

**STAFF REPORT
C50**

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11/29/17

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**CONSIDER ACCEPTANCE OF AN OFFER OF DEDICATION
OF LATERAL ACCESS EASEMENT**

PARTY WHO RECORDED OFFER OF DEDICATION:

Douglas B. Otto, as Trustee of the Douglas B. Otto Trust created July 31, 1996

PARTY TO ACCEPT EASEMENT:

California State Lands Commission

INTERESTED PARTY:

California Coastal Commission

LOCATION:

The easement is located between the ambulatory mean high tide line of the Pacific Ocean and the toe of the rock seawall adjacent to 6746 Breakers Way, in Mussel Shoals, Ventura County.

BACKGROUND:

Since the adoption of the 1879 California Constitution, 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 State Lands Commission (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. Since the Legislature's passage of the Coastal Act in 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 are formally made and recorded by property owners as a condition of approval of permits to develop within the Coastal Zone. These OTDs have a

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21-year life from the date of recording and will expire if not formally accepted by a public agency within that time period.

The OTDs are 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 (CCC) 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 managed by the Commission. Commission staff is involved in an ongoing process with the CCC to analyze the OTDs and determine which offers the Commission should accept.

The Commission has already authorized the acceptance of more than 280 OTDs along the coast of California since 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 California 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.

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.

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STAFF ANALYSIS AND RECOMMENDATION:

Authority:

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

Public Trust and State's Best Interests Analysis:

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 OTD, as recorded, includes the entire width of the upland property at 6746 Breakers Way (Subject Property) from the ambulatory mean high tide line to the toe of the rock seawall.

The Coastal Development Permit (No. A-374-78) that required the OTD at the Subject Property as a condition was approved by the CCC on October 16, 1978. Douglas B. Otto, as Trustee of the Douglas B. Otto Trust created July 31, 1996, recorded the Irrevocable Offer to Dedicate Public Access Easement and Declaration of Restrictions on August 9, 2001, as Document No. 2001-0156440-00, Official Records of Ventura County. The OTD expires on August 9, 2022.

Staff reviewed the recorded OTD and believes it is appropriate for Commission 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 create approximately 40.07 lineal feet of public access along the beach adjacent to 6746 Breakers Way (Assessor's Parcel Number 060-0-082-385).

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. As such, staff believes that the proposed action is consistent with and promotes Public Trust needs and values at this location, at this time, and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Staff recommends acceptance of the OTD as it promotes Strategy 1.3 of the Commission's Strategic Plan to promote, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
2. Staff recommends the Commission find that acceptance of an offer of dedication does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and

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is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, sections 15060, subdivision (c)(3), and 15378.

EXHIBITS:

- A. Location Map
- B. Site Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that acceptance of the offer of dedication is not subject to the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15060, subdivision (c)(3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that acceptance of the offer of dedication is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

AUTHORIZATION:

1. Approve and authorize a Certificate of Acceptance for the Irrevocable Offer to Dedicate Public Access Easement recorded on August 9, 2001, as Document No. 2001-0156440-00, Official Records of Ventura County; as a condition of Coastal Development Permit No. A-374-78 for Assessor's Parcel Number 060-0-082-385.
2. Authorize the Executive Officer or her designee to execute and record the Certificate of Acceptance on behalf of the Commission, in substantially the form of the copy of such document on file in the Sacramento office of the Commission.

NO SCALE



EXHIBIT A

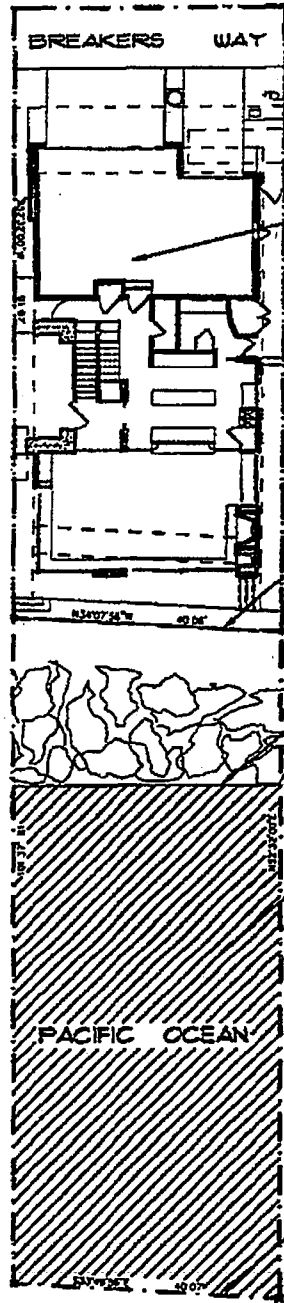
JWP 10/11/17

W 24665
6746 BREAKERS WAY, MUSSEL SHOALS
VENTURA COUNTY

CALIFORNIA STATE
LANDS COMMISSION



EXHIBIT C



LOT 56
6746 BREAKERS WAY
VENTURA, CA 93001
APN: 060-0-082-325

"AVERAGE HIGH TIDE LINE"
PER MUSSEL SHOALS TRACT No. 1
MAY 1924 FILED IN BOOK 12, PAGE 29
OF MISC. RECORDS, RECORDS OF
VENTURA COUNTY

TOE OF ROCK SEAWALL

LATERAL ACCESS EASEMENT AREA

PACIFIC OCEAN

"ORDINARY HIGH WATER MARK"
PER STATE LANDS COMMISSION
SURVEY OF APRIL 1953 FILED
IN BOOK 18, PAGE 25 OF
RECORDS OF SURVEY, RECORDS
OF VENTURA COUNTY

LOT PLAN - LOT 56

