial duty  
11 to provide Petitioner, as a property owner whose property rights  
12 will be affected by the Conservancy's activities, with notice and  
13 an opportunity to be heard regarding which issues should be  
14 addressed in the study considering opening and developing the  
15 Easement.

16       26. The Conservancy failed to provide Petitioner with notice  
17 and an opportunity to be heard in violation of its ministerial  
18 duty as required by Horn v. County of Ventura, 24 Cal. 3d 605, 156  
19 Cal. Rptr. 718 (1979), and has since repeatedly refused  
20 Petitioner's reasonable requests to stay the study until a  
21 properly noticed hearing has been held.

22       27. Consequently, Petitioner has no other speedy or adequate  
23 remedy in the ordinary course of law except pursuant to the claims  
24 raised in this Petition.

25       28. The Conservancy's actions and failures to act, as  
26 described herein, constitute separate and independent violations  
27 of its duties as imposed by California law, and prejudicial abuses  
28 of discretion. Petitioner is therefore entitled to relief through

1 the issuance of a writ of mandate pursuant to Section 1085 of the  
2 California Code of Civil Procedure, as set forth in the prayer for  
3 relief in connection with this First Cause of Action.

4                   SECOND CAUSE OF ACTION - WRIT OF MANDATE  
5                   FAILURE TO PROVIDE SECTION 31107.1 NOTICE  
6                   (Against the Conservancy and the Board)  
7                   (Cal. Civ. Proc. Code. § 1085)

8           29. Petitioner realleges and incorporates herein by this  
9 reference as though the same were fully set forth herein each and  
10 every allegation set forth above in Paragraphs 1 through 28,  
11 inclusive, of this Petition.

12           30. Section 31107.1 of the Public Resources Code requires  
13 the Conservancy and the Department of General Services to jointly  
14 develop and implement procedures to ensure that the Conservancy's  
15 transactions are undertaken "efficiently and equitably with proper  
16 notice to the public."

17           31. The Conservancy failed to provide Petitioner with notice  
18 of the Conservancy's proposed May 16 Action in violation of its  
19 ministerial duty imposed by Section 31107.1 of the Public  
20 Resources Code.

21           32. The Conservancy's actions and failures to act, as  
22 described herein, constitute separate and independent violations  
23 of its duties as imposed by California law, and prejudicial abuses  
24 of discretion. Petitioner is therefore entitled to relief through  
25 the issuance of a writ of mandate pursuant to Section 1085 of the  
26 California Code of Civil Procedure, as set forth in the prayer for  
27 relief in connection with this Second Cause of Action.

28

1                                    THIRD CAUSE OF ACTION - WRIT OF MANDATE

2                                    FAILURE TO INSTITUTE SECTION 31107.1 NOTICE PROCEDURES

3                                    (Against All Respondents)

4                                    (Cal. Civ. Proc. Code § 1085)

5                    33. Petitioner realleges and incorporates herein by this  
6 reference as though the same were fully set forth herein each and  
7 every allegation set forth above in Paragraphs 1 through 32,  
8 inclusive, of this Petition.

9                    34. Section 31107.1 of the Public Resources Code requires  
10 the Conservancy and the Department of General Services to jointly  
11 develop and implement procedures to ensure that the Conservancy's  
12 transactions are undertaken "efficiently and equitably with proper  
13 notice to the public."

14                    35. Although the Conservancy and the Department of General  
15 Services have entered into a "Memorandum of Understanding  
16 Concerning Real Property Transactions" (hereinafter "Memorandum of  
17 Understanding") which the Conservancy contends satisfies the  
18 Conservancy's obligations under Section 31107.1 (see, Exhibit J at  
19 pages 32 to 42 of the Administrative Record), the Memorandum of  
20 Understanding does not ensure that the Conservancy's transactions  
21 are undertaken "with proper notice to the public" as required by  
22 Section 31107.1. In fact, the only provisions regarding public  
23 notice in the Memorandum of Understanding relate solely to the  
24 Conservancy's disposition of property. (See, Exhibit J at pages  
25 39 to 42 of the Administrative Record.)

26                    36. The failure of the Conservancy and/or the Department of  
27 General Services to develop and implement notice procedures as  
28 required by Section 31107.1 of the Public Resources Code

1 contributed to the Conservancy's failure to provide Petitioner and  
2 other interested members of the public with notice and opportunity  
3 to be heard regarding the proposed study, and constitutes a  
4 continuing violation of the Conservancy's statutory obligations to  
5 the public and property owners throughout California that may be  
6 materially affected by the Conservancy's actions.

7 37. The Conservancy's and Department of General Services'  
8 actions and failures to act, as described herein, constitute  
9 separate and independent violations of their duties as imposed by  
10 California law, and prejudicial abuses of discretion. Petitioner  
11 is therefore entitled to relief through the issuance of a writ of  
12 mandate pursuant to Section 1085 of the California Code of Civil  
13 Procedure, as set forth in the prayer for relief in connection  
14 with this Third Cause of Action.

15 FOURTH CAUSE OF ACTION - WRIT OF MANDATE

16 VIOLATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

17 (Against the Conservancy and the Board)

18 (Cal. Civ. Proc. Code § 1085 & Pub. Res. Code § 21102)

19 38. Petitioner realleges and incorporates herein by this  
20 reference as though the same were fully set forth herein each and  
21 every allegation set forth above in Paragraphs 1 through 37,  
22 inclusive, of this Petition.

23 39. Developing the Easement and opening it to public use  
24 constitutes a discretionary project which is subject to the  
25 provisions of the California Environmental Quality Act  
26 (hereinafter "CEQA").

27 40. The Conservancy characterizes the study authorized by  
28 the Board on May 16, 1996 as a "feasibility study" of the project.

1           41. Section 21102 of the Public Resources Code requires that  
2 feasibility studies must include the consideration of  
3 environmental factors.

4           42. Section 21106 of the Public Resources Code requires that  
5 all state agencies must request in their budgets the funds  
6 necessary to protect the environment in relation to problems  
7 caused by the agencies' activities.

8           43. In violation of the ministerial duty imposed by Section  
9 21102 and in violation of CEQA's prohibition against the "piece-  
10 meal" evaluation of projects, the study authorized by the  
11 Conservancy only authorizes consideration of construction costs  
12 and does not include the consideration of any environmental  
13 factors, including factors necessary to enable the Conservancy to  
14 comply with its obligations under Section 21106 of the Public  
15 Resources Code. (See, Exhibit B at pages 6, 7 and 11 to  
16 Administrative Record.) Specifically, the study will not include  
17 consideration of the factors set forth in Paragraph 18 of this  
18 Petition.

19           44. In accordance with Section 21177(e) of the Public  
20 Resources Code, Petitioner's exhaustion obligation under CEQA is  
21 excused by the failure of the Conservancy to provide Petitioner  
22 with notice and an opportunity to be heard.

23           45. The Conservancy's actions and failures to act, as  
24 described herein, constitute separate and independent violations  
25 of its duties as imposed by California law, and prejudicial abuses  
26 of discretion. Petitioner is therefore entitled to relief through  
27 the issuance of a writ of mandate pursuant to Section 1085 of the

28

1 California Code of Civil Procedure, as set forth in the prayer for  
2 relief in connection with this Fourth Cause of Action.

3 PRAYER FOR RELIEF

4 WHEREFORE, Petitioner prays for relief as follows:

5 A. On the First, Second, Third, and Fourth Causes of  
6 Action, that this Court issue an alternative writ of mandate,  
7 pursuant to Section 1085 of the California Code of Civil  
8 Procedure, commanding Respondents and each of them, to stay all  
9 activities relating to the May 16 Action until Petitioner and  
10 other affected property owners have been provided with notice and  
11 an opportunity to be heard regarding the scope of any study or  
12 studies relating to the feasibility of opening and/or developing  
13 the Easement;

14 B. On the Third Cause of Action, that this Court issue an  
15 alternative writ of mandate, pursuant to Section 1085 of the  
16 California Code of Civil Procedure, commanding Respondents and  
17 each of them, to develop and implement notice procedures to ensure  
18 that the Conservancy's transactions are undertaken "efficiently  
19 and equitably with proper notice to the public" as required by  
20 Section 31107.1 of the Public Resources Code.

21 C. On the Fourth Cause of Action, that this Court issue an  
22 alternative writ of mandate, pursuant to Section 1085 of the  
23 California Code of Civil Procedure, commanding Respondents and  
24 each of them, to include environmental factors listed in Paragraph  
25 18, above within the scope of any feasibility study regarding the  
26 Easement which may be authorized after Petitioners and other  
27 affected property owners are provided with notice and opportunity  
28 to be heard;

1 D. On the First, Second, Third, and Fourth Causes of  
2 Action, that the Court award Petitioner attorneys' fees pursuant  
3 to Section 1021.5 of the California Code of Civil Procedure on the  
4 grounds that (i) Petitioner's action protects the important right  
5 of the general public to receive notice of the Conservancy's  
6 transactions and compels the Conservancy and the Department of  
7 General Services to develop and implement long-overdue notice  
8 procedures, (ii) Petitioner's action protects the important right  
9 of the general public that feasibility studies include a  
10 consideration of environmental factors as required by CEQA, and  
11 (iii) Petitioner has undertaken a substantial financial burden,  
12 disproportionate to his individual stake in the matter, in an  
13 effort to privately enforce compliance with California law;

14 E. That the Court award Petitioner the costs of suit  
15 incurred herein; and

16 F. That the Court award Petitioner such other further  
17 relief as the Court may deem just and proper.

18

19 Dated: July 2, 1996

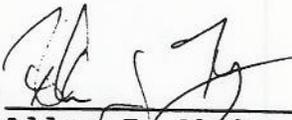
20

IRELL & MANELLA LLP  
Allan J. Abshez  
Michael S. Lowe

21

22

23

By:   
Allan J. Abshez  
Attorneys for Petitioner Frank  
Mancuso, Sr.

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VERIFICATION

I, Frank Mancuso, Sr., hereby verify:

I am the Petitioner in this action and have read the foregoing Petition and know its contents. I declare that the facts alleged in the Petition are true of my own knowledge

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification is executed this 2<sup>nd</sup> day of July,

1996.

Frank Mancuso Sr.  
Frank Mancuso, Sr.

