

**CONSERVANCY DELEGATION TO ITS EXECUTIVE OFFICER
TO ACCEPT OFFERS TO DEDICATE
RECORDED PURSUANT TO THE COASTAL ACT**

**Agenda Item 9.
December 4, 2002**

COASTAL CONSERVANCY

Project Summary
December 4, 2002

**CONSERVANCY DELEGATION TO ITS EXECUTIVE OFFICER
TO ACCEPT OFFERS TO DEDICATE
RECORDED PURSUANT TO THE COASTAL ACT**

Project Manager: Joan Cardellino

RECOMMENDED ACTION: Staff recommends that the State Coastal Conservancy delegate authority to the Executive Officer to accept any Offer to Dedicate public access recorded pursuant to the Coastal Act that has not been accepted within 90 days of its expiration date.

LOCATION: Statewide

PROGRAM CATEGORY: Public Access

ESTIMATED COST: None

PROJECT SUMMARY: Since at least 1977, the Conservancy has, at various times, delegated specified functions to its Executive Officer for reasons of practicality or efficiency. Staff is recommending that the Conservancy authorize the Executive Officer to act in an additional defined circumstance with respect to acceptance of offers to dedicate public access that have been recorded pursuant to the provisions of the Coastal Act. Under new legislation effective January 1, 2003, adding Sections 31402.1, 31402.2, and 31402.3 to the Conservancy's enabling statute (Division 21 of the Public Resources Code), the Conservancy is required, without exception, to accept any such offer to dedicate that has not been accepted by another entity within 90 days of its expiration date. The additional delegation proposed by this staff recommendation would authorize the Executive Officer to carry out the acceptance of these offers to dedicate as required by the legislation.

COASTAL CONSERVANCY

Staff Recommendation
December 4, 2002

**CONSERVANCY DELEGATION TO ITS EXECUTIVE OFFICER
TO ACCEPT OFFERS TO DEDICATE
RECORDED PURSUANT TO THE COASTAL ACT**

Project Manager: Joan Cardellino

STAFF

RECOMMENDATION: Staff recommends that the State Coastal Conservancy adopt the following Resolution pursuant to Section 31103 of the Public Resources Code and Section 13734 of Title 14 of the California Code of Regulations:

“Effective January 1, 2003, the State Coastal Conservancy hereby delegates to its Executive Officer the authority to take the following actions, and directs the Executive Officer to exercise the delegated authority consistent with applicable law and the policies of the Conservancy, without further, specific Conservancy authorization:

Accept on behalf of the State, through the Conservancy, any offer to dedicate an interest in real property that has been recorded pursuant to the Coastal Act (Division 20 of the Public Resources Code) to provide public access or to protect open space and that has not been accepted by any other entity within 90 days of its expiration date. Prior to exercising this delegated authority, the Executive Officer shall endeavor to provide advance notice of the Conservancy’s intention to accept the offer to dedicate to the owner of the property burdened by the offer to dedicate and to any other persons to whom notice may be required by law.”

Staff further recommends that the Conservancy adopt the following findings:

“Based on the accompanying staff report, the State Coastal Conservancy hereby finds that the proposed authorization is consistent with and will help carry out the purposes of Division 21 of the Public Resources Code.”

STAFF DISCUSSION: *General Sources of Delegation* Section 31103 of the Conservancy's enabling legislation (Division 21 of the California Public Resources Code) provides, in relevant part:

The conservancy shall determine the qualifications of, and it shall appoint and fix the salary of, the executive officer of the conservancy, who shall be exempt from civil service, and shall appoint such other staff as may be necessary to carry out the powers and functions set forth in this division.

Section 31103 conveys an implicit delegation to the Executive Officer "to carry out the powers and functions" of the Conservancy under Division 21, subject to ultimate direction by the Conservancy.

