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WRITER'S DIRECT DIAL NUMBER

February 17, 1998

VIA FACSIMILE AND U.S. MAIL

Peter Kaufman, Esq.
Supervising Deputy Attorney General
110 West A Street, Suite 1100
San Diego, California 92101

Re: Mancuso v. California State Coastal Conservancy, et al; LASC No. BS 040197

Dear Mr. Kaufman:

Under this cover I am transmitting the requested edits to the draft Settlement Agreement which we discussed. These edits respond to comments which I received from Mr. Mancuso's business counsel. I trust you will agree that they do not implicate the substance of the Agreement.

Mr. Mancuso and his business counsel have requested an opportunity to review a clean draft once the edits have been implemented. As we also discussed, the performance requirements on the part of Mr. Mancuso and Mr. Wildman require that they conclude arrangements among one another before going forward. We are in the process of preparing such arrangements.

We understand your concern about the time for performance which the draft Agreement currently provides. We anticipate quickly wrapping up remaining drafting issues and arrangements between Mr. Wildman and Mr. Mancuso so that the Agreement can be executed. If necessary, however, we would be willing to consider adjusting the performance dates to account for such activities.

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Please do not hesitate to contact me if you have any questions or comments. This letter constitutes a settlement communication within the meaning of California Evidence Code Sections 1152 and Rule 408 of the Federal Rules of Evidence, and shall be subject to the privileges and evidentiary protections provided thereby.

Very truly yours,

Allan J. Abshez

cc: Mr. Frank Mancuso
Steve Thomas, Esq.

BSH2159F.WP

Edited Pages Only

SETTLEMENT AGREEMENT

I.

PARTIES

This settlement agreement is made by and among the State Coastal Conservancy (hereinafter "Conservancy"), the Department of General Services (hereinafter "Department"), the Mountains Recreation and Conservation Authority (hereinafter "Authority"), Donahue Wildman (hereinafter "Wildman") and Frank Mancuso, Sr. (hereinafter "Mancuso") and ~~their Related~~ Wildman and Mancuso's Related Entities[1].

II.

EFFECTIVE DATE

The effective date of this Agreement is the date on which it is last executed by a party to this Agreement.

III.

DESCRIPTION OF DISPUTE

This Agreement is made with reference to the following facts:

1. The Conservancy is the ~~owner~~ holder of a recorded approximately 10 foot wide non-exclusive pedestrian easement which permits the public the right to pass and repass across the real property located at 27910 and 27920 Pacific Coast Highway, Malibu, Los

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1. For purposes of this Agreement, "Related Entities" shall be defined as Mancuso and Wildman's respective predecessors, successors, assignees, administrators, legal representatives, joint venturers, partners, agents, members, attorneys, officers, directors, employees, shareholders, affiliates, associates, parent entities, subsidiary entities (whether or not wholly owned), and their officers, directors, employees, shareholders and affiliates, and any other representative of Mancuso or Wildman.

matters, causes of action and claims which have been raised or which could have been raised, now or in the future, and which arise out of the facts set forth in paragraphs III.4 through 7 of this Agreement and nothing contained herein shall be construed as an admission of liability by any party nor of the validity of any claims or contentions which have been made or which could be have been made.

IV.

TERMS OF THE AGREEMENT

The parties to this Agreement, in consideration of the mutual covenants and agreements to be performed, as set forth below, agree as follows:

1. Settlement of the Action. Within ten (10) days of the execution of this Agreement, Mancuso shall provide the Conservancy with an executed satisfaction of judgment in the form attached as Exhibit C. Upon receipt of the Satisfaction of Judgment, the Conservancy and the Department shall file a dismissal of the Appeal in the Court of Appeal and the Satisfaction of Judgment in Los Angeles Superior Court.

2. Notice. From and after the effective date of this Agreement with respect to any proposed Conservancy action related to the development, enhancement, maintenance, restoration, or closing of public access on, over or across real property located between the first public road and the Pacific Ocean, the Conservancy shall give the owners of the subject real property and the owners of record of real property located adjacent to the boundaries of the subject property ten (10) days

direct mail notice of any meeting or action in which such matters will be considered by the Conservancy. In addition, such notice shall also be provided to the owners of record of the real property bordering the adjacent real properties. In addition, the Conservancy will give notice of any such proposed action to any individual or entity previously expressing any interest in access on, over or across the subject property. This obligation to provide notice shall survive the termination of this Agreement or Consummation notwithstanding any other provision hereof.