BSK21056.WP

FRIZI & MANFELLA LLP  
A Registered Limited Liability  
Law Partnership Providing  
Professional Corporation  
1090 Ave. Of The Stars  
Los Angeles, California  
31097-4920

1 IRELL & MANELLA LLP  
 Allan J. Abshez (Bar No. 115319)  
 2 Michael S. Lowe (Bar No. 173664)  
 1800 Avenue of the Stars  
 3 Suite 900  
 Los Angeles, California 90067-4276  
 4 Telephone: (310) 277-1010  
 5 Attorneys for Petitioner Frank  
 Mancuso, Sr.  
 6  
 7

COPY

ORIGINAL FILED

JUL 11 1996

LOS ANGELES  
SUPERIOR COURT

8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
 9 FOR THE COUNTY OF LOS ANGELES  
 10

11 FRANK MANCUSO, SR., an )  
 individual, )  
 12 )  
 Petitioner, )  
 13 )  
 v. )  
 14 )  
 CALIFORNIA STATE COASTAL )  
 15 CONSERVANCY, an agency of the )  
 State of California, CALIFORNIA )  
 16 STATE COASTAL CONSERVANCY BOARD, )  
 the governing body of the )  
 17 California State Coastal )  
 Conservancy, CALIFORNIA )  
 18 DEPARTMENT OF GENERAL SERVICES, )  
 an agency of the State of )  
 19 California, and DOES 1 through )  
 100, )  
 20 )  
 Respondents. )  
 21

CASE NO. BS040197  
 DECLARATION OF ALLAN J.  
 ABSHEZ, ESQ. IN SUPPORT OF  
 PETITION FOR ALTERNATIVE WRIT  
 OF MANDATE

RECEIVED

JUL 12 1996

STATE COASTAL CONSERVANCY  
OAKLAND, CALIF.

1 IRELL & MANELLA LLP  
Allan J. Abshez (Bar No. 115319)  
2 Michael S. Lowe (Bar No. 173664)  
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5 Attorneys for Petitioner Frank  
Mancuso, Sr.  
6  
7

8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES  
10

11 FRANK MANCUSO, SR., an  
individual, )

12 Petitioner, )

13 v. )

14 CALIFORNIA STATE COASTAL )  
15 CONSERVANCY, an agency of the )  
State of California, CALIFORNIA )  
16 STATE COASTAL CONSERVANCY BOARD, )  
the governing body of the )  
17 California State Coastal )  
Conservancy, CALIFORNIA )  
18 DEPARTMENT OF GENERAL SERVICES, )  
an agency of the State of )  
19 California, and DOES 1 through )  
100, )

20 Respondents. )  
21 )

CASE NO. B5040197

DECLARATION OF ALLAN J.  
ABSHEZ, ESQ. IN SUPPORT OF  
PETITION FOR ALTERNATIVE WRIT  
OF MANDATE

22 I, Allan J. Abshez, declare as follows:

23 1. I am a member of the Bar of the State of California, and  
24 am a partner with Irell & Manella LLP, attorneys for Petitioner  
25 Frank Mancuso, Sr., in this action. I have personal knowledge of  
26 the facts set forth herein, and if called as a witness, I could  
27 and would testify competently thereto.

28

1           2.     Attached as Exhibit A hereto is a true and correct copy  
2 of a letter dated May 2, 1996, which provides notice of a May 16,  
3 1996 Coastal Conservancy meeting and was apparently sent to some  
4 persons by the Coastal Conservancy. The Coastal Conservancy did  
5 not provide this notice to Petitioner.

6           3.     Attached as Exhibit B hereto is a true and correct copy  
7 of the staff report prepared for the May 16, 1996 Coastal  
8 Conservancy Board meeting regarding "Chiate/Wildman Easement  
9 Feasibility Analysis."

10          4.     After becoming informed of the proposed May 16, 1996  
11 agenda item pertaining to Petitioner's property, I sent a letter  
12 via facsimile on May 15, 1996 to Ms. Brenda Buxton of the Coastal  
13 Conservancy. The letter informed the Coastal Conservancy that  
14 Petitioner had not received notice of the May 16, 1996 meeting and  
15 requested that the proposed action item pertaining to Petitioner's  
16 property be continued so that Petitioner could be afforded proper  
17 notice and an opportunity to be heard by the Conservancy Board  
18 before the Board authorized a study regarding opening and  
19 developing the "Chiate/Wildman" easement. A true and correct copy  
20 of this letter is attached as Exhibit C hereto.

21          5.     Attached as Exhibit D hereto is a true and correct copy  
22 of a letter dated May 22, 1996 which I received from Michael  
23 Fischer, in which Mr. Fischer states that the Conservancy Board  
24 authorized the study to go forward at the May 16, 1996 meeting.

25          6.     On June 6, 1996 I sent a letter to Mr. Fischer of the  
26 Conservancy reiterating Petitioner's objections, and requesting  
27 that work on the study be stopped until Petitioner was afforded  
28 notice and opportunity to be heard by the Conservancy Board

1 regarding the appropriate scope of the study. A true and correct  
2 copy of this letter is attached as Exhibit E hereto.

3 7. On June 13, 1996 I spoke on the telephone with James  
4 Pierce of the Conservancy and was informed by Mr. Pierce that the  
5 Conservancy had not yet reached a decision regarding Petitioner's  
6 request and that a written response to such request would be  
7 forthcoming. Later that afternoon I sent Mr. Pierce a letter  
8 confirming this conversation. A true and correct copy of this  
9 letter is attached as Exhibit F hereto.

10 8. Attached as Exhibit G hereto is a true and correct copy  
11 of a letter dated June 18, 1996 which I received from James  
12 Pierce. In the letter, Mr. Pierce provides an explanation for the  
13 Conservancy's failure to provide Petitioner with actual notice of  
14 the May 16, 1996 meeting. The letter also indicated that  
15 Conservancy staff had refused Petitioner's request for notice and  
16 an opportunity to be heard before the Board.

17 9. On June 19, 1996 I spoke on the telephone to object that  
18 Conservancy staff should not have refused Petitioner's request  
19 without presenting it to the Conservancy Board, and specifically  
20 requested that the Board be presented with Petitioner's request at  
21 its scheduled June 20, 1996 meeting. Later that afternoon I sent  
22 Mr. Pierce a letter confirming this conversation. A true and  
23 correct copy of this letter has been attached as Exhibit H hereto.

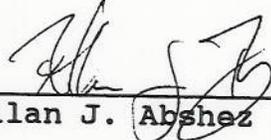
24 10. On June 24, 1996 I received a phone mail message from  
25 James Pierce stating that the Conservancy staff had not presented  
26 Petitioner's request for notice and opportunity to be heard to the  
27 Conservancy Board at its June 20 meeting. On June 26, 1996 I sent  
28 Mr. Pierce a letter confirming my receipt of his phone mail

1 message and again objecting to the Conservancy's failure to  
2 provide Petitioner notice and an opportunity to be heard. A true  
3 and correct copy of this letter has been attached as Exhibit I  
4 hereto.

5 11. Attached as Exhibit J hereto is a true and correct copy  
6 of a "Memorandum of Understanding Concerning Real Property  
7 Transactions" which I received from James Pierce on July 2, 1996.  
8 According to Mr. Pierce, the Memorandum satisfies the  
9 Conservancy's obligations under Section 31107.1 of the Public  
10 Resources Code.

11  
12 Executed this 2 day of July, 1996, at Los Angeles,  
13 California.

14 I declare under penalty of perjury that the foregoing is true  
15 and correct.

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19 Allan J. Abshez  
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**CHIATE, WILDMAN EASEMENT FEASIBILITY ANALYSIS**

**COASTAL CONSERVANCY**

**Project Summary  
May 16, 1996**

**CHIATE/WILDMAN EASEMENT FEASIBILITY ANALYSIS**

**File No. 88-046**

**Project Manager: Brenda Buxton and Lisa Ames**

**RECOMMENDED ACTION:** Authorization to disburse funds to retain technical specialists to assist in the pre-project feasibility analysis and design of the Conservancy-held Chiate/Wildman access easement and the adjacent, unaccepted Offer-to-Dedicate a parking easement.

**LOCATION:** 27900-10 Pacific Coast Highway, Malibu, Los Angeles County (Exhibit A)

**PROGRAM CATEGORY:** Public Access and Dedications and Donations

**ESTIMATED COST:** up to \$38,500

**PROJECT SUMMARY:** If this authorization is approved, staff will be able to further analyze construction feasibility of a Conservancy-held vertical access easement and its accompanying Offer-to-Dedicate a parking easement (currently not yet accepted by the Conservancy or any other entity) at Escondido Beach, Malibu. Before staff can evaluate the relative merit of any alternatives to the Chiate/Wildman site or return to the Conservancy with a recommendation to construct the Chiate/Wildman access easement, staff needs to answer the following questions about the Chiate/Wildman vertical and parking easements: are the easements buildable; if they are, how would they be built; and how much will they cost to construct? The feasibility analysis will answer these questions by evaluating site conditions and constraints, considering various design alternatives, and estimating construction costs. Staff expects this work to cost no more than \$38,500.

The feasibility analysis will present staff with an accurate cost estimate which is needed in order to determine if the Chiate/Wildman easement can be built with the specifically designated funds (known as the "Black Tor" funds), which the Conservancy holds in a special deposit account. (The currently available cost estimate is six years old and does not include geotechnical information which is critical for formulating a reasonably accurate cost estimate.) In addition, staff needs to examine the design alternatives of the feasibility analysis in order to assess the environmental impacts created by an access construction project at the Chiate/Wildman site.

**COASTAL CONSERVANCY**

Staff Recommendation  
May 16, 1996

**CHIATE/WILDMAN EASEMENT FEASIBILITY ANALYSIS**

File No. 88-046

Project Manager: Brenda Buxton and Lisa Ames

**STAFF  
RECOMMENDATION:**

Staff recommends that the State Coastal Conservancy adopt the following Resolution, pursuant to Sections 31400, 31400.3, 31404 and 31405 of the Public Resources Code:

"The Coastal Conservancy hereby authorizes the disbursement of an amount not to exceed thirty-eight thousand five hundred dollars (\$38,500) to retain technical specialists to assist staff in the construction feasibility analysis and design of the Chiate/Wildman vertical easement and access parking."

Staff further recommends that the Conservancy adopt the following finding:

"Based on the accompanying staff report and attached exhibits, the State Coastal Conservancy hereby finds that the proposed project is consistent with the purposes and criteria set forth in Division 21 of the Public Resources Code, specifically, in Sections 31400, 31400.3, 31404 and 31405; with the Conservancy's Access Standards and Program Criteria; and with Coastal Act policies and objectives."

