

Staff Report 36

PARTIES:

PARTY THAT RECORDED OFFER OF DEDICATION:

Stephen Kaplan and Jean Moran Kaplan, as Co-Trustees of the Kaplan Living Trust dated March 10, 2004 (Grantor)

PARTY TO ACCEPT EASEMENT:

California State Lands Commission

Interested Party:

California Coastal Commission

PROPOSED ACTION:

Consider Acceptance of an Offer of Dedication of Public Lateral Access Easement

AREA, LAND TYPE, AND LOCATION

The easement is located between the ambulatory mean high tide line of the Pacific Ocean and the deck dripline adjacent to 31302 Broad Beach, Assessor's Parcel Number 4470-016-037 (Subject Property), Malibu, Los Angeles County.

BACKGROUND:

Since the adoption of the Constitution of California of 1879, access to California's Public Trust waterways has been a mandated responsibility of State government. The vast majority of the hundreds of title settlement agreements the Commission has entered into since its inception in 1938 have included the provision of public access to the waterways involved.

In the 1960s, an organization with the acronym COAST (Citizens Organized to Acquire Access to State Tidelands) began a "Save the Coast" campaign that eventually resulted in the adoption of Proposition 20 by the State's voters in 1972.

The Legislature made Proposition 20 permanent with the adoption of the Coastal Act in 1976. Since 1976, more than 1,500 offers to dedicate (OTDs) public access easements, both vertical and lateral (i.e., to and along the coast), have been made involving California's 1,100-mile coastline.

These OTDs were formally made and recorded by property owners as a condition of approval of permits to develop within the Coastal Zone. They have a 21-year life from the date of recording and will expire if not formally accepted by a public agency within that time.

The OTDs were required to ensure protection of existing public rights of use and to mitigate and compensate for the impacts to public access caused by development. In many cases, the location of the boundary between the privately owned uplands and the publicly owned tidelands is unsettled. Furthermore, the public may have acquired rights of use through the doctrine of implied dedication and have rights of recreational use in any area subject to the public easement in navigable waters. Therefore, these OTDs may describe and include areas already having public rights of use or public ownership. Acceptance by the Commission of the OTDs does not change the nature of the existing rights but removes any question of the public's right of use of the area described.

The California Coastal Commission has requested that the State Lands Commission review and, where appropriate, accept OTDs of lateral access easements involving sandy beach areas lying adjacent to tidelands. Commission staff is involved in an ongoing process with the California Coastal Commission to analyze the OTDs and determine which offers the Commission should accept.

The Commission has already authorized the acceptance of more than 300 OTDs along the coast of California since April 2, 1991, the majority of which are located in the Malibu area of Los Angeles County.

The Commission's liability for holding these lateral parcels is limited by section 831.2 of the Government Code, which provides that a public entity is not liable for injury caused by a natural condition of any unimproved public property. There should be no maintenance and little management required for these easements because of the lack of improvements on the parcels and because the easements simply provide the public with the right to access and use the beach.

In this case, there is a rock revetment within the easement that is temporarily authorized by the California Coastal Commission's Emergency Coastal Development Permit 4-10-003-G. The State Lands Commission authorized the portions of the temporary revetment on State sovereign land through Lease No.

PRC 9364, issued to the Broad Beach Geologic Hazard Abatement District (BBGHAD).

The easement includes a buffer between the upland residence's deck and the waterward toe of the revetment where public access is not permitted. This buffer will be automatically removed if the rock revetment is no longer authorized by the Coastal Commission or is removed.

OTDs generally involve sandy beach areas lying between the private structure built on the upper beach and the tidelands which are already State owned and under the Commission's jurisdiction. Therefore, these areas are not only appurtenant to the Commission's existing area of ownership and jurisdiction, but are, for all practical public use purposes, integral to it.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6106, 6216, 6219, and 6301.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

The proposed action involves acceptance of an OTD to secure a public lateral access easement across a privately held parcel. Public access easements are vital tools for ensuring California's coastline remains open and accessible to the public. The proposed OTD will run the entire width of the Subject Property from the mean high tide line to the deck dripline. The Coastal Development Permit (No. 10-063) that required the OTD at 31302 Broad Beach Road as a condition was approved on October 7, 2013, by the City of Malibu (Resolution No. 13-94).

The Irrevocable Offer to Dedicate Public Lateral Access Easement and Declaration of Restrictions was recorded by Grantor on January 19, 2016, as Document Number 20160059524, Official Records of Los Angeles County. The OTD expires on January 18, 2037.

Staff reviewed the offer of the property interest shown on the attached Exhibit B-1 and recommends acceptance. Upon approval by the Commission, the Commission's Executive Officer will execute and record a Certificate of Acceptance, accepting the easement on the Subject Property. Once accepted, the easement will add an additional 60 linear feet of public access along the beach adjacent to the Subject Property.

The addition of this easement will address a gap in the existing lateral access along this portion of the beach, creating greater certainty for the public that the beach is open to the public.

The upland property owner remains responsible for maintaining the temporary rock revetment under their Coastal Development Permit. Acceptance of the easement does not impair the Coastal Commission's or the State Lands Commission's ability to require removal of the temporary revetment from land under their jurisdictions. The State Lands Commission's lease also requires the BBGHAD to indemnify the Commission from all damages associated with the temporary revetment on sovereign land.