The Conservancy adopted the following regulation (14 Cal. Code of Regulations Section 13734) to effect this delegation of authority:

13734. Duties and Delegation of Staff.

(a) In accordance with the direction and policies of the Conservancy and pursuant to Public Resources Code Section 31103, the executive officer shall administer the affairs of the Conservancy and, subject to approval by the Conservancy, the executive officer shall, on behalf of the Conservancy and in accordance with applicable state and civil service procedures, appoint such other employees as may be necessary to carry out the functions of the Conservancy.

From time-to-time, the Conservancy has utilized these general provisions to delegate to the Executive Officer the authority to act in specific circumstances in order efficiently and effectively to carry out the basic functions of the Conservancy. The proposed additional delegation serves to accomplish these same purposes.

Delegation of Authority to Accept Offers to Dedicate.

Since at least 1977, the Conservancy has, at various times, delegated specified functions to its Executive Officer for reasons of practicality or efficiency. Staff is recommending that the Conservancy authorize the Executive Officer to act in an additional defined circumstance associated with acceptance of offers to dedicate interests in real property that have been recorded pursuant to the provisions of the Coastal Act in order to provide public access to and along the coast or to preserve coastal open space. The impetus for the proposed additional

delegation of authority is a recent amendment to the Conservancy's enabling legislation.

In September of this year, the Governor signed into law SB 1962 (Polanco), Chapter 518, Statutes of 2002. (Exhibit 1). The new legislation, which becomes effective January 1, 2003, amended the Conservancy's enabling legislation (Division 21 of the Public Resources Code), by adding Sections 31402.1, 31402.2 and 31402.3 and also amended sections of the Government Code that require further review and approval for the acquisition of property interests on behalf of the state. These amendments revise the process by which the Conservancy may accept offers to dedicate public access that have been recorded pursuant to the coastal development permit process and the process by which the property interests created by acceptance may be transferred.

Under the new law, the Conservancy is required to "accept any outstanding offer to dedicate a public accessway that has not been accepted by another public agency or nonprofit organization within 90 days of its expiration date" (Public Resources Code Section 31402.2). Section 31402.2, as added by SB 1962, allows for no exceptions and leaves the Conservancy no discretion to determine whether or not to accept an individual offer to dedicate that terminates in less than 90 days—the Conservancy *must* accept the offer to dedicate at that time.

In addition, by amending Government Code Sections 11005 and 15853 and by adding Public Resource Code Section 31402.1, SB 1962 eliminated any requirement that the Conservancy's acceptance of these offers be reviewed and approved by the Departments of Finance and General Services or by the Public Works Board. Conservancy action alone is sufficient to accept the offers to dedicate.

Given these changes in the process of acceptance there is little practical purpose to be served by continuing to require Conservancy action to formalize the acceptance of public access offers to dedicate, which must be accepted by the Conservancy under any circumstance, once within 90 days of termination. Accordingly, delegation of this function to the Executive Officer is appropriate and warranted.

The proposed delegation extends only to the mere acceptance of offers to dedicate that would otherwise expire. It does not extend to any Conservancy action to develop or improve a public accessway that has been offered for dedication. It also does not extend to any formal action by the Conservancy which may be needed to open the accessway once the offer has been ac-

cepted. (The acceptance of many offers to dedicate under the proposed delegation, however, will result in the “opening” of an accessway without any further “formal action.” Offers to dedicate beach lateral access are one example). Whenever Conservancy staff proposes to develop, improve, or take formal action to open a dedicated accessway, these actions will be brought to the Conservancy for consideration and approval.

COMPLIANCE

WITH CEQA: The proposed Conservancy action—the authorization to accept outstanding offers to dedicate that were required under the Coastal Act development permit process—has already been reviewed for environmental impact. In the course of the development permit process and as part of its statutory responsibilities, the California Coastal Commission (or its regional commissions) previously undertook review and environmental assessment of the impacts associated with each specific development giving rise to the requirement of an offer to dedicate and in doing so considered the need for and impact of the creation of the public access that was the end result of the offer. In this context, the Coastal Commission is a “certified regulatory agency,” whose review is recognized as functionally equivalent to environmental assessment under the California Environmental Quality Act (CEQA). (CEQA Guidelines, 14 Cal. Code of Regulations, Section 15251(c); Public Resources Code Section 21080.5). The Conservancy’s action to accept these offers to dedicate simply effectuates the prior Coastal Commission determination that has been assessed under a CEQA-equivalent process.