---

**STAFF DISCUSSION:**

**Project Description:**

If this authorization is approved, staff will be able to use the expertise of engineers and site design consultants to further analyze construction feasibility of a Conservancy-held vertical access easement and its accompanying Offer-to-Dedicate an easement for parking, not yet accepted by the Conservancy, at Escondido Beach, Malibu. The feasibility study will answer the following questions: are the easements buildable; if they are, how would we build it; and how much will construction cost? The study will do this by evaluating site conditions and constraints, considering various design alternatives, and estimating construction costs. The feasibility analysis is expected to cost no more than \$38,500.

Until this feasibility study is completed, staff will not be able to accurately evaluate the costs and impacts associated with constructing the access improvements to the Chiate/Wildman vertical and parking easements. This lack of information makes

it difficult to recommend constructing the improvements or to evaluate relative merit of any alternatives to access from the Chiate/Wildman site.

In 1983, the Conservancy accepted the Chiate/Wildman vertical access easement. The Conservancy has authorized acceptance of an adjacent parking easement, but this has not been completed because of existing unauthorized improvements made by the property owners in the easement area that need to be relocated (by the property owners) before acceptance. Until recently, the Conservancy has been unable to develop this accessway due to the lack of a local management entity. However, in 1995 the Mountains Recreation and Conservation Authority (the "MRCA"), a joint powers agency made up of the Santa Monica Mountains Conservancy and the Conejo Recreation and Park District, offered to operate and maintain the Chiate/Wildman easement, once constructed, as well as two other access easements along Escondido Beach. The Conservancy authorized entering into a management agreement with the MRCA for these accessways on September 20, 1995 (Exhibit B).

At that meeting, the Conservancy also directed staff to continue to investigate the feasibility of constructing access improvements at the Chiate/Wildman easement and, at the same time, gave the Chiate/Wildman property owners until December to present a beach access alternative that would provide better or equal access to the same beach area. Since 1990, the property owners have been seeking, unsuccessfully, to locate an acceptable beach access alternative to the Chiate/Wildman easement.

In early December 1995 the property owners proposed that, in exchange for the Conservancy and Coastal Commission extinguishing the Chiate/Wildman vertical and parking easements, they would dedicate parking, vertical, and lateral easements located approximately a quarter-mile upcoast, adjacent to the private Paradise Cove beach. When presented to the public at a March 5, 1995 Malibu meeting, local residents voiced unanimous opposition to the exchange and raised the following concern: the proposed exchange would increase public access to an area designated environmentally sensitive in the approved Land Use Plan, impact the privacy of Pt. Dume residents, not fulfill the Conservancy's goal to provide equal or better access since the alternative would be next to an existing (although privately owned) accessway, and would take an accessway opportunity away from residents across from the Chiate/Wildman accessway.

Staff has since requested that the Chiate/Wildman property owners address these concerns as well as some problems identified by staff in the property owners proposed terms and conditions of the alternative easement. Staff will not be able to make a recommendation on this proposed exchange until these issues are more thoroughly examined. Any further actions regarding construction of improvements at the Chiate/Wildman easement or

an exchange for an alternative accessway would be the subject of a future staff recommendation. In the meantime, the staff will continue to diligently pursue the preparatory work precedent to construction of the access improvements at the easement currently held by the Conservancy.

**Project Financing:** The feasibility study would be funded by a special deposit account, set aside pursuant to a Coastal Commission permit condition for the purpose of building the Chiate/Wildman easements. Approximately \$412,000 remains in the account, \$3,200 having been spent on the topographical survey of the vertical easement. One of the key parts of the construction feasibility study is the cost estimate which will inform the Conservancy whether or not it can construct the Chiate/Wildman easements for the amount available in the special deposit account.

**Site Description:** The Chiate/Wildman vertical easement (27900-10 Pacific Coast Highway) runs through an existing gate, driveway, and tennis court, past two houses, and then along the walls of a steep ravine. The improvements in the vertical easement were made without Conservancy authorization and would be removed at the property owner's expense. The Offer-to-Dedicate parking easement is over the eastern 25 feet of the property. Staff estimates that the Offer-to-Dedicate for a parking easement (currently not accepted by the Conservancy), if developed, would only hold about eight cars due to various constraints, such as an overlapping CalTrans easement, a ravine, and the necessity to allow the fee owner access to his property. This issue will be examined in more detail in the feasibility analysis. The topography of the parking and vertical easements will likely make construction of the easements challenging. This underscores the importance of thoroughly investigating construction feasibility before recommending construction.

**Project History:** The Conservancy accepted the vertical easement in 1982 and, although the Conservancy authorized the acceptance of an accompanying Offer-to-Dedicate a parking easement, acceptance was not completed due to unauthorized improvements in the easement area that would need to be relocated before the parking area could be constructed.

In 1990, as a result of a Coastal Commission permit action, the Conservancy received funds specifically designated to construct the Chiate/Wildman vertical easement or an alternative approved by the Commission's Executive Director and the Conservancy's Executive Officer. Approximately \$412,000 is available for construction of the Chiate/Wildman easement.

Over the last six years, the property owners have presented beach access alternatives to the Conservancy in exchange for extinguishing the Chiate/Wildman vertical easement and Offer-to-Dedicate a parking easement. An "in-lieu" cash settlement was rejected because it may not have mitigated the impacts of development due to the difficulties the Conservancy would likely have in

locating a willing seller of public beach access easements. Staff also turned down other alternatives such as a parking area on the inland side of Pacific Coast Highway, and more recently, a parking area on a steep slope at the junction of Malibu Cove Colony Drive and Pacific Coast Highway because of site constraints (no safe highway crossing, geological instability, etc.) and neighborhood opposition.

Last summer, a proposal to exchange the Chiate/Wildman easement with an alternative easement and the opening of two other vertical access easements were the subject of some controversy in the local community. Staff received numerous letters regarding the potential exchange which were attached as exhibits to the September 20, 1995 staff recommendation. To summarize, some local residents objected to the concept of trading accessways and argued that the property owners should be forced to comply with their permit conditions (*i.e.*, allowing the construction of the vertical and parking); others pointed out that the Chiate/Wildman easement was directly across from their homes and would be their primary beach access, and finally, many, particularly those on Malibu Cove Colony Drive, opposed the specific alternative discussed at that time: a 13-car parking lot on a steep sloping lot. That alternative since has been abandoned due to the infeasibility of constructing parking on an unstable slope.

**CONSISTENCY WITH  
CONSERVANCY'S  
ENABLING LEGISLATION:**

The proposed authorization is recommended pursuant to Chapter 9 of Division 21 of the Public Resources Code.

Public Resources Code Section 31400 states that the Conservancy should have a "principal role in the implementation of a system of public accessways" to guarantee the public's right to access and enjoyment of the coast. The first step in implementing the Chiate/Wildman accessway, one part of a system of accessways to the Malibu coast, is to complete a feasibility analysis.

Under Public Resources Code 31400.3, the Conservancy may provide such assistance as is required to aid in the establishment of a system of public accessways. This feasibility analysis is necessary before the Conservancy can establish the public access improvements to the Chiate/Wildman easement.

Section 31404 allows the Conservancy to take title to properties for public access but does not require the Conservancy to open such properties to public use if "the benefits of public use would be outweighed by the costs of development and maintenance." This feasibility study will enable Conservancy staff to make this evaluation by estimating the costs of access development.

Section 31405 states that the Conservancy may collect fees for the purpose of providing public access and use such funds for

development of coastal accessways. The Conservancy has received funds specifically designated for the development of access improvements at the Chiate/Wildman easement and will use a portion of these funds for the feasibility analysis. The construction feasibility analysis is necessary if the Conservancy is to develop the Chiate/Wildman accessway for public use.

**CONSISTENCY WITH  
CONSERVANCY'S  
PROGRAM GUIDELINES:**

The project is consistent with the Conservancy's Access Program Guidelines in the following respects:

**Urgency:** Locating an operation and management entity to take responsibilities for new accessways in Malibu has been quite difficult. The MRCA's offer to operate and maintain the Chiate/Wildman easement represents an unique opportunity that should be taken advantage of as soon as possible. However, the Conservancy needs to first evaluate if and how it would construct the necessary physical improvements to the easement (the purpose of the feasibility analysis) and then, actually build the improvements before the MRCA can assume management responsibilities.

**Consistency with Coastal Access Standards:** The Conservancy's coastal access standards set forth various criteria for the development of coastal accessways, such as the accessways should safely accommodate public use, minimize the alteration of natural land forms, provide site amenities, etc. One of the purposes of this feasibility study is to determine how to construct the Chiate/Wildman accessway in a manner consistent with the Coastal Access Standards.

**Cost-Effectiveness:** This feasibility analysis will determine the most cost-effective way to construct the improvements at the Chiate/Wildman easement.

**Local Coastal Program Consistency:** Malibu does not have a certified Local Coastal Program at this time. The approved County Land Use Plan, a document used to guide coastal planning until the LCP is certified, recognizes Escondido Beach as a priority access area and calls for accessways at every 2,000 feet along the coast. Construction of the Chiate/Wildman vertical easement is consistent with the LUP because the easement is approximately 2,000 feet from either of the nearest accessways: the privately-owned Paradise Cove beach and the Seacliff accessway at 27420-28 Pacific Coast Highway. This feasibility analysis is part of the usual pre-project evaluation undertaken by the Conservancy before developing an accessway.

**CONSISTENCY WITH  
COASTAL ACT:**

This feasibility study is consistent with the policies and goals of the Coastal Act. Section 30210 of the Coastal Act states that "maximum access . . . shall be provided for all the people." Construction of the Chiate/Wildman accessway improvements

would be consistent with this section since the Conservancy would be utilizing Offers-to-Dedicate Public Access to provide the maximum access possible to the Escondido Beach area. Because Offers-to-Dedicate were required by the Coastal Commission as conditions of permitted development, the construction of these vertical and parking easements would implement specific findings of the Commission regarding the need for public access at this location. The feasibility study will assist the Conservancy in determining if and how it can fulfill this goal of maximizing access by constructing the Chiate/Wildman accessway.

**COMPLIANCE  
WITH CEQA:**

The proposed use of environmental professional services for feasibility studies involves only basic data collection, research, and resource evaluation. These activities will not result in a serious or major disturbance to an environmental resource and, thus, are categorically exempt from CEQA review pursuant to 14 California Code of Regulations Section 15306.