PK-not a problem "if read in context" (2/16/98) already made + sent changes

3. Cost Analysis. The Conservancy shall complete an analysis (hereafter "Analysis") of the cost of constructing and maintaining the physical improvements (access and parking) necessary to allow the public to access and to move from Pacific Coast Highway to the mean high tide line on the Easement (hereafter "Improvements"). Mancuso and Wildman shall permit the Conservancy and its agents and consultants reasonable access to their properties during week day business hours upon 48 hours notice in order to facilitate timely completion of the Analysis under the terms and conditions described in the document attached hereto and incorporated by reference herein as Exhibit D. By June 30, 1998 or thirty (30) days after the completion of field work necessary to complete the Analysis on the Mancuso and Wildman properties whichever comes first, the Conservancy staff shall provide Mancuso and Wildman with a progress report on the work that has been accomplished and the work which remains to be performed on the Analysis. That progress report shall be

delivered to Mancuso and Wildman or their representatives at a meeting in the Conservancy's offices in which the Conservancy staff shall also provide any final objective results in its possession from the work on the Analysis. By September 30, 1998 or ten (10) days after their receipt of a final report from the Conservancy's consultants with respect to the Analysis, whichever comes first, the Conservancy staff shall provide Mancuso and Wildman with copies of that report.

Upon the Effective Date of this Agreement

4. Public Access Program Study. The Conservancy shall complete a feasibility study of a public access program for Malibu (hereafter "Access Program"). It is intended that the Access Program study will survey the entire range of public access opportunities in Malibu with a view towards the opening of beachfront properties currently owned by the public (such as Dan Blocker) and/or easements either owned by, offered to, or available to, the Conservancy and other public entities. Though it is acknowledged by Mancuso and Wildman that the Conservancy retains complete discretion in determining what access opportunities shall be included in the Access Program and the standards to be utilized in making that determination, the Conservancy acknowledges that Mancuso and Wildman believe that access opportunities should be selected for the Access Program that have the potential to provide significant public benefit and can be pragmatically expected to be implemented given available resources. It is expressly understood by the parties, however, that the Conservancy may determine at the conclusion of the study

that it is not feasible to open any easement or any of the publicly owned beachfront properties. The study shall take into account the fact, as more fully described below, that the sum of $987,000.00 plus funds in the Black Tor Account and the California Coastal Commission's Malibu Access Account may be made available through the implementation of this Agreement towards accomplishment of the Access Program. The Conservancy shall provide Mancuso and Wildman with two progress reports concerning the access program feasibility study. One report shall be provided by May 31, 1998 and the other by September 30, 1998. The reports shall indicate what the Conservancy staff has accomplished during the proceeding period and what tasks remain to be accomplished. Those progress reports shall be delivered to Mancuso and Wildman or their representatives at a meeting in the Conservancy's offices in which the Conservancy staff shall also provide any final objective information in its possession from the work on the Access Program.

5. Materials to be Provided
No later than ten (10) days prior to a Conservancy meeting regarding the determinations described in paragraph 6 below, Wildman shall deliver to the Conservancy two complete and fully executed applications which the Conservancy shall be authorized to file with the California Coastal Commission. Wildman shall be responsible for obtaining and providing to the California Coastal Commission any information which that agency reasonably requests in order to process the applications. The first application shall be to amend Coastal Development Permit

does not approve the Access Program prior to January 31, 2000, this Agreement shall be terminated automatically and the parties shall have no further obligations under this Agreement, except as expressly provided herein.

8. Implementing Actions.

a. If the Conservancy approves the Access Program prior to January 31, 2000, Mancuso and Wildman shall open, within ten (10) days of the Conservancy's determination, escrow by deposition with ~~Stewart Title of California, Inc.~~ First American Title Company [redacted] ("Escrow Agent") the sum of $987,000.00 to an interest bearing account, along with copies of escrow instructions which are mutually executed by Mancuso, Wildman, the Escrow Agent and the Conservancy. Such escrow instructions shall be consistent with the terms of this Agreement, shall provide that the cost of any title insurance policy or policies shall be borne by Mancuso and Wildman and that escrow and recording fees shall be borne equally by Mancuso, Wildman and the Conservancy. These instructions shall also assure that the terms of paragraphs IV.8.a, IV.8.d, VII.1 and V.II.2 are duly implemented by the Escrow Agent and Mancuso, Wildman and the Conservancy. In the event Mancuso and Wildman fail to open escrow as required by the terms of this paragraph, the time for any party to perform a subsequent obligation under this Agreement shall be stayed until Mancuso and Wildman actually performs said obligation; provided, however, that if Mancuso and Wildman fail to open escrow by June 30, 2000, this Agreement shall be terminated automatically and the Parties shall have no

if without any party being deemed in breach,

or supplements or endorsements to existing policies (if requested by Mancuso or Wildman)

further obligations under this Agreement except as expressly provided herein. The escrow shall secure Mancuso and Wildman's agreement to pay the sum of $987,000.00 in exchange for the Conservancy's relinquishment of the Easement in accordance with the terms and conditions of this Agreement.

