

JP WMM

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DEPARTMENT OF JUSTICE



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October 20, 1997

Alan Abshez
Irell & Manella
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067-4276

RE: Mancuso v. Calif. State Coastal Conservancy, et al.
LASC No. BS 040197

Dear Mr. Abshez:

At its October 16, 1997 meeting, the Conservancy authorized me to draft a settlement agreement which included the following terms and conditions.

1. The above entitled matter be dismissed with prejudice as to all parties.
2. Each side shall bear its own costs and attorney fees with respect to the above entitled matter.
3. The Conservancy will provide notice of any potential action involving the Chiate\Wildman Easement by mail to Mr. Mancuso and Mr. Wildman and to any property owner within 100 feet of the boundaries of their properties.
4. The Conservancy staff will complete an analysis of the cost of constructing the physical improvements necessary to allow the public to move from Pacific Coast Highway to the mean high tide line on the Chiate\Wildman easement and Mancuso and Wildman shall permit the Conservancy's agents reasonable access to their properties for the purpose of completing the analysis on specified terms and conditions.
5. At the same time, the Conservancy staff will conduct a feasibility study of a public access program for Malibu. The study will survey the entire range of public access opportunities in Malibu with a view

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towards opening of beachfront properties currently owned by the public such as Dan Blocker and El Sol Beaches and an appropriate number of easements owned by or available to the public. Nothing in the settlement agreement, however, will guarantee that the Conservancy will conclude that any particular access opportunity will be determined to be feasible. The study will take into account the \$987,000.00 contribution from Mancuso and Wildman in reaching any conclusion on feasibility.

6. The cost analysis and feasibility study will be completed by January 31, 1999. The Conservancy will determine whether the access program is feasible. If the access program is not feasible, the parties will have no further obligations to one another. If it is determined to be feasible, the Conservancy will determine whether the benefits of public use of the easement are outweighed by (a) the cost of constructing and maintaining the easement's infrastructure and (b) the public benefits of the public access program. If the Conservancy finds that the easement's benefits are outweighed, the Conservancy will authorize its staff to begin an appropriate CEQA analysis of the access program. If it fails to reach that conclusion, the parties will have no further obligations to one another.

7. Any CEQA analysis will be completed by January 31, 2000. If the Conservancy determines not to adopt the public access program, the parties will have no further obligations to one another. If the Conservancy adopts the program, the parties will perform the following acts:

a. Mancuso and Wildman will obtain a letter of credit in the amount of \$987,000.00 plus a cost of living adjustment for the period January 31, 1999 to January 31, 2000. The letter will be good for 6 years and will serve two functions. First, it will be the mechanism for the Mancuso and Wildman contribution to the public access program. Second, it will secure the Mancuso and Wildman obligations to perform under the agreement;

b. Upon receipt of the letter of credit, the Conservancy will submit an application to the Coastal Commission for permission to reconvey the easement, to utilize the Black Tor Account for the access program and to utilize

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\$82,000.00 from the Malibu Access Account for the program;

c. The Conservancy will request General Services approval to reconvey the easement;

d. Wildman will seek Coastal Commission approval to delete his offer of dedication of the parking lot area; and

e. Mancuso and the owner of the Black Tor Account property will seek amendment of the Black Tor permit condition allowing the funds in the account to be utilized outside the Escondido Beach area.

A failure by the Conservancy to meet its obligations will terminate the parties' obligations under the Agreement. A failure by Mancuso and Wildman to meet these obligations will result in a call on the letter of credit.

8. If either the Coastal Commission or the Department of General Services deny any of the applications or approvals, the parties obligations are ended and the letter of credit is returned. If either the Commission or the Department fails to approve the applications by June 30, 2000, or conditions they impose preclude recordation of a reconveyance by August 30, 2000, the same result is achieved.

9. If the Coastal Commission and the Department approve the applications by June 30, 2000 and the Conservancy is able to record the reconveyance by August 31, 2000, the Conservancy or its designee will call the letter of credit and upon receipt of the funds will record the reconveyance.

10. If a judicial order is issued which precludes the Conservancy from reconveying the easement or the Commission or the Department from approving the applications, the parties duties and obligations will be stayed during the time the order is in effect. If a final judgment precludes any of these actions, the parties obligations will be terminated and the letter of credit returned. If the judgment occurs after reconveyance. The easement will be returned to the Conservancy and any funds plus interest obtained under the letter of credit will be returned.

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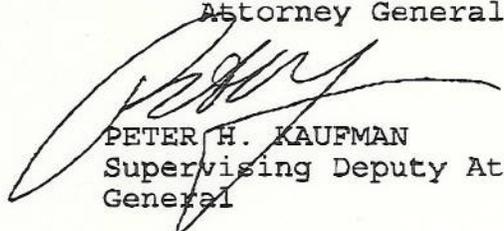
11. The agreement will include a liquidated damages provision regarding the Conservancy's right to use the letter of credit in the event of a breach by Mancuso and Wildman.

12. The agreement will include a provision that if the agreement cannot be completely fulfilled, Mancuso and Wildman will not use any actions by the Conservancy, the Department and the Commission taken because of the agreement as a basis for opposing the opening of the Easement.

Please consult with your client and Jonathan Horne regarding these terms and conditions and advise me as soon as possible whether or not they are acceptable. If they are, I believe we should have little difficulty finalizing an agreement. The Conservancy wants to review the agreement itself before authorizing its executive officer to sign. As a result, we will need to have the agreement in final form at least 10 days before the Conservancy's next meeting which is November 25, 1997.

Sincerely,

DANIEL E. LUNGREN
Attorney General



PETER H. KAUFMAN
Supervising Deputy Attorney
General

cc. Steve Horn
Elena Eger