In addition, the proposed authorization is statutorily exempt from CEQA pursuant to 14 California Code of Regulations, Section 15262, which provides an exemption for feasibility and planning studies for possible future actions not yet approved. Construction of the Chiate/Wildman easement or the authorization of an easement exchange will be subject to CEQA review when presented to the Conservancy for approval.

**Location of Offem-to-Dedicate Public Access  
Escalante Beach, Malibu**

*held or to be accepted by Coastal Conservancy*

**Exhibit A.**



**EXHIBIT B**

**STATE COASTAL CONSERVANCY**

**Project Summary  
September 20, 1995**

**MALIBU ACCESS: ESCONDIDO BEACH**

**File No.: 95-010  
Project Manger: Brenda Buxton**

**RECOMMENDED ACTION:** Authorization to (1) accept two vertical access easements, two lateral access easements, and one parking easement, (2) enter into a 20-year interagency agreement with the Mountains Recreation and Conservation Authority (MRCA) to operate and maintain three vertical access easements and two parking easements, and (3) disburse \$82,000 to the Mountains Recreation and Conservation Authority for operation and management.

**LOCATION:** 27398-400, 27420-28, 27450, and 27900-10 Pacific Coast Highway, Escondido Beach, Malibu, Los Angeles County

**PROGRAM CATEGORY:** Public Access

**COST ESTIMATE:** Coastal Commission Malibu Beach Access Fund: \$82,000

**PROJECT SUMMARY:** If approved, this project would open up three new accessways along Escondido Beach in Malibu and require no Conservancy bond funds.

Despite the existence of well-known beaches, such as Zuma and Topanga, many miles of the Malibu coast are inaccessible to the public. Along some sections of the coast, development precludes beach access, while in other areas the beaches suffer from extensive erosion, leaving little space for public access between houses and the ocean. This lack of coastal access could be ameliorated by the acceptance and opening of Malibu's 12 vertical Offers-to-Dedicate (OTDs), but to date, most vertical OTDs are unaccepted and closed due to the lack of a management entity capable of operating and maintaining them. The Los Angeles County Department of Beaches and Harbors and the State Department of Parks and Recreation are unwilling to operate smaller, non-revenue-generating accessways such as these. The City of Malibu currently is writing its Local Coastal Plan and has not yet developed any access policies. The City has not assumed operation and maintenance responsibilities for any dedicated accessways at this time.

The Coastal Conservancy has been working to open up key access points along the Malibu coast since 1979. Escondido Beach has long been a priority because it is a wide sandy beach with public access available only at the extreme ends of the mile-long beach: the privately-owned Paradise Cove (with a \$15 fee for day-use parking) at the western end of the beach and Los Angeles

County's Escondido Creek accessway at the eastern end (Exhibit A). In addition, this beach has three dedicated vertical accessways that, if opened, would provide public access; two are unaccepted, but constructed, and one has been accepted by the Conservancy, but not yet constructed. Until now, the Conservancy has been unable to open up these important beach access points due to the lack of a management agency.

Recently, however, the Mountains Recreation and Conservation Authority (MRCA) has offered to assume responsibility for operation and maintenance of the accessways on Escondido Beach. MRCA is a joint powers agency consisting of the Santa Monica Mountains Conservancy and the Conejo Recreation and Park District. The MRCA operates rural and urban parks in the Malibu area and the San Fernando Valley and has construction and maintenance crews as well as rangers on its staff. The MRCA prefers to focus on Escondido Beach easements since it maintains facilities along the nearby Escondido Falls trail. At this time, the MRCA lacks the resources to take on management responsibilities for other accessways in Malibu. Additionally, the MRCA is not willing to accept the OTDs. For this reason, Conservancy staff recommends that the Conservancy accept the outstanding OTDs, enter into a 20-year interagency agreement with the MRCA for their management, and disburse \$82,000 to the MRCA for at least the first five years of operation and maintenance costs.

The local community has several concerns regarding management and pedestrian safety which the staff of the Conservancy and the MRCA have attempted to address. In order to allay some of the concerns about privacy and safety, Conservancy and MRCA staff have designed a maintenance program that will include locking the gates at night, regular inspections of the stairs, ranger services available on an on-call basis, and weekly trash pick up. Local residents are also concerned about the possibility of beachgoers parking on the inland side of Pacific Coast Highway and crossing this busy highway. However, as is discussed in the project description, there is extensive oceanside parking adjacent to or near the accessways which will minimize the necessity to cross the highway.

In the past, the Conservancy has sought to increase and improve access by assisting with the costs of acquisition of property and/or construction of stairs, trails, and other facilities. At Escondido Beach, acquisition and construction costs are not an issue. The accessways are already dedicated for public use; two of the accessways are built; and the third accessway, owned by the Conservancy, could be constructed with funds set aside for this purpose in a designated account. Furthermore, the Coastal Commission's Malibu Beach Access Fund could be used to cover the expenses of an operation and maintenance entity. In Malibu, the main obstacle to creating new access has been the lack of a management agency, not the lack of funds or property interests. The Conservancy can best carry out its mandate to implement a system of public coastal accessways by enabling a local entity, in this case the MRCA, to assume management responsibilities.

000016

**IRELL & MANELLA LLP**

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CABLE ADDRESS IRELLA LSA

FACSIMILE (310) 203-7189

WRITER'S DIRECT DIAL NUMBER

May 15, 1996

**VIA FACSIMILE AND U.S. MAIL**

Ms. Brenda Buxton  
Project Manager  
California State Coastal Conservancy  
1330 Broadway, Suite 1100  
Oakland, California 94612

Re: Feasibility Study for Escondido Beach Access  
Development

Dear Ms. Buxton:

We are writing on behalf of our client, Frank Mancuso, who is the owner of a portion of the fee ownership underlying the "Chiate/Wildman easement" (the "Easement"). Yesterday we learned that the Conservancy's May 16th agenda includes an action item pertaining to the Easement. Mr. Mancuso received no personal notice regarding such item as required by law. Accordingly, we are writing to object to the Conservancy's consideration of any action regarding the Easement at its May 16th meeting.

In addition to the fact that Mr. Mancuso has not been provided with personal notice regarding the May 16th meeting, Mr. Mancuso wishes to be able to present to the Conservancy specific public safety, engineering, environmental, and legal issues associated with the Easement, which should be considered by the Conservancy prior to the Conservancy taking any action or expending any public funds in connection with the Easement. By virtue of the lack of notice, Mr. Mancuso is unable to submit these comments in time for the Conservancy's May 16th meeting.

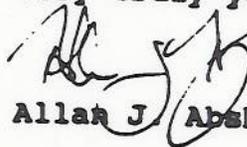
Ms. Brenda Buxton

May 15, 1996

Page 2

For all of the foregoing reasons, we respectfully request that such item be removed from the Conservancy's May 16th agenda until Mr. Mancuso is afforded proper notice and can make provision to attend or submit comments to the Conservancy.

Very truly yours,



Allan J. Abshez

cc: Mr. Frank Mancuso

**CALIFORNIA STATE COASTAL CONSERVANCY**

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



May 22, 1996

Mr. Allan Abshez  
Irell and Manella LLP  
1800 Avenue of the Stars, Suite 900  
Los Angeles, CA 90067-4276

Dear Mr. Abshez:

I am responding to your letter of May 15, 1996 to Brenda Buxton regarding the feasibility study for the Chiate/Wildman easement. The staff recommendation for this feasibility study was approved by the Conservancy at the May 16, 1996 meeting and a copy of the recommendation is attached.

Our mailing list for issues regarding the Chiate/Wildman easement, including this feasibility study, has Ms. Susan McCabe as Mr. Mancuso's representative. In my attached letter of April 1, 1996, I informed Ms. McCabe and other representatives that the Conservancy would be continuing its feasibility study of the easement. In addition, Ms. Buxton faxed a copy of the staff recommendation for the feasibility study to Ms. McCabe at the Rose and Kindle office in Sacramento on May 9, 1996.

We would appreciate a letter from Mr. Mancuso clarifying who is his representative and where he would like us to direct future notices or discussions regarding this easement.

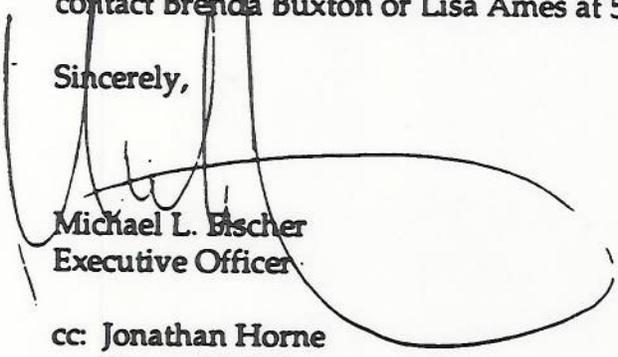
As you will see in the attached staff recommendation, the Conservancy is taking no action regarding the construction of this easement. We will be hiring technical experts to evaluate the easement's construction feasibility. Construction of the Chiate/Wildman easement would require a separate authorization by the Conservancy.

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Mr. Allan Abshez  
May 22, 1996  
Page Two

If you have additional information regarding the easement, you are welcome to submit it to us. This information will be taken into consideration when evaluating the feasibility of building this easement. For further details, please contact Brenda Buxton or Lisa Ames at 510-286-1015.

Sincerely,



Michael L. Fischer  
Executive Officer

cc: Jonathan Horne  
Susan McCabe

Enclosures

000020

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WRITER'S DIRECT DIAL NUMBER

June 6, 1996.

Mr. Michael L. Fischer  
Executive Officer  
California State Coastal Conservancy  
1330 Broadway, Suite 1100  
Oakland, California 94612-2530

Re: Feasibility Study for Escondido Beach Access

Dear Mr. Fischer:

We are in receipt of your letter of May 22, 1996. As you will recall, our April 15, 1996 letter requested that the Conservancy refrain from taking any action on April 16 in connection with staff's recommendation regarding the proposed Escondido Beach Access. The basis of our request was that our client had not been provided with legally required notice and the opportunity to be heard regarding matters which may result in a significant deprivation of his property rights. Horn v. County of Ventura, 24 Cal. 3d 605 (1979).

