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Attorney General

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State of California  
DEPARTMENT OF JUSTICE



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March 25, 1998

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

Jonathan S. Horne  
1158 26th Street  
Suite 535  
Santa Monica, California 90403

SENT BY FACSIMILE AND U.S. MAIL

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

Dear Gentlemen:

On February 17, 1998, Mr. Abshez advised our office that, pending the conclusion of certain unspecified "arrangements" between Mr. Mancuso and Mr. Wildman, should the Conservancy agree to several minor changes to the Settlement Agreement in the above entitled matter, the agreement could be executed forthwith.

On February 18, 1998, the Conservancy advised Mr. Abshez that the proposed changes were acceptable and forwarded a document reflecting those changes to him for execution.

In a subsequent conversation with Mr. Horne, our office was informed that the above mentioned "arrangements" could be resolved easily in a brief conversation between Mr. Mancuso and Mr. Wildman which it was represented could take place prior to March 24, 1998.

After repeated unreturned telephone calls to Mr. Abshez and a communication from Mr. Horne that no meeting between Mr. Wildman and Mr. Mancuso could take place before April of this year, our office has advised the Conservancy that it cannot provide any assurance that your clients will execute the Settlement Agreement in a manner likely to permit the Conservancy to timely carry out its obligations under that agreement.

Given the fact that the Settlement Agreement has deadlines for performance which are rapidly approaching and the fact that the Conservancy has no desire to renegotiate any of those deadlines, the Conservancy intends to exercise its rights under the public access easement it has across the property of both your clients. The Conservancy's position is that it is entitled, irrespective of the Settlement Agreement, to perform work on its easement in furtherance of public access and that if your clients truly intend to see the Settlement Agreement fulfilled in a timely manner, they will have no objection to the Conservancy's immediate exercise of its rights under the easement.

As you are undoubtedly aware, the Conservancy has a contract with Mr. Charles Rauw. The purpose of that contract is the creation of an estimate of the cost of constructing the infrastructure necessary to allow the public to safely utilize the Conservancy's easement which runs from Pacific Coast Highway to the mean high tide line.

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 will 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.

There can be no question that the Conservancy and its agents have a right to traverse the easement. The law is equally well established that Mr. Rauw and his agents have the right to stand briefly on portions of your clients' property which are off the easement in order to perform survey and geotechnical work. Under the rule enunciated in Ward v. City of Monrovia (1940) 16 Cal.2d 815, 821, Joseph v. Ager (1895) 108 Cal. 517, 520 and Haley v. L.A. County Flood Control Dist. (1959) 172 Cal.App.2d 285, 290, the grantee of an easement has certain implied secondary easements essential to the easement's full enjoyment. Such secondary easements allow the holder of the easement to cross or be upon the servient estate outside of 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

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unreasonable burden on your clients. No conceivable injury to their property can occur from such conduct. Yet, without the 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.

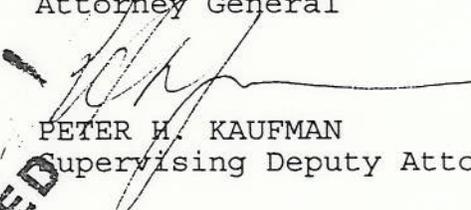
Moreover, though it is not required as a condition of the Conservancy's exercise of its rights under its easement, I have been authorized to inform you that the Conservancy agrees that Mr. Rauw will not utilize any motorized equipment on your clients' property outside of the easement and that the Conservancy will indemnify, defend and hold Mancuso, Wildman and their respective agents, trustees, staff, contractors, subcontractors, guests and invitees harmless from and against any and all expenses, costs, fees, suits, actions, obligations, liabilities and damages (including attorney fees and costs) which result from the entry of Mr. Rauw or anyone working on behalf of Mr. Rauw or the Conservancy on any portion of the your clients' property outside of the easement on the dates set forth below.

Mr. Rauw will traverse the easement and place his survey equipment on and collect soil samples from the easement while upon your clients' property immediately adjacent to the easement on one or more of the following dates May 14, 1998, May 15, 1998, May 21, 1998 and May 22, 1998.

If you would like to accompany Mr. Rauw while he performs his work, you are more than welcome to do so. Furthermore, please be advised that absent an order from a court of competent jurisdiction which precludes Mr. Rauw or his agents from undertaking the tasks described above, neither Mr. Rauw nor his agents nor any employee, counsel or official representing the Conservancy will be dissuaded from doing so.

Sincerely,

DANIEL E. LUNGREN  
Attorney General

  
PETER H. KAUFMAN  
Supervising Deputy Attorney General

cc. William Ahearn  
James Pierce

RECEIVED  
MAR 30 1998  
CONSERVANCY  
OAKLAND, CALIF.