Nonetheless, even if CEQA is applicable to the Conservancy acceptance of Coastal Act offers to dedicate, the Conservancy action is exempt from review. Under SB 1962, the Conservancy’s acceptance of an offer to dedicate public access that is within 90 days of expiration, whether delegated or not, involves absolutely no discretion. It is a purely ministerial act that the State legislature has mandated that the Conservancy undertake. As such, it is statutorily exempt from review under CEQA Guidelines, 14 Cal. Code of Regulations, Section 15628. Staff will file a Notice of Exemption upon Conservancy approval of the proposed delegation of authority.

EXHIBIT 1
SB 1962 (Polanco)

BILL NUMBER: **SB 1962** CHAPTERED

BILL TEXT

CHAPTER 518

FILED WITH SECRETARY OF STATE SEPTEMBER 13, 2002

APPROVED BY GOVERNOR SEPTEMBER 12, 2002

PASSED THE SENATE AUGUST 30, 2002

PASSED THE ASSEMBLY AUGUST 28, 2002

AMENDED IN ASSEMBLY AUGUST 26, 2002

AMENDED IN ASSEMBLY AUGUST 24, 2002

AMENDED IN ASSEMBLY JUNE 25, 2002

AMENDED IN SENATE MAY 29, 2002

AMENDED IN SENATE APRIL 24, 2002

INTRODUCED BY Senator Polanco

(Principal coauthor: Assembly Member Vargas)

(Coauthor: Assembly Member Shelley)

FEBRUARY 22, 2002

An act to amend Sections 11005 and 15853 of the Government Code, and to add Sections 31402.1, 31402.2, and 31402.3 to the Public Resources Code, relating to coastal access.

LEGISLATIVE COUNSEL'S DIGEST

SB 1962, Polanco. State coastal conservation: coastal access.

(1) Existing law requires the State Coastal Conservancy to implement and administer various coastal protection programs and projects, including a system of public accessways to and along the state's coastline. Existing law authorizes the conservancy to acquire, develop, and maintain areas for public access to significant coast resources and generally authorizes the conservancy to award grants to public agencies and nonprofit organizations for the purpose of acquiring land for public accessway purposes along the coast.

This bill would require the conservancy to accept any outstanding offer to dedicate a public accessway that has not been accepted by another public agency or nonprofit organization within 90 days of its expiration date. The bill would additionally require the conservancy to open at least 3 public accessways each year either directly or by awarding grants to public agencies or nonprofit agencies for that purpose. The bill would prohibit the use of moneys appropriated from the General Fund for those purposes.

This bill would additionally authorize the conservancy to transfer public access easements or other less-than-fee interests in property to a public agency or nonprofit organization for development, management, or public use, and would authorize the conservancy to enter into agreements with those entities for those same purposes.

(2) With certain exceptions, existing law generally requires the approval of the Director of Finance before the state may accept a gift or dedication of personal or real property. Existing law further requires that all contracts related to acquisition of real property by the state be reviewed and approved by the Director of General Services.

This bill would exclude from the above requirement offers to dedicate public accessways made to the conservancy pursuant to the California Coastal Act.

(3) Existing law requires that all real property and interests in real property to be acquired by or for any state agency, with specified exceptions, be acquired by the State Public Works Board.

This bill would exclude from the above requirement offers to dedicate public accessways made to the conservancy pursuant to the California Coastal Act.