The Escrow Agent shall close the escrow at the earliest date when and only when it is unconditionally prepared to issue ALTA policies of title insurance, to Mancuso and Wildman, insuring their respective ownerships free and clear of the Easement and the Offer but not sooner than one hundred twenty (120) days after the Department's approval of the relinquishment of the Easement as provided in subparagraph (c) of this paragraph below, except in the event of litigation as described in Paragraph VII.2 of this Agreement.

The Escrow Agent shall close the escrow by: (the "Close of Escrow")

(1) paying the sum of principal and accrued interest in the escrow account to the Conservancy or its designated assignee;

(2) recording executed quitclaim deeds conveying to Mancuso and Wildman, as the case may be, the Conservancy's entire interest in the Easement burdening their respective properties in the form attached hereto as Exhibits E and F; and

(3) recording an instrument(s) revoking the Offer.

Except as specifically provided in Paragraph VII.2 of this Agreement, in the event that the ~~Escrow Agent is unable to~~ close of ~~the~~ escrow ~~by~~ does not occur on or before December 31, 2000, the escrow and this Agreement

Director of General Services a request for approval to relinquish the Easement. The Department, however, shall not act on the Conservancy's request if the California Coastal Commission has not approved the applications described in subparagraph (b).

d. If by June 30, 2000, the California Coastal Commission has not approved the applications described in subparagraph (b) without the requirement of further consideration by Mancuso or Wildman in a manner which allows ~~escrow to close on or prior to~~ the Close of Escrow to occur on or before December 31, 2000, or the Department has not approved relinquishment of the Easement within sixty (60) days of a Commission decision approving relinquishment of the Easement, then except as otherwise provided in subparagraph (a) of this paragraph, escrow shall be terminated and the principal and interest in the escrow account shall be disbursed to Mancuso and Wildman and any quitclaim deeds shall be returned to the Conservancy. In addition, this Agreement shall be terminated automatically and the parties shall have no further obligations under this Agreement except as expressly provided herein.

9. It is acknowledged and agreed by the parties that paragraph IV.8 refers to certain decisions and actions of the Conservancy by specific dates and refers to decisions and actions of the California Coastal Commission and the Department. It is further acknowledged and agreed by the parties that notwithstanding the Conservancy's obligation under this Agreement to make a decision by a specific date, nothing in this Agreement compels the Conservancy, the Commission or the Department to make

a decision in any particular way and that each such decision constitutes an exercise of the independent discretion of the Conservancy, the Commission and the Department under the laws of the State of California.

V.

MUTUAL RELEASES

1. The parties agree that, upon the filing of the satisfaction of judgment in the Action, all claims and causes of action of any nature whatsoever whether known, unknown, suspected or unsuspected, contingent or fixed arising out of the alleged notice, CEQA, and Public Resources Code Section 31107.1 violations alleged in the Action shall be released, relieved and discharged. Specifically

~~2. The parties expressly understand that California~~ Civil Code section 1542 provides as follows:

> "A general release does not extend to claims which the creditor does not know or suspect exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

The parties knowingly, voluntarily, intentionally, and expressly waive any and all rights and benefits conferred by section 1542 and agree and acknowledge that this waiver is an essential term of this Agreement, without which the consideration given herein would not have been given.

VI.

REPRESENTATIONS AND WARRANTIES

1. Independent Legal Advice. Each of the parties represents, warrants and agrees that it has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement.

2. No Other Representation. Each of the parties represents, warrants and agrees that in executing this Agreement it has relied solely on the statements expressly set forth herein. Each of the parties further represents, warrants and agrees that in executing this Agreement it has placed no reliance whatsoever on any statement, representation or promise of any other party or any other person or entity not expressly set forth herein or upon the failure of any other party or any other person or entity to make any statement, representation or disclosure of anything whatsoever. The parties have included this clause: (i) to preclude any claim that any party was in any way fraudulently induced to execute this Agreement and (ii) to preclude the introduction of parol evidence to vary, interpret, supplement or contradict the terms of this Agreement.

3. Factual Investigation. Each of the parties represents, warrants and agrees that it has made such investigation of the facts that in any way relate to or arise out of or are connected in any way with the matters or events which were alleged specifically in the Action as it deemed necessary or desirable.

VII.