Due to the Conservancy's lack of notice, Mr. Mancuso was prevented from presenting specific public safety, engineering, environmental, and legal issues associated with what is commonly known as the Chiate/Wildman easement, as well as matters concerning the entry of Conservancy contractors and vendors onto his property, which should have been considered by the Conservancy prior to any action pertaining to the scoping and authorization of the proposed study. Prior entries by the Conservancy's agents have damaged areas of Mr. Mancuso's property which are outside of the easement area.

Although your letter does not state whether the Conservancy complied with our reasonable request, its plain implication is that the Conservancy acted despite our request in derogation of our client's due process rights. We would appreciate being advised immediately if the Conservancy did not take any action.

Mr. Michael L. Fischer  
June 6, 1996  
Page 2

We hope that the Conservancy is willing to recognize its constitutional responsibilities to provide reasonable notice and hearing to directly affected property owners, and that we will be able to avoid costly unproductive litigation. Accordingly, we are requesting that the Conservancy immediately stop the work which your letter implied was authorized on April 16 until a duly noticed hearing has taken place. We would appreciate your written response to this request so that we can determine how to appropriately proceed.

None of the items described in your May 22nd letter indicates that the Conservancy sought or attempted any direct mail notice to Mr. Mancuso, who is the fee owner of a portion of the property affected by the easement, as required by law. For your information, Ms. McCabe does not represent Mr. Mancuso. In addition, Ms. McCabe also confirmed to me by telephone that she has not informed the Conservancy that she is representing Mr. Mancuso. In your letter of May 22nd you referenced and included Conservancy correspondence dated April 1, 1996. Such correspondence is addressed to Mr. Jonathan Horne, who does not represent Mr. Mancuso. In addition, such letter makes no mention of the April 16th action item.

Finally, in accordance with the Public Records Act, we are requesting a complete copy of the administrative record pertaining to the Chiate/Wildman easement. We will, of course, reimburse the Conservancy for the cost of copying the record.

Once again, we would appreciate receiving immediate written advice as to the Conservancy's position and whether the Conservancy is willing to voluntarily stop the work authorized on April 16th so that we can determine how to appropriately proceed.

Very truly yours,

  
Allan J. Abshez

cc: Mr. Frank Mancuso

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FACSIMILE (714) 760-5200

WRITER'S DIRECT DIAL NUMBER

June 13, 1996

VIA FACSIMILE AND U.S. MAIL

James Pierce, Esq.  
California State Coastal Conservancy  
1330 Broadway  
Suite 1100  
Oakland, California 94612

Re: Chiate/Wildman Easement

Dear Mr. Pierce:

This letter confirms our telephone conversation of this afternoon. You informed me that a decision had not yet been reached regarding our June 6 letter request that actions arising from the Conservancy Board's May 16 meeting regarding the Chiate/Wildman Easement be suspended until Mr. Mancuso had been afforded a duly noticed opportunity to be heard regarding the same. You indicated that the Conservancy would provide a written response to our request on Monday or Tuesday of next week.

As indicated in both our letters of May 15 and June 6, Mr. Mancuso received no personal notice of the May 16 action regarding the Easement, notwithstanding the fact that such item significantly impacts Mr. Mancuso's property rights, and among other things, contemplates entry onto his property by third party vendors. I indicated my concern that Mr. Mancuso should be afforded a duly noticed opportunity to be heard before the Conservancy Board's May 16 action acquires irreversible momentum, and stressed the importance of a response so as to enable Mr. Mancuso to determine whether it will be necessary to pursue formal legal redress.

Because of the problems which have arisen from the lack of personal notice to Mr. Mancuso and other area property owners, I inquired whether the Conservancy had adopted any

James Pierce, Esq.

June 13, 1996

Page 2

notice procedures as mandated by Section 31107.1 of the Public Resources Code. You indicated that you were not aware that the Conservancy had adopted any procedures pursuant to Section 31107.1, or any other notice procedures.

Finally, I inquired as to the status of our June 6 Public Records Act request. I was informed that we would shortly be provided with an estimate of the cost of copying the record. We would like to receive the record as promptly as possible so that we may adequately prepare for a hearing before the Conservancy Board (assuming the Conservancy is willing to accommodate our reasonable request).

Please do not hesitate to contact me if you have any comments or questions.

Very truly yours,



Allan J. Abshez

cc: Mr. Frank Mancuso



June 18, 1996

Via Facsimile & U.S. Mail  
310/203-7199

Mr. Alan Abshez  
Irell & Manella LLP  
1800 Avenue of the Stars, Suite 900  
Los Angeles, CA 90067-4276

RE: **Feasibility Study for Escondido Beach Access/Mancuso Property**

Dear Mr. Abshez:

This is in response to your letter of June 6, 1996 to Michael Fisher, and letters of June 13, 1996 to me and to Charles Rauw of Charles I. Rauw Consulting Engineers. Your correspondence alleges that your client Frank Mancuso's procedural due process rights have been violated, in that you contend Mr. Mancuso was not afforded notice or an opportunity to be heard with respect to the Conservancy's May 16, 1996 board meeting and authorization of the above-referenced feasibility study. Your correspondence also requests that the Conservancy refrain from taking any action in furtherance of the feasibility study authorized by the Conservancy Board on May 16, 1996.

It is our opinion that Ms. Susan McCabe repeatedly, both actually and constructively, represented to the Conservancy that she was Mr. Mancuso's agent. Ms. McCabe contacted Mr. Fisher in early 1994 and stated that she represented Mr. Mancuso concerning the Chiate/Wildman easement. Indeed, at this time she, along with Jonathan Horne, Mr. Wildman's representative, provided Mr. Fisher with a tour of the subject real property. Also, in September of 1994 Ms. McCabe and Mr. Horne toured the property with Conservancy staff Joan Cardellino and Brenda Buxton. In December of 1995 Ms. McCabe and Mr. Horne attended a meeting at the Conservancy's offices where they proposed an access alternative to the Chiate/Wildman easement. Further, in February 1996 Ms. Buxton and Steve Horn, Deputy Executive Officer of the Conservancy, had several conversations with Ms. McCabe concerning the Chiate/Wildman easement. The following month, Ms. McCabe attended a public meeting concerning the easement, and also telephoned Ms. Buxton subsequent to the meeting to discuss the proposed alternative

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Oakland, California 94612-2530

510-286-1015 Fax: 510-286-0470

Mr. Alan Abshez  
June 18, 1996  
Page 2

easement. Ms. McCabe has also received correspondence from the Conservancy on this matter, yet never notified the Conservancy that she was not Mr. Mancuso's agent.

Ms. McCabe's repeated contact with the Conservancy and attendance at meetings concerning the easement constitutes her repeated representation that she was acting as Mr. Mancuso's agent in this matter. Accordingly, the Conservancy reasonably believed Ms. McCabe to be acting as such. The Conservancy regrets any misunderstanding between Mr. Mancuso and Ms. McCabe as to her agency status, but was not duty bound to establish the exact nature of the relationship between these individuals.

Ms. McCabe's agent status notwithstanding, neither Mr. Mancuso or your firm ever requested to receive notice from the Conservancy with respect to the May 16, 1996 meeting, as required by law. Notice of the May 16, 1996 meeting was provided to all persons who requested, in writing (in accordance with California Government Code Section 11125(a)),<sup>1</sup> to be notified of the meeting. Furthermore, as a courtesy, Ms. Buxton provided Ms. McCabe with a facsimile of the staff recommendation describing the proposed feasibility study in early May 1996.

The Conservancy regrets Mr. Mancuso's election (perhaps unintended) to forego his opportunity to be heard at the May 16, 1996 meeting. However, the Conservancy asserts it did nothing wrong concerning its duty to provide proper notice of the meeting. Notwithstanding, as I mentioned during our telephone conversation of June 13, 1996, the Conservancy invites Mr. Mancuso to raise his concerns to the Conservancy in writing. The Conservancy also receives oral comments from the public at each of its meetings; the next two Conservancy meetings will be held June 20, 1996 in Sacramento and August 15, 1996 in San Francisco.

Your correspondence also states that Mr. Mancuso's property has been damaged by Conservancy agents. Assuming any such damage did occur, please elaborate on this statement if the extent of the damage warrants your taking the time to do so.

With respect to your June 6, 1996 Public Records Request Act inquiry, we have four filefolders, each approximately 3 1/2 inches thick. We suggest that you review the files for relevance and applicability prior to copying. Please let me know how you would

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<sup>1</sup> Your June 13, 1996 correspondence references Cal. Public Resources Code Section 31107.1 with respect to the Conservancy's notice procedures. Section 31107.1 pertains to "property transactions," that is acquisitions, exchanges, etc. The Conservancy's action on the Chiate/Wildman easement does not constitute a transaction as the Conservancy already owns the easement.

Mr. Alan Abshez  
June 18, 1996  
Page 3

like to handle the inspection and production of the documents.

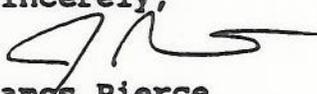
As for your letter to Mr. Rauw, be aware that neither you or Mr. Mancuso have any authority to impede Mr. Rauw or Charles I. Rauw Consulting Engineers from the performance of any contractual obligation they may have concerning the feasibility study. Furthermore, you, on behalf of Mr. Mancuso, are instructed and requested to direct any communications to the Conservancy or its agents concerning this issue through this office until otherwise instructed. Any further unauthorized conduct will be considered tortious interference with the Conservancy's business relationship(s).

At this time, the Conservancy will continue working on the previously approved feasibility study. However, you have the Conservancy's assurance that no entry onto Mr. Mancuso's property will occur without his permission. Indeed, Mr. Mancuso currently blocks access to the Conservancy's easement from Highway One, and maintains structures which encroach upon the Conservancy's easement. These issues require resolution, which will hopefully be accomplished through negotiation rather than litigation. Any necessary entry onto Mr. Mancuso's property prior to resolution of these issues for purposes of the feasibility study will be described in writing and permission for entry will be sought.

The Conservancy urges you and your client to realize that work on feasibility studies, as opposed to actual construction, can be conducted largely off-site. Further realize that one potential outcome of a feasibility study is a lack of feasibility. Finally, realize that the concerns referenced in your correspondence can and should be raised at the time actual construction is considered for authorization. In short, your request for cessation of the study and threat of litigation lack merit and wisdom in that they are not ripe for judicial intervention, nor has Mr. Mancuso exhausted his administrative remedies. Keep in mind the prohibition on the filing of frivolous actions embodied in Code of Civil Procedure Section 128.5.

The Conservancy looks forward to hearing, addressing and resolving the issues referenced in your correspondence and in this letter. Please contact me with any questions.