CONCLUSION:

For all the reasons above, staff believes that the proposed action is consistent with and promotes Public Trust needs and values at this location and is in the State's best interests.

OTHER PERTINENT INFORMATION:

1. Acceptance of the OTD is a discretionary action by the Commission. Each time the Commission accepts an OTD, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law.
2. Acceptance of the OTD is consistent with the "Meeting Evolving Public Trust Needs" and "Prioritizing Social, Economic, and Environmental Justice" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. Acceptance of an Offer to Dedicate a Public Lateral Access Easement creates new public access points along California's coast and ensures the preservation of public access to California's coastal waters. As such, this action advances Goal 1, "PROMOTE EQUITY"; Goal 3, "INCREASE AND SUPPORT EQUITABLE PUBLIC ACCESS"; and Goal 6, "REDUCE IMPACTS AND INCREASE BENEFITS" of the Commission's 2018 Environmental Justice Policy, adopted at its December 4, 2018 meeting.
4. The acceptance of an offer of dedication is not a project as defined by the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

EXHIBITS:

- A. Location Map
- B-1. Land Description
- B-2. Sketch to Accompany Land Description

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the acceptance of this OTD is consistent with and promotes Public Trust needs and values at this location and is in the State's best interests.

AUTHORIZATION:

1. Approve the acceptance of the Irrevocable Offer to Dedicate Public Lateral Access Easement recorded on January 19, 2016, as Document Number 20160059524, Official Records of Los Angeles County.
2. Authorize the Executive Officer or designee to execute and record a Certificate of Acceptance on behalf of the California State Lands Commission.



EXHIBIT A

TS 04/02/2021

W 24665
31302 BROAD BEACH ROAD,
MALIBU, LOS ANGELES COUNTY

CALIFORNIA STATE
LANDS COMMISSION



EXHIBIT C-1

LEGAL DESCRIPTION OF LATERAL ACCESS EASEMENT

A PARCEL OF LAND BEING A PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, IN THE CITY OF MALIBU, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS CONFIRMED TO MATTHEW KELLER BY PATENT, RECORDED IN BOOK 1, PAGE 407 ET SEQ., OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER IN THE CITY OF MALIBU, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, PER MAP RECORDED IN BOOK 1 OF PATENTS, PAGE 407 ET SEQ., IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, WITHIN THE FOLLOWING DESCRIBED BOUNDARIES:

COMMENCING AT THE NORTHEASTERLY CORNER OF LOT 1 OF BLOCK 3 OF TRACT NO. 12909 PER MAP RECORDED IN BOOK 263, PAGES 37 AND 38 OF MAPS, RECORDS OF SAID COUNTY, SAID POINT BEING IN A CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 2980.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 12° 19' 43" EAST; THENCE EASTERLY ALONG SAID CURVE AND ALONG THE SOUTHERLY LINE OF "BROAD BEACH ROAD", 60 FEET WIDE, AS SHOWN ON SAID MAP OF TRACT NO. 12909, THROUGH A CENTRAL ANGLE OF 0° 56' 19" AN ARC DISTANCE OF 48.82 FEET TO THE NORTHERLY EXTENSION OF THE WESTERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED RECORDED JANUARY 16, 1953, IN BOOK 40753, PAGE 416 OF OFFICIAL RECORDS, RECORDS OF SAID COUNTY, SAID POINT BEING DESIGNATED AS POINT "A"; THENCE CONTINUING ALONG SAID SOUTHERLY LINE OF "BROAD BEACH ROAD" THENCE THROUGH A CENTRAL ANGLE OF 1° 25' 22" AN ARC DISTANCE OF 74.00 FEET; THENCE LEAVING SAID SOUTHERLY LINE SOUTH 14° 41' 24" WEST, 154.30 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE NORTH 76° 43' 58" WEST, 44.33 FEET; THENCE SOUTH 13° 16' 05" WEST, 2.02 FEET; THENCE NORTH 76° 43' 58" WEST, 4.02 FEET; THENCE SOUTH 13° 16' 05" WEST, 1.21 FEET; THENCE NORTH 76° 43' 58" WEST, 16.50 FEET; THENCE SOUTH 13° 16' 05" WEST, 0.59 FEET; THENCE NORTH 80° 09' 38" WEST, 5.33 FEET TO A POINT THAT IS SOUTHERLY AND RADIAL FROM SAID POINT "A", SOUTH 13° 16' 02" WEST, 159.30 FEET; THENCE ALONG SAID RADIAL LINE, SOUTH 13° 16' 02" WEST, TO THE AMBULATORY MEAN HIGH TIDE LINE OF THE PACIFIC OCEAN; THENCE EASTERLY ALONG SAID AMBULATORY TIDE LINE TO A POINT BEING ON A SOUTHERLY PROLONGATION FROM SAID TRUE POINT OF BEGINNING; THENCE ALONG SAID PROLONGATION, NORTH 14° 41' 24" EAST, TO SAID TRUE POINT OF BEGINNING.



EXHIBIT "C-2" LATERAL ACCESS EASEMENT