(4) The bill would require the Executive Director of the California Coastal Commission to determine that specified requirements are met before an offer to dedicate an interest in real property may be transferred to a nonprofit organization. The bill would additionally provide that the conservancy shall retain a power of entry with the option to reclaim or assign the interest under specified circumstances.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 11005 of the Government Code is amended to read:

11005. (a) Unless the Legislature specifically provides that approval is not required, every gift or dedication to the state of personal property, or every gift to the state of real property in fee or in any lesser estate or interest, shall be approved by the Director of Finance, and every contract for the acquisition or hiring of real property in fee or in any lesser estate or interest, entered into by or on behalf of the state, shall be approved by the Director of General Services. Any contract entered into in violation of this section is void. This section applies to any state agency that, by general or specific statute, is expressly or impliedly authorized to enter into transactions referred to in this section.

(b) This section does not apply (1) to unconditional gifts of money, (2) to the acquisition or hiring by the Department of Transportation of real property in fee or in any lesser estate or interest for highway purposes, but does apply to the hiring by that department of office space in any office building, (3) to contracts entered into under the authority of Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, (4) to the receipt of donated, unencumbered personal property from private sources received in conjunction with the administration of the Federal Surplus Personal Property Program by the Department of General Services, (5) to the receipt of gifts of personal property in the form of interpretive or historical objects, each valued at fifteen thousand dollars (\$15,000) or less, by the Department of Parks and Recreation, or (6) the acceptance by the State Coastal Conservancy of offers to dedicate public accessways made pursuant to Division 20 (commencing with Section 30000) of the Public Resources Code.

SEC. 2. Section 15853 of the Government Code is amended to read:

15853. (a) The board may select and acquire, in the name of and on behalf of the state, with the consent of the state agency concerned, the fee or any lesser right or interest in any real property necessary for any state purpose or function.

(b) If moneys are appropriated by the Budget Act for any fiscal year or by any other act for the acquisition of land or other real property, either (1) subject to this part or (2) for any state agency for whom property is acquired by the board, the moneys and acquisitions are subject to this part and the moneys shall be expended in accordance with this part, notwithstanding any other provisions of law.

(c) Notwithstanding any other provisions of law, all land and other real property to be acquired by or for any state agency, other than the Department of Transportation, the Department of Water Resources, the State Reclamation Board, the Department of Fish and Game, the Wildlife Conservation Board, the Public Employees' Retirement System, the State Teachers' Retirement System, the Department of Housing and Community Development, the State Lands Commission, except for property to be acquired for the State Lands Commission pursuant to an appropriation from the General Fund, and the State Coastal Conservancy with respect to acceptance of offers to dedicate public accessways made pursuant to Division 20 (commencing with Section 30000) of the Public Resources Code, shall be acquired by the State Public Works Board in accordance with this part.

(d) (1) Notwithstanding subdivision (a), the board shall acquire, on behalf of and for the Department of Parks and Recreation, in accordance with this part, any interests in real property, including options to purchase, which have been appraised, selected, and settled through purchase negotiations by the Department of Parks and Recreation pursuant to subdivision (b) of Section 5006 of the Public Resources Code. Out of moneys appropriated for the acquisition of options to purchase, no more than ten thousand dollars (\$10,000) may be expended for the acquisition of any single option unless otherwise provided by the Legislature.

(2) Notwithstanding Section 15854, purchase negotiations for interests in real property for the state park system pursuant to subdivision (d) of Section 5006 of the Public Resources Code shall be initiated within six months of the effective date of the act that appropriates funds for the acquisition. Purchase negotiations on all projects not proposed pursuant to subdivision (d) of Section 5006 of the Public Resources Code shall be initiated within 12 months of the effective date of the act appropriating funds for the acquisition. Either title shall be conveyed or a written agreement to transfer title shall be executed within the appropriate authorization period unless the Department of Parks and Recreation formally abandons the acquisition prior to the conclusion of the appropriate authorization period. For the purposes of this section, in order for the Department of Parks and Recreation to "formally abandon" an acquisition, it shall transmit written notification to the board of its intent not to proceed with the acquisition.