Sincerely,



James Pierce  
Staff Counsel

000027

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WRITER'S DIRECT DIAL NUMBER

June 19, 1996

VIA FACSIMILE AND U.S. MAIL

Mr. James Pierce  
Staff Counsel  
Coastal Conservancy  
1330 Broadway, 11th Floor  
Oakland, California 94612-2530

Re: Chiate/Wildman Easement

Dear Mr. Pierce:

We are in receipt of your letter of June 18, 1996. As we discussed during our telephone conversation this afternoon, we are requesting that our request to suspend activity pending correction of the Conservancy's due process error be presented to the Board at its meeting in Sacramento tomorrow.

We do not believe it is appropriate for staff to unilaterally deny Mr. Mancuso's request as indicated by your letter, and to fail to even present our request to the Board, which after all is the responsible decision-making entity in the present instance.

Your letter acknowledges that the Conservancy did not provide Mr. Mancuso, one of the two owners whose properties are encumbered by the easement, with any actual notice of the Conservancy's May 16 agenda item. It is our understanding that the other property owner concerned did receive actual notice. Decisions regarding the easement directly and materially effect Mr. Mancuso's property rights. As I explained during our conversation, we fail to understand how a short delay to afford Mr. Mancuso notice and an opportunity to be heard (as he should have originally been provided) could in any way injure or prejudice the Conservancy's interests.

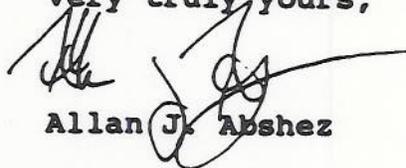
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000028

Mr. James Pierce  
June 19, 1996  
Page 2

As we discussed, we will be responding separately to the other issues raised in your June 18 letter. We look forward to the Conservancy Board's response to our request.

Very truly yours,



Allan J. Abshez

cc: Mr. Frank Mancuso  
Mr. Michael Fischer  
Ms. Brenda Buxton

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WRITER'S DIRECT DIAL NUMBER

June 26, 1996

VIA FACSIMILE AND U.S. MAIL

Mr. James Pierce  
Staff Counsel  
California State Coastal Conservancy  
1330 Broadway, 11th Floor  
Oakland, California 94612-2530

Re: Chiate/Wildman Easement

Dear Mr. Pierce:

I received your phone mail message of June 24, 1996, in which you informed me that staff did not present to the Conservancy Board Mr. Mancuso's request for notice and opportunity to be heard regarding the proposed study to open the Chiate/Wildman Easement. In our view, by withholding Mr. Mancuso's request from the Board, the staff of the Conservancy has denied Mr. Mancuso any administrative remedy he may have had, or has rendered the same futile. Staff's action also reinforces the serious concerns presented in our previous correspondence to the Conservancy.

We wish to respond to several of the points raised in your June 18, 1996 letter, Specifically:

1. Your letter admits no actual notice was ever given to Mr. Mancuso. Whatever the Conservancy's misimpression about Ms. McCabe, there is no excuse for the Conservancy not providing mailed notice to the property owner on whose property a portion of the easement concerned lies.
2. Your letter again suggests that the Conservancy has not adopted procedures for notice as required by Public Resources Code Section 31107.1. The lack of such procedures is the source of the problem which has occurred in the present instance.

Mr. James Pierce

June 26, 1996

Page 2

Your interpretation that the Conservancy has no notice obligations under Section 31107.1 is conveniently self-serving given the lack of notice which has occurred, and the Conservancy's apparent failure to implement Section 31107.1.<sup>1</sup> Moreover, your unduly narrow interpretation of Section 31107.1 is neither consistent with the broad definition of the word "transaction," nor the language of Section 31107.1, which emphasizes not only proper -- but equitable -- notice to the public. Simply put, given the fact that the study will provide critical information to guide the Conservancy's decision-making process regarding the easement, there is no excuse for denying directly affected property owners, like Mr. Mancuso, the opportunity to provide input regarding the study's proper scope.

3. Your suggestion that Mr. Mancuso raise his concerns in comments at a later time is not sufficient to remedy the Conservancy's errors. Mr. Mancuso and other area property owners should have been afforded an opportunity to be heard and to provide input regarding the proper scope of the feasibility study and the environmental and other factors that should be included before the study was authorized.<sup>2</sup> Instead, the Conservancy limited the scope of the study apparently to construction issues only, and authorized a limited budget tailored to such scope. These limitations effectively preclude the study from providing a full consideration of the factors which concern Mr. Mancuso.

4. Your remarks concerning our June 13, 1996 letter to Rauw Consulting Engineers are inappropriate. Our letter to Rauw

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<sup>1</sup> We are at a loss to understand the Conservancy's purported reliance on Government Code Section 11125(a) to excuse the Conservancy's lack of notice to Mr. Mancuso. Obviously, in order to request notice of future activities, an affected owner must have had at least initial notice; here, no such notice occurred.

<sup>2</sup> These factors include, but are not limited to, traffic hazards and traffic congestion impacts; the lack of safe and sufficient parking; the cost and feasibility of providing such basic services as police, lifeguard, emergency communications and sanitary facilities; the cost and feasibility of mitigating adverse impacts to coastal bluffs, the beach, and sensitive vegetation and animal species; as well as impacts to surrounding and private property values.

Mr. James Pierce  
June 26, 1996  
Page 3

placed it on notice that no arrangements had been made by the Conservancy for entry to our client's property; a fact which your June 18 letter concedes. Nothing about our letter in any way impedes the Conservancy's business relationship with Rauw; nor is Rauw your client. Mr. Mancuso reserves the right to communicate with Rauw regarding any matter which effects his property interest.

Please do not hesitate to contact me if you have any questions or comments.

Very truly yours,



Allan J. Abshez

cc: Mr. Frank Mancuso

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*  
William G. Anthony  
Director

By: *Peter Grenell*  
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

- 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.

1 IRELL & MANELLA LLP  
Allan J. Abshez (Bar No. 115319)  
2 Michael S. Lowe (Bar No. 173664)  
1800 Avenue of the Stars  
3 Suite 900  
Los Angeles, California 90067-4276  
4 Telephone: (310) 277-1010

COPY

5 Attorneys for Petitioner Frank  
Mancuso, Sr.  
6  
7

8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES

10

11 FRANK MANCUSO, SR., an )  
individual, )

12 )  
13 Petitioner, )

14 v. )

15 CALIFORNIA STATE COASTAL )  
CONSERVANCY, an agency of the )  
State of California, CALIFORNIA )  
16 STATE COASTAL CONSERVANCY BOARD, )  
the governing body of the )  
17 California State Coastal )  
Conservancy, CALIFORNIA )  
18 DEPARTMENT OF GENERAL SERVICES, )  
an agency of the State of )  
19 California, and DOES 1 through )  
100, )

20 )  
21 Respondents. )

CASE NO. BS 040197  
PETITIONER'S DESIGNATION OF  
ADMINISTRATIVE RECORD

22 TO THE HONORABLE JUDGE OF THE SUPERIOR COURT:

23 Petitioner Frank Mancuso, Sr., designates the following  
24 documents as the part of the administrative record pertinent to  
25 this action:  
26  
27

28

RECEIVED

JUL 12 1996

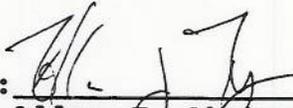
STATE COASTAL CONSERVANCY  
OAKLAND, CALIF.

- 1 Exhibit A: Notice of May 16, 1996, Conservancy meeting  
2 provided to all persons who had requested, in  
3 writing, to be notified of the meeting. Petitioner  
4 was not provided with this notice.
- 5 Exhibit B: "Chiate/Wildman Easement Feasibility Analysis."
- 6 Exhibit C: Letter dated May 15, 1996, from Allan Abshez to  
7 Brenda Buxton advising the Conservancy that  
8 Petitioner had not received notice of the May 16,  
9 1996 meeting and requesting that Petitioner be  
10 granted an opportunity to be heard prior to  
11 commissioning a study relating to the  
12 "Chiate/Wildman" easement.
- 13 Exhibit D: Letter dated May 22, 1996, from Michael Fischer to  
14 Allan Abshez responding that the Conservancy  
15 approved the staff recommendation for the study at  
16 the May 16, 1996 meeting.
- 17 Exhibit E: Letter dated June 6, 1996, from Allan Abshez to  
18 Michael Fischer reiterating the Conservancy's  
19 failure to provide Petitioner with notice and an  
20 opportunity to be heard and requesting that the  
21 Conservancy stop working on the study until  
22 Petitioner receives an opportunity to be heard.
- 23 Exhibit F: Letter dated June 13, 1996, from Allan Abshez to  
24 James Pierce confirming a telephone conversation in  
25 which Mr. Pierce indicated that the Conservancy had  
26 not yet reached a decision regarding Petitioner's  
27 request that the Conservancy suspend all actions  
28 arising from the Conservancy Board's May 16 meeting  
regarding the Chiate/Wildman easement.
- Exhibit G: Letter dated June 18, 1996, from James Pierce to  
Allan Abshez acknowledging that the Conservancy did  
not provide Petitioner with actual notice of the  
May 16, 1996, meeting and refusing Petitioner's  
request for notice and an opportunity to be heard.
- Exhibit H: Letter dated June 19, 1996, from Allan Abshez to  
James Pierce requesting that Petitioner's request  
for notice and an opportunity to be heard be  
presented to the Conservancy Board at its meeting  
in Sacramento on June 20, 1996.
- Exhibit I: Letter dated June 26, 1996, from Allan Abshez to  
James Pierce confirming that staff did not present  
to the Conservancy Board Petitioner's request for  
notice and opportunity to be heard.

1 Exhibit J: "Memorandum of Understanding Concerning Real  
2 Property Transactions" which the Conservancy claims  
3 satisfies its obligations under Section 31107.1 of  
4 the Public Resources Code.

5 Dated: July 2, 1996

6 IRELL & MANELLA LLP  
7 Allan J. Abshez  
8 Michael S. Lowe

9 By:   
10 Allan J. Abshez  
11 Attorneys for Petitioner Frank  
12 Mancuso, Sr.

**CALIFORNIA STATE COASTAL CONSERVANCY**

1330 BROADWAY, SUITE 1100

OAKLAND, CA 94612-2530

ATTS 541-1018

TELEPHONE (510) 298-1018

FAX (510) 298-0470

May 2, 1996

**Subject: Feasibility Study for Escondido Beach Access Development****Dear Malibu Residents:**

On Thursday, May 16, 1996 the Coastal Conservancy will consider funding a study to examine the feasibility of developing a public access route from Pacific Coast Highway to Escondido Beach. The potential access route is along a publicly held easement known as the "Chiate/Wildman easement" at 27900-10 Pacific Coast Highway. The study would be a part of the Coastal Conservancy's ongoing investigation of developing the easement for public use.

