

GUIDELINES AND CRITERIA
FOR CONSERVANCY ACCEPTANCE OF
DEDICATIONS AND DONATIONS OF LESS-THAN-FEE INTERESTS
IN REAL PROPERTY

(Revised January 4, 1979)

INTRODUCTION

Pursuant to Section 31104 of the Public Resources Code, the State Coastal Conservancy is authorized to accept gifts of less-than-fee interests in real property to facilitate implementation of its programs of agricultural preservation, area restoration, resource enhancement, buffer zone establishment, site reservation and public accessway development in the Coastal Zone

In addition, ~~proposed~~ Section 31104.1 of the Public Resources Code requires the Conservancy to serve as a repository for lands whose reservation is required to meet the policies and objectives of the Coastal Act or a certified local coastal plan or program, and authorizes the Conservancy to accept dedication of fee title of easements, development rights, or other interests in lands including interests required to provide public access to recreation and resources areas in the Coastal Zone.

The following guidelines and criteria have been promulgated by the Conservancy to assist staff in evaluating and determining the project priority of offers which may be received by the Conservancy.

DEFINITIONS

For purposes of these guidelines and criteria, less-than-fee interests in real property are defined to include, but are not limited to, scenic easements, open-space easements, conservation easements, development rights, and access easements.

PROJECT SPECIFIC CRITERIA

Conservancy evaluation of less-than-fee donation and dedication offers ~~shall~~ *should* be based on the following project specific criteria:

1. Significance - The servient land must be significant in that it includes or benefits:
 - a. A planned or existing Conservancy project or program;
 - b. A public resource protection zone, beach, park, natural area, or fish and wildlife preserve in the Coastal Zone;
 - c. Any area identified in any state or regional local plan, or Local Coastal Plan or Program, as a significant coastal resource site;
 - d. Any area deemed to be significant in terms of Coastal Act policies; and
 - e. Any area which is to be transferred to a federal, state, or local governmental agency pursuant to a coastal program of that agency.
2. Need - Acceptance of the dedication or donation ~~must be needed because:~~ *should be based on the following project specific criteria:*
 - a. *The public interest would not be better served by the acquisition of the fee interest in the property, and either:*

- a- b. The Conservancy is the most appropriate public entity to accept the interest; or
- b- c. No other suitable public or private agency is willing and able to accept the interest.

3. Management and Maintenance -

- a. The Conservancy shall not be responsible for maintenance or management of the servient estate, or payment of real estate taxes or other assessments levied against such land.
- b. Expenditures for the maintenance and management of the less-than-fee interest shall be limited to those activities:
 - 1. Needed to ensure that restrictions are being observed by the servient owner or his successors in interest;
 - 2. Funded by other than state funds; and
 - 3. Urgently needed to fulfill a Conservancy program objective.
- c. Simultaneously with the preparation or review of the instrument creating the donated or dedicated interest, the Conservancy shall gather information concerning the then current condition of the land. Such information may be in the form of maps, including but not limited to geologic, geographic, hydrologic, and vegetative depictions; photographs; and any other recording or description which evidences the state of the land at the time of creation of the interest. Such information shall be in a form suitable for recording and shall be for the purpose of establishing the baseline condition of the land against which future changes therein may be measured and assessed. Such information shall be placed on the land records of the appropriate jurisdiction simultaneously with the recording of the instrument creating the less-than-fee interest, and the purpose of the information and its relation to the document creating said interest shall be clearly indicated on its face.
- d. At the time of the acceptance of the less-than-fee interest, the Conservancy shall prepare a plan for the monitoring of the interest. The purpose of such plan shall be to establish a program for the regular periodic inspection of the land in order to ensure compliance with the restrictions of the less-than-fee interests, and the program shall include, at a minimum, specific designations of the method and the frequency of inspection as well as provisions for notification to the owner of the land of the date and time of such inspections.

4. Scope - Relevant to this consideration are:

- a. The degree to which Conservancy ownership of the interest will address and resolve impacts of greater than local concern; and
- b. The extent to which acceptance of the dedication will address a multiplicity of Coastal Conservancy goals.

5. Cooperation with Local Government - To the fullest extent possible, the Conservancy shall seek the cooperation of local governments in evaluating dedication offers and in implementing programs for the maintenance and management of the less-than-fee interests.

6. Completeness of Proposal - The dedication proposal shall include the following articles:
- a. The original deed(s), with the State of California as the named grantee, properly executed and acknowledged, with provisions for the following:
 - i. A clause absolving the Conservancy of liability for payment of any real property taxes or other assessments levied against the land(s);
 - ii. A clause relieving the State of California of responsibility for maintaining or managing the land;
 - iii. A clause giving the State of California discretion to determine under what circumstances an action to enforce the terms of the agreement at law or in equity will arise;
 - iv. A clause authorizing the State of California, its officers and agents periodically to enter the land at times reasonably acceptable to the owner, to ensure that restrictions are being observed;
 - v. A legally sufficient description of the interest to be conveyed;
 - vi. Any appropriate restrictions on the use of the servient estate (e.g., prohibitions against building or modifying existing structures, alterations of water courses, etc.);
 - vii. A procedure by which restrictions may be modified by agreement of the parties to accommodate unforeseen changes in the future use of the property;
 - viii. If the less-than-fee interest is an easement, a clause providing that the easement is in gross to the State of California;
 - ix. A clause granting the State of California, where there is a permit, the right to assign the granted interest to another public or private non-profit agency; and
 - x. A clause providing that remedies for breach of the restrictions by the owner of the servient estate shall include:
 - A. Injunction to force a termination of the breaching activity;
 - B. Injunction to force the restoration of all damage done by such activity; and
 - C. Such further relief as may be available at law or in equity.
 - xi. A clause stating that the State of California shall have no right of control over, or duties and responsibilities with respect to, the servient estate which would subject the State of California to any liability occurring upon the land by virtue of the fact that the right of the State of California, its successors and assigns, to enter the land is strictly limited to prevent uses inconsistent with the interest granted and does not include the right to go upon the land for the purpose of correcting any dangerous condition as defined by Government Code Section 830.

- b. A plat of the property upon which the interest has been traced, together with any available photographs.
- c. A current preliminary title report issued by a reputable title company.
- d. A statement of the size in acres of the servient estate.
- e. A statement of the size, stated in square feet, of the improvements which are subject to the less-than-fee interest and a description of said improvement, if any.
- f. A copy of the grantor's escrow instructions, if any.

ACCESS DONATION PROGRAM

The Conservancy also recognizes the great need for public coastal access, and encourages the donation of access easements by private landowners. Easements can provide either "lateral" access along the shoreline, or "vertical" access to the shoreline. Under the Access Donation Program, a landowner may propose a donation of an easement to the Conservancy. Conservancy and Coastal Commission staffs, together with appropriate state or local agencies will work with the landowner to determine the exact location and dimensions of the easement. The proposed donations will then be reviewed by the Coastal Commission to determine that they are consistent with the access provisions of the Coastal Act. After the determination has been made, the Conservancy will review the dedications with a view to accepting those it deems appropriate.

The Conservancy may transfer access easements to appropriate local or state agencies if, in the judgment of the Conservancy, the other agency has developed a public access program which could include the donated easement and will provide public access.

The Project Specific Criteria set forth above shall also apply to the Access Donation Program.