(3) The board, at any time during the periods specified in paragraph (2), may commence condemnation proceedings if it finds it to be appropriate. However, if, during the appropriate authorization period, title is not conveyed or a written agreement to transfer

title is not signed, the acquisition has not been formally abandoned, or condemnation proceedings have not been commenced, the Department of Parks and Recreation shall notify, by letter, the chair of the committee in each house of the Legislature that considers appropriations, the Chair of the Joint Legislative Budget Committee, and the Members of the Legislature within whose district any part of the land or other real property is located of the status of the acquisition. For the purpose of this paragraph, condemnation proceedings shall be deemed to be commenced as of the date the board authorizes acquisition by condemnation.

(4) The board may schedule special meetings as are necessary to expedite the acquisition of options to purchase real property for the state park system.

(e) The board may acquire furnishings that the owner thereof agrees to sell and that are contained within improvements acquired by the board. Cost of acquisition of furnishings shall be charged to the appropriation available for acquisition of the real property.

SEC. 3. Section 31402.1 is added to the Public Resources Code, to read:

31402.1. (a) It is the intent of the Legislature to provide for timely acceptance of offers to dedicate interests in property, recorded pursuant to Division 20 (commencing with Section 30000) and needed to provide public access to and along the ocean shoreline.

(b) The Legislature finds and declares all of the following:

(1) In order to prevent the potential loss of public accessways to and along the state's coastline, it is in the best interest of the state to accept all offers to dedicate real property that protect open space or have the potential to provide access to public tidelands, including any beach, shoreline, or view area, or that provide a connection to other easements or public properties providing this access.

(2) Offers to dedicate interests in property that are required and recorded pursuant to Division 20 (commencing with Section 30000) provide mitigation necessary for approved development to occur consistent with the policies and objectives of that division and are not gifts to the state or acquisitions of property interests within the meaning of Section 31105.

SEC. 4. Section 31402.2 is added to the Public Resources Code, to read:

31402.2. The conservancy shall accept any outstanding offer to dedicate a public accessway that has not been accepted by another public agency or nonprofit organization within 90 days of its expiration date.

SEC. 5. Section 31402.3 is added to the Public Resources Code, to read:

31402.3. (a) The conservancy shall open at least three public accessways each year either directly or by awarding grants to public agencies or nonprofit organizations.

(b) The conservancy may transfer public access easements or other less-than-fee interests in property to any appropriate public agency or nonprofit organization for development, management, or public use, or may enter into agreements with public agencies and nonprofit organizations for the development, management, or public use of the accessway.

(c) No public accessway accepted pursuant to Section 31402.2 shall be developed, improved, or formally opened for public use until its transfer, development, or public use has been authorized by the conservancy.

(d) The conservancy may not use moneys appropriated from the General Fund for the purposes of this section.

SEC. 6. (a) Before approving the conveyance by the conservancy to a nonprofit organization of an offer to dedicate an interest in real property under Division 20 (commencing with Section 30000) of the Public Resources Code, the Executive Director of the California Coastal Commission shall determine the following:

(1) The nonprofit organization qualifies and is in good standing as a nonprofit organization under Section 501(c)(3) of the United States Internal Revenue Code.

(2) The nonprofit organization has filed a Form 990 with the Internal Revenue Service.

(b) The nonprofit organization shall submit to the California Coastal Commission a management plan that describes the nonprofit organization's planned management and operation of the interest.

(c) The conservancy shall retain a power of entry, with the option to reclaim or assign the interest, if the commission determines that the nonprofit organization is not managing or operating the interest consistent with the management plan developed pursuant to subdivision (b).

**ACCEPTANCE OF PUBLIC ACCESS EASEMENTS
CENTRAL AND SOUTH COAST**

**Agenda Item 8.
January 24, 2002**

COASTAL CONSERVANCY

Project Summary
January 24, 2002

**ACCEPTANCE OF PUBLIC ACCESS EASEMENTS
SOUTH COAST**

File No. 02-011
Project Manager: Joan Cardellino

RECOMMENDED ACTION: Conservancy acceptance, and possible future transfer, of seven Offers to Dedicate public access easements.