If funding is authorized, the Coastal Conservancy will employ technical experts to evaluate site conditions and constraints, consider design alternatives, and estimate construction costs. The study would also examine the feasibility of constructing a small adjacent parking lot. Please be aware that at the May 16 meeting the Coastal Conservancy will be considering authorization of a feasibility study only, and not actual construction of public access facilities.

The Coastal Conservancy's meeting will be held in Carlsbad, California, in the city council chambers, 1200 Carlsbad Village Drive, beginning at 9:30 a.m. If you would like to comment on this issue, but cannot attend the meeting, please mail or fax comments to my attention at the above address or number. All written comments received before the date of the meeting will be presented to the Coastal Conservancy's governing board.

Sincerely,



Brenda Burton  
Project Manager

000004

**CHIATE, WILDMAN EASEMENT FEASIBILITY ANALYSIS**

:

# COASTAL CONSERVANCY

Project Summary  
May 16, 1996

## CHIATE/WILDMAN EASEMENT FEASIBILITY ANALYSIS

File No. 88-046

Project Manager: Brenda Buxton and Lisa Ames

**RECOMMENDED ACTION:** Authorization to disburse funds to retain technical specialists to assist in the pre-project feasibility analysis and design of the Conservancy-held Chiate/Wildman access easement and the adjacent, unaccepted Offer-to-Dedicate a parking easement.

**LOCATION:** 27900-10 Pacific Coast Highway, Malibu, Los Angeles County (Exhibit A)

**PROGRAM CATEGORY:** Public Access and Dedications and Donations

**ESTIMATED COST:** up to \$38,500

**PROJECT SUMMARY:** If this authorization is approved, staff will be able to further analyze construction feasibility of a Conservancy-held vertical access easement and its accompanying Offer-to-Dedicate a parking easement (currently not yet accepted by the Conservancy or any other entity) at Escondido Beach, Malibu. Before staff can evaluate the relative merit of any alternatives to the Chiate/Wildman site or return to the Conservancy with a recommendation to construct the Chiate/Wildman access easement, staff needs to answer the following questions about the Chiate/Wildman vertical and parking easements: are the easements buildable; if they are, how would they be built; and how much will they cost to construct? The feasibility analysis will answer these questions by evaluating site conditions and constraints, considering various design alternatives, and estimating construction costs. Staff expects this work to cost no more than \$38,500.

The feasibility analysis will present staff with an accurate cost estimate which is needed in order to determine if the Chiate/Wildman easement can be built with the specifically designated funds (known as the "Black Tor" funds), which the Conservancy holds in a special deposit account. (The currently available cost estimate is six years old and does not include geotechnical information which is critical for formulating a reasonably accurate cost estimate.) In addition, staff needs to examine the design alternatives of the feasibility analysis in order to assess the environmental impacts created by an access construction project at the Chiate/Wildman site.

# COASTAL CONSERVANCY

Staff Recommendation  
May 16, 1996

## CHIATE/WILDMAN EASEMENT FEASIBILITY ANALYSIS

File No. 88-046

Project Manager: Brenda Buxton and Lisa Ames

### STAFF RECOMMENDATION:

Staff recommends that the State Coastal Conservancy adopt the following Resolution, pursuant to Sections 31400, 31400.3, 31404 and 31405 of the Public Resources Code:

"The Coastal Conservancy hereby authorizes the disbursement of an amount not to exceed thirty-eight thousand five hundred dollars (\$38,500) to retain technical specialists to assist staff in the construction feasibility analysis and design of the Chiate/Wildman vertical easement and access parking."

Staff further recommends that the Conservancy adopt the following finding:

"Based on the accompanying staff report and attached exhibits, the State Coastal Conservancy hereby finds that the proposed project is consistent with the purposes and criteria set forth in Division 21 of the Public Resources Code, specifically, in Sections 31400, 31400.3, 31404 and 31405; with the Conservancy's Access Standards and Program Criteria; and with Coastal Act policies and objectives."

---

### STAFF DISCUSSION:

#### Project Description:

If this authorization is approved, staff will be able to use the expertise of engineers and site design consultants to further analyze construction feasibility of a Conservancy-held vertical access easement and its accompanying Offer-to-Dedicate an easement for parking, not yet accepted by the Conservancy, at Escondido Beach, Malibu. The feasibility study will answer the following questions: are the easements buildable; if they are, how would we build it; and how much will construction cost? The study will do this by evaluating site conditions and constraints, considering various design alternatives, and estimating construction costs. The feasibility analysis is expected to cost no more than \$38,500.

Until this feasibility study is completed, staff will not be able to accurately evaluate the costs and impacts associated with constructing the access improvements to the Chiate/Wildman vertical and parking easements. This lack of information makes

it difficult to recommend constructing the improvements or to evaluate relative merit of any alternatives to access from the Chiate/Wildman site.

In 1983, the Conservancy accepted the Chiate/Wildman vertical access easement. The Conservancy has authorized acceptance of an adjacent parking easement, but this has not been completed because of existing unauthorized improvements made by the property owners in the easement area that need to be relocated (by the property owners) before acceptance. Until recently, the Conservancy has been unable to develop this accessway due to the lack of a local management entity. However, in 1995 the Mountains Recreation and Conservation Authority (the "MRCA"), a joint powers agency made up of the Santa Monica Mountains Conservancy and the Conejo Recreation and Park District, offered to operate and maintain the Chiate/Wildman easement, once constructed, as well as two other access easements along Escondido Beach. The Conservancy authorized entering into a management agreement with the MRCA for these accessways on September 20, 1995 (Exhibit B).

At that meeting, the Conservancy also directed staff to continue to investigate the feasibility of constructing access improvements at the Chiate/Wildman easement and, at the same time, gave the Chiate/Wildman property owners until December to present a beach access alternative that would provide better or equal access to the same beach area. Since 1990, the property owners have been seeking, unsuccessfully, to locate an acceptable beach access alternative to the Chiate/Wildman easement.

In early December 1995 the property owners proposed that, in exchange for the Conservancy and Coastal Commission extinguishing the Chiate/Wildman vertical and parking easements, they would dedicate parking, vertical, and lateral easements located approximately a quarter-mile upcoast, adjacent to the private Paradise Cove beach. When presented to the public at a March 5, 1995 Malibu meeting, local residents voiced unanimous opposition to the exchange and raised the following concern: the proposed exchange would increase public access to an area designated environmentally sensitive in the approved Land Use Plan, impact the privacy of Pt. Dume residents, not fulfill the Conservancy's goal to provide equal or better access since the alternative would be next to an existing (although privately owned) accessway, and would take an accessway opportunity away from residents across from the Chiate/Wildman accessway.

Staff has since requested that the Chiate/Wildman property owners address these concerns as well as some problems identified by staff in the property owners proposed terms and conditions of the alternative easement. Staff will not be able to make a recommendation on this proposed exchange until these issues are more thoroughly examined. Any further actions regarding construction of improvements at the Chiate/Wildman easement or

an exchange for an alternative accessway would be the subject of a future staff recommendation. In the meantime, the staff will continue to diligently pursue the preparatory work precedent to construction of the access improvements at the easement currently held by the Conservancy.

**Project Financing:** The feasibility study would be funded by a special deposit account, set aside pursuant to a Coastal Commission permit condition for the purpose of building the Chiate/Wildman easements. Approximately \$412,000 remains in the account, \$3,200 having been spent on the topographical survey of the vertical easement. One of the key parts of the construction feasibility study is the cost estimate which will inform the Conservancy whether or not it can construct the Chiate/Wildman easements for the amount available in the special deposit account.

**Site Description:** The Chiate/Wildman vertical easement (27900-10 Pacific Coast Highway) runs through an existing gate, driveway, and tennis court, past two houses, and then along the walls of a steep ravine. The improvements in the vertical easement were made without Conservancy authorization and would be removed at the property owner's expense. The Offer-to-Dedicate parking easement is over the eastern 25 feet of the property. Staff estimates that the Offer-to-Dedicate for a parking easement (currently not accepted by the Conservancy), if developed, would only hold about eight cars due to various constraints, such as an overlapping CalTrans easement, a ravine, and the necessity to allow the fee owner access to his property. This issue will be examined in more detail in the feasibility analysis. The topography of the parking and vertical easements will likely make construction of the easements challenging. This underscores the importance of thoroughly investigating construction feasibility before recommending construction.

**Project History:** The Conservancy accepted the vertical easement in 1982 and, although the Conservancy authorized the acceptance of an accompanying Offer-to-Dedicate a parking easement, acceptance was not completed due to unauthorized improvements in the easement area that would need to be relocated before the parking area could be constructed.

In 1990, as a result of a Coastal Commission permit action, the Conservancy received funds specifically designated to construct the Chiate/Wildman vertical easement or an alternative approved by the Commission's Executive Director and the Conservancy's Executive Officer. Approximately \$412,000 is available for construction of the Chiate/Wildman easement.

Over the last six years, the property owners have presented beach access alternatives to the Conservancy in exchange for extinguishing the Chiate/Wildman vertical easement and Offer-to-Dedicate a parking easement. An "in-lieu" cash settlement was rejected because it may not have mitigated the impacts of development due to the difficulties the Conservancy would likely have in

locating a willing seller of public beach access easements. Staff also turned down other alternatives such as a parking area on the inland side of Pacific Coast Highway, and more recently, a parking area on a steep slope at the junction of Malibu Cove Colony Drive and Pacific Coast Highway because of site constraints (no safe highway crossing, geological instability, etc.) and neighborhood opposition.

Last summer, a proposal to exchange the Chiate/Wildman easement with an alternative easement and the opening of two other vertical access easements were the subject of some controversy in the local community. Staff received numerous letters regarding the potential exchange which were attached as exhibits to the September 20, 1995 staff recommendation. To summarize, some local residents objected to the concept of trading accessways and argued that the property owners should be forced to comply with their permit conditions (*i.e.*, allowing the construction of the vertical and parking); others pointed out that the Chiate/Wildman easement was directly across from their homes and would be their primary beach access, and finally, many, particularly those on Malibu Cove Colony Drive, opposed the specific alternative discussed at that time: a 13-car parking lot on a steep sloping lot. That alternative since has been abandoned due to the infeasibility of constructing parking on an unstable slope.

