

DANIEL E. LUNGREN  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



110 WEST A STREET, SUITE 1100  
SAN DIEGO, CA 92101

P.O. BOX 85266  
SAN DIEGO, CA 92186-5266  
(619) 645-2001

FACSIMILE: (619) 645-2012  
(619) 645-2020

October 9, 1997

VIA FACSIMILE & U.S. MAIL

Allan Abshez  
IRELL & MANELLA  
1800 Avenue of the Stars, Suite 900  
Los Angeles, California 90067-4276

Jonathan Horne  
LAW OFFICES OF JONATHAN HORNE  
1158 26th Street  
Santa Monica, California 90401

RE: State Coastal Conservancy Easement Across 27910 and 27920  
Pacific Coast Highway, Malibu

Dear Gentlemen:

As you are aware, the State Coastal Conservancy was granted a public access easement across the properties owned by your clients at 27910 and 27920 Pacific Coast Highway. In order to determine the cost of constructing the infrastructure necessary to allow the public to safely utilize this easement for the purpose of traveling from Pacific Coast Highway to the mean high tide line of the Pacific Ocean, the Conservancy authorized a contract with Charles Rauw.

Mr. Rauw's contract calls for him to survey the site in order to determine the topographic location of the easement across your clients' properties as well as to collect soil samples from and perform other geotechnical work with respect to the easement. In order to accomplish these tasks, Mr. Rauw and his agents need to have access to the easement and to be able to stand at times on a portion of your clients' property which is off the easement.

Currently, the Conservancy has no ability to access its easement from Pacific Coast Highway because the easement is obstructed by a locked gate for which the Conservancy has no key. In the past, you have opened the gate to allow Mr. Rauw and other members of the Conservancy staff onto the easement. You have also allowed Mr. Rauw and members of the Conservancy staff the

ability to stand on portions of your clients' property which is not subject to the easement.

Recently, however, I am informed that your clients have refused to allow Mr. Rauw to access the easement from Pacific Coast Highway and will not permit him or his agents to stand on any ground other than that over which the easement is located. Indeed, I have been advised that Mr. Rauw or one of his employees was actually ordered off the property by Mr. Wildman, the owner of 27910 Pacific Coast Highway. I am further informed that Mr. Rauw was unable to complete his work for the Conservancy and that he cannot perform his work unless he has access to the easement from Pacific Coast Highway and unless he can survey the easement from a point off the easement and collect soil samples and do other geotechnical work from a point off the easement.

Under established law, while the owner of property subject to an access easement may, in appropriate circumstances, place a gate across the easement, he may only do so if the holder of the easement is provided with the means to open the gate for uses consistent with the purposes of the easement. (McCoy v. Matich (1954) 128 Cal.App.2d 50.) Without getting into the question of the propriety of this particular gate, it is my understanding that the County Fire Department has a key to this gate for purposes of using it to access the easement across your clients' property. A similar key can and should be provided to the Conservancy.

Furthermore, with respect to Mr. Rauw's ability to briefly stand on portions of your clients' property which are off the easement in order to perform survey and geotechnical work, the law is similarly well established that the grantee of an easement has certain implied secondary easements essential to the easement's full enjoyment. (Ward v. City of Monrovia (1940) 16 Cal.2d 815, 821; Joseph v. Ager (1895) 108 Cal. 517, 520; Haley v. L.A. County Flood Control Dist. (1959) 172 Cal.App.2d 285, 290.) Such secondary easements allow the holder of the easement the right to cross or be upon the servient estate outside the boundaries of the easement if such conduct is necessary in order to enable the easement holder to obtain full exercise of its rights. Though such secondary easements are limited to those circumstances in which off easement entry is reasonably necessary and though the easement holder may not, by such conduct, needlessly increase the burden on the servient estate, what Mr. Rauw proposes to do is fully within those limitations.

The placement of survey equipment outside the boundaries of the easement and the collection of soil samples from within the easement while standing off of it hardly constitute an unreasonable burden on your clients. No conceivable injury to their property can occur from such conduct. Yet, without the

Allan Abshez  
October 9, 1997  
Page 3

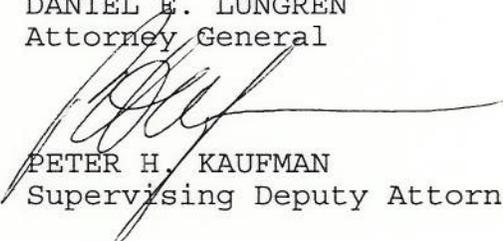
ability to stand off the easement, Mr. Rauw cannot possibly perform his work. As a consequence, the work proposed by Mr. Rauw meets the established tests for use of the Conservancy's secondary easement across your clients' property.

The Conservancy has directed me to take appropriate action to secure its rights under the grant of easement including, in this case, the right to have its agent, Mr. Rauw, conduct a topographic survey of the easement while standing off the easement and to collect soil samples and perform other geotechnical work while standing off the easement. It has also authorized me to obtain its right to enter the easement from Pacific Coast Highway, preferably by means of a key through the currently locked gate.

As a result, unless I have obtained written assurances from each of you by October 15, 1997 that Mr. Rauw will be permitted to perform a topographic survey of the easement and collect soil samples and perform other geotechnical work while standing off the easement and that the Conservancy will be provided with the means to pass through the currently locked gate at a time of its choosing, I will be forced to conclude that your clients dispute the Conservancy's rights in this regard and, in fact, have no intention of permitting the Conservancy to exercise its rights under the easement. Faced with such facts, I will take appropriate action.

Sincerely,

DANIEL E. LUNGREN  
Attorney General



PETER H. KAUFMAN  
Supervising Deputy Attorney General

cc. Elena Eger

RECEIVED  
OCT 14 1997  
COASTAL CONSERVANCY  
OAKLAND, CALIF.