GENERAL

1. Termination of Agreement. At any time after June 30, 1998, but no later than five (5) days prior to the Conservancy meeting described in Paragraph IV.6 of this Agreement, either Mancuso or Wildman may terminate this Agreement at his sole discretion with or without cause, if written notice of that decision to terminate is in the Conservancy's possession no later than five (5) days prior to the Conservancy meeting described in Paragraph IV.6 of this Agreement. Should either Mancuso or Wildman choose to exercise this limited right to terminate, the parties shall have no further obligations under this Agreement except as expressly provided herein.

It is expressly understood by the parties that in the event this Agreement is terminated, the Conservancy need not make any finding or take any action contemplated by this Agreement. Should either Mancuso or Wildman choose to exercise the above described limited right to terminate this Agreement and the Conservancy elects to proceed with the determinations described in Paragraphs IV.6 and IV.7 of this Agreement, the Conservancy shall not conduct a meeting with respect to either determination before May 1, 1999.

2. Effect of Litigation.

a. Extension of Escrow. In the event that a lawsuit is filed in a court of competent jurisdiction challenging any or all of the California Coastal Commission decisions described in

except to perform the notice obligations provided in Paragraph IV.2 (which obligations shall continue notwithstanding the termination or consummation of this Agreement)

subparagraph (b) below or the decision of the Department described in subparagraph (c) below, escrow shall be extended until the earlier of: (i) a final non-appealable judgment by a court of competent jurisdiction determining that the California Coastal Commission decisions described in subparagraph (b) below are upheld and that the decision of the Department described in subparagraph (c) below is upheld, in which case the escrow shall be closed as described above; or (ii) a final non-appealable judgment by a court of competent jurisdiction determining that any or all of the California Coastal Commission decisions described in subparagraph (b) below or the Department's decision described in subparagraph (c) below are not upheld, in which case the escrow shall be automatically terminated and the principal and accrued interest in the escrow account shall be disbursed to Mancuso and Wildman, and any quitclaim deeds shall be returned to the Conservancy, whereupon this Agreement shall be terminated and the parties shall have no further obligations ~~hereunder, except~~ as expressly provided herein.

(, with or without cause,)

Notwithstanding the foregoing, should escrow fail to close for any reason by December 31, 2005, Mancuso and Wildman shall have the right ~~in their~~ sole discretion, to terminate this Agreement and the escrow by a writing addressed to the Conservancy, the Department and the Escrow Agent. In the event of such a termination, any sums in the escrow account plus accumulated interest shall be returned to Mancuso and Wildman and

or shall be construed as an admission of any facts in connection with any claims or causes of action or admission or acknowledgment of the existence of any liability or claim or wrongdoing on the part of any party.

5. Full Integration. This Agreement is the final written expression and the complete and exclusive statement of all of the agreements, conditions, promises representations and covenants between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements, negotiations, representations, understanding and discussions between and among the parties, their respective representatives and any other person or entity with respect to the subject matter covered herein. Any amendment to this Agreement must be in writing and must specifically refer to this Agreement and must be signed by duly authorized representatives of each of the parties.

6. Survival of Warranties. All representations and warranties contained in this Agreement shall survive its execution, effectiveness and delivery. It is expressly understood and agreed by the parties that none of the releases set forth herein are intended to or do release any claims or rights arising out of this Agreement or the breach of it.

7. Benefits, Successors and Assigns. This Agreement shall be binding upon and shall inure to the ~~benefit of each of the~~ heirs, beneficiaries parties and each of their respective ~~successors and assigns~~ and each of them.

15. Counterparts. This Agreement may be executed in any number of counterparts by the parties and when each party has signed and delivered at least one such counterpart to the other party, each counterpart shall be deemed an original and taken together shall constitute one and the same Agreement that shall be binding and effective as to all of the parties.

16. Obligation for Return of Easement and Reimbursement. In the event the Easement has been reconveyed to Mancuso and Wildman but it is subsequently determined by a court of competent jurisdiction in a final non-appealable judgment that the reconveyance is invalid, Mancuso and Wildman shall take whatever actions are necessary to restore the Easement to the Conservancy and the Conservancy take whatever actions are necessary to return any sums received from Mancuso and Wildman plus any interest earned on those sums from the date they were received by the Conservancy to Mancuso and Wildman.

17. No Joint Venture or Partnership. No actions or obligations hereunder shall be deemed to create a partnership or joint venture between any of the parties hereto. All actions, findings and applications made by any public agency pursuant to this Agreement ~~is~~ are done or made in the exercise of the independent discretion and judgment of such agency. In addition,

18. Time of Performance of Obligations. Time is of the essence in this Agreement.

19. Further Assurances. Each of the parties agrees that it shall cooperate and take such additional steps and shall execute