**CONSISTENCY WITH  
CONSERVANCY'S  
ENABLING LEGISLATION:**

The proposed authorization is recommended pursuant to Chapter 9 of Division 21 of the Public Resources Code.

Public Resources Code Section 31400 states that the Conservancy should have a "principal role in the implementation of a system of public accessways" to guarantee the public's right to access and enjoyment of the coast. The first step in implementing the Chiate/Wildman accessway, one part of a system of accessways to the Malibu coast, is to complete a feasibility analysis.

Under Public Resources Code 31400.3, the Conservancy may provide such assistance as is required to aid in the establishment of a system of public accessways. This feasibility analysis is necessary before the Conservancy can establish the public access improvements to the Chiate/Wildman easement.

Section 31404 allows the Conservancy to take title to properties for public access but does not require the Conservancy to open such properties to public use if "the benefits of public use would be outweighed by the costs of development and maintenance." This feasibility study will enable Conservancy staff to make this evaluation by estimating the costs of access development.

Section 31405 states that the Conservancy may collect fees for the purpose of providing public access and use such funds for

development of coastal accessways. The Conservancy has received funds specifically designated for the development of access improvements at the Chiate/Wildman easement and will use a portion of these funds for the feasibility analysis. The construction feasibility analysis is necessary if the Conservancy is to develop the Chiate/Wildman accessway for public use.

**CONSISTENCY WITH  
CONSERVANCY'S  
PROGRAM GUIDELINES:**

The project is consistent with the Conservancy's Access Program Guidelines in the following respects:

**Urgency:** Locating an operation and management entity to take responsibilities for new accessways in Malibu has been quite difficult. The MRCA's offer to operate and maintain the Chiate/Wildman easement represents an unique opportunity that should be taken advantage of as soon as possible. However, the Conservancy needs to first evaluate if and how it would construct the necessary physical improvements to the easement (the purpose of the feasibility analysis) and then, actually build the improvements before the MRCA can assume management responsibilities.

**Consistency with Coastal Access Standards:** The Conservancy's coastal access standards set forth various criteria for the development of coastal accessways, such as the accessways should safely accommodate public use, minimize the alteration of natural land forms, provide site amenities, etc. One of the purposes of this feasibility study is to determine how to construct the Chiate/Wildman accessway in a manner consistent with the Coastal Access Standards.

**Cost-Effectiveness:** This feasibility analysis will determine the most cost-effective way to construct the improvements at the Chiate/Wildman easement.

**Local Coastal Program Consistency:** Malibu does not have a certified Local Coastal Program at this time. The approved County Land Use Plan, a document used to guide coastal planning until the LCP is certified, recognizes Escondido Beach as a priority access area and calls for accessways at every 2,000 feet along the coast. Construction of the Chiate/Wildman vertical easement is consistent with the LUP because the easement is approximately 2,000 feet from either of the nearest accessways: the privately-owned Paradise Cove beach and the Seacliff accessway at 27420-28 Pacific Coast Highway. This feasibility analysis is part of the usual pre-project evaluation undertaken by the Conservancy before developing an accessway.

**CONSISTENCY WITH  
COASTAL ACT:**

This feasibility study is consistent with the policies and goals of the Coastal Act. Section 30210 of the Coastal Act states that "maximum access . . . shall be provided for all the people." Construction of the Chiate/Wildman accessway improvements

would be consistent with this section since the Conservancy would be utilizing Offers-to-Dedicate Public Access to provide the maximum access possible to the Escondido Beach area. Because Offers-to-Dedicate were required by the Coastal Commission as conditions of permitted development, the construction of these vertical and parking easements would implement specific findings of the Commission regarding the need for public access at this location. The feasibility study will assist the Conservancy in determining if and how it can fulfill this goal of maximizing access by constructing the Chiate/Wildman accessway.

**COMPLIANCE  
WITH CEQA:**

The proposed use of environmental professional services for feasibility studies involves only basic data collection, research, and resource evaluation. These activities will not result in a serious or major disturbance to an environmental resource and, thus, are categorically exempt from CEQA review pursuant to 14 California Code of Regulations Section 15306.

In addition, the proposed authorization is statutorily exempt from CEQA pursuant to 14 California Code of Regulations, Section 15262, which provides an exemption for feasibility and planning studies for possible future actions not yet approved. Construction of the Chiate/Wildman easement or the authorization of an easement exchange will be subject to CEQA review when presented to the Conservancy for approval.

**Location of Offens-to-Dedicate Public Access  
Escandido Beach, Malibu**

*held or to be accepted by Coastal Conservancy*

**Exhibit A.**



**Pt. Dume Headlands State Park  
rent area - Internal trails to beach**

## EXHIBIT B

### STATE COASTAL CONSERVANCY

Project Summary  
September 20, 1995

#### MALIBU ACCESS: ESCONDIDO BEACH

File No.: 95-010  
Project Manager: Brenda Buxton

**RECOMMENDED ACTION:** Authorization to (1) accept two vertical access easements, two lateral access easements, and one parking easement, (2) enter into a 20-year interagency agreement with the Mountains Recreation and Conservation Authority (MRCA) to operate and maintain three vertical access easements and two parking easements, and (3) disburse \$82,000 to the Mountains Recreation and Conservation Authority for operation and management.

**LOCATION:** 27398-400, 27420-28, 27450, and 27900-10 Pacific Coast Highway, Escondido Beach, Malibu, Los Angeles County

**PROGRAM CATEGORY:** Public Access

**COST ESTIMATE:** Coastal Commission Malibu Beach Access Fund: \$82,000

**PROJECT SUMMARY:** If approved, this project would open up three new accessways along Escondido Beach in Malibu and require no Conservancy bond funds.

Despite the existence of well-known beaches, such as Zuma and Topanga, many miles of the Malibu coast are inaccessible to the public. Along some sections of the coast, development precludes beach access, while in other areas the beaches suffer from extensive erosion, leaving little space for public access between houses and the ocean. This lack of coastal access could be ameliorated by the acceptance and opening of Malibu's 12 vertical Offers-to-Dedicate (OTDs), but to date, most vertical OTDs are unaccepted and closed due to the lack of a management entity capable of operating and maintaining them. The Los Angeles County Department of Beaches and Harbors and the State Department of Parks and Recreation are unwilling to operate smaller, non-revenue-generating accessways such as these. The City of Malibu currently is writing its Local Coastal Plan and has not yet developed any access policies. The City has not assumed operation and maintenance responsibilities for any dedicated accessways at this time.

The Coastal Conservancy has been working to open up key access points along the Malibu coast since 1979. Escondido Beach has long been a priority because it is a wide sandy beach with public access available only at the extreme ends of the mile-long beach: the privately-owned Paradise Cove (with a \$15 fee for day-use parking) at the western end of the beach and Los Angeles

County's Escondido Creek accessway at the eastern end (Exhibit A). In addition, this beach has three dedicated vertical accessways that, if opened, would provide public access; two are unaccepted, but constructed, and one has been accepted by the Conservancy, but not yet constructed. Until now, the Conservancy has been unable to open up these important beach access points due to the lack of a management agency.

Recently, however, the Mountains Recreation and Conservation Authority (MRCA) has offered to assume responsibility for operation and maintenance of the accessways on Escondido Beach. MRCA is a joint powers agency consisting of the Santa Monica Mountains Conservancy and the Conejo Recreation and Park District. The MRCA operates rural and urban parks in the Malibu area and the San Fernando Valley and has construction and maintenance crews as well as rangers on its staff. The MRCA prefers to focus on Escondido Beach easements since it maintains facilities along the nearby Escondido Falls trail. At this time, the MRCA lacks the resources to take on management responsibilities for other accessways in Malibu. Additionally, the MRCA is not willing to accept the OTDs. For this reason, Conservancy staff recommends that the Conservancy accept the outstanding OTDs, enter into a 20-year interagency agreement with the MRCA for their management, and disburse \$82,000 to the MRCA for at least the first five years of operation and maintenance costs.

The local community has several concerns regarding management and pedestrian safety which the staff of the Conservancy and the MRCA have attempted to address. In order to allay some of the concerns about privacy and safety, Conservancy and MRCA staff have designed a maintenance program that will include locking the gates at night, regular inspections of the stairs, ranger services available on an on-call basis, and weekly trash pick up. Local residents are also concerned about the possibility of beachgoers parking on the inland side of Pacific Coast Highway and crossing this busy highway. However, as is discussed in the project description, there is extensive oceanside parking adjacent to or near the accessways which will minimize the necessity to cross the highway.

In the past, the Conservancy has sought to increase and improve access by assisting with the costs of acquisition of property and/or construction of stairs, trails, and other facilities. At Escondido Beach, acquisition and construction costs are not an issue. The accessways are already dedicated for public use; two of the accessways are built; and the third accessway, owned by the Conservancy, could be constructed with funds set aside for this purpose in a designated account. Furthermore, the Coastal Commission's Malibu Beach Access Fund could be used to cover the expenses of an operation and maintenance entity. In Malibu, the main obstacle to creating new access has been the lack of a management agency, not the lack of funds or property interests. The Conservancy can best carry out its mandate to implement a system of public coastal accessways by enabling a local entity, in this case the MRCA, to assume management responsibilities.

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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.

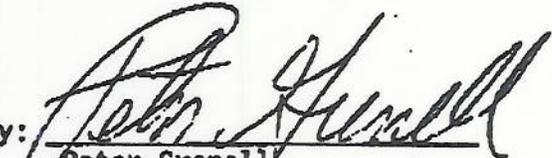
In any instance in which a Conservancy transaction must be completed within a time period less than that specified herein, the Conservancy shall provide the Department with notice and information concerning the transaction and its time constraints at the earliest possible opportunity, and the Department 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



- v. warranty as to title or as to toxic substances;
- v. A general statement of the conditions under which offers will be entertained including minimum sales price, 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 30 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 offers 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, where appropriate.

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

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 Division 21 of the Public Resources Code which necessitate the disposition.

2. As soon as possible after such selection is made, but in no 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 selection, the Conservancy procedures for each function may be defined. 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 of publication, hearing, selection, and other procedures may be simply 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 transfer 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 event of transfer 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.