LOCATION: Oceanfront sites in Los Angeles and San Diego Counties

PROGRAM CATEGORY: Dedications/Public Access

ESTIMATED COST: Staff costs only.

PROJECT SUMMARY: The Coastal Conservancy's policy on Offers to Dedicate Public Access easements, adopted by the Conservancy in December 2001, states that the Conservancy will seek to prevent the expiration of any OTD by considering any unaccepted OTDs at least six months prior to their date of expiration. The Conservancy's policy is to accept any such OTD after giving due consideration to the feasibility of public use of the dedicated accessway, as well as any opinions of Conservancy legal staff or the Attorney General that the OTD is fatally flawed or likely to be determined invalid.

The OTDs are the result of conditions applied to coastal development permits to mitigate the loss of potential public access to the coast. Coastal Commission and Coastal Conservancy staff members have been working to secure the acceptance of seven OTDs recorded through this process by the appropriate local government or state government agency. Because the acceptance of any of these OTDs by the Conservancy is subject to review and approval by the Department of General Services and the Public Works Board, it is timely for the Conservancy to consider acceptance of these OTDs now so that the review and acceptance process can be concluded prior to their expiration.

The seven OTDs under consideration are the following (names refer to original permit applicant):

- *Santa Catalina Island Company*: two easements separately offered: a vertical easement and a lateral easement in the Hamilton Cove neighborhood on Catalina Island, City of Avalon, Los Angeles County (Exhibit 1)
- *Brown*: bluff face open space easement in Encinitas, San Diego County (Exhibit 2)
- *Furgatch*: sandy beach lateral easement in Del Mar, San Diego County (Exhibit 3)
- *Anderson*: sandy beach lateral in La Jolla, San Diego County (Exhibit 4)
- *Dinnerman*: sandy beach lateral in La Jolla, San Diego County (Exhibit 5)
- *Lillard*: vertical easement from Broad Beach Road, in Malibu, Los Angeles County (Exhibit 6)

Conservancy staff has had extensive conversations with staff in the cities of San Diego, Leucadia, and Avalon regarding their acceptance of the respective OTDs. The City of San Diego is currently considering accepting Furgatch, but is unequivocal in refusing to accept the Anderson and Dinnerman easements. The City of Leucadia has not been interested in accepting the Brown open space easement. The City of Avalon was initially receptive to accepting the Santa Catalina Island Company vertical and lateral OTDs, but is now concerned about lawsuits from property owners and threats to cut off existing informal public access across a private road in the vicinity of the easements. With respect to the Lillard OTD, staff has had discussion with Mountains Recreation and Conservation Authority (MRCA), a public agency, that may, but is not now willing, to accept the offered easement. Staff anticipates that the easement likely will be transferred to MRCA in the future, in conjunction with MRCA management of Lechuza Beach.

COASTAL CONSERVANCY

Staff Recommendation

January 24, 2002

ACCEPTANCE OF PUBLIC ACCESS EASEMENTS

SOUTH COAST

File No. 02-011

Project Manager: Joan Cardellino

STAFF

RECOMMENDATION: Staff recommends that the State Coastal Conservancy adopt the following Resolution pursuant to Sections 31104.1 and 31400 *et seq.* of the Public Resources Code:

“The State Coastal Conservancy hereby authorizes the acceptance of the following Offers to Dedicate public access easements:

- a. The Santa Catalina Island Company property, recorded in the Official Records of Los Angeles County as document Number 81-489930, on May 15, 1981 and located at Hamilton Cove, Catalina Island, as shown in Exhibit 7;
- b. The Santa Catalina Island Company property, recorded in the Official Records of Los Angeles County as document number 489931, on May 15, 1981 and located at Hamilton Cove, Catalina Island, as shown in Exhibit 8;
- c. The Brown property, recorded in the Official Records of San Diego County in book 1981, page numbers 436 through 461 as Document Number 81-073145 on March 10, 1981, and located at 828 Neptune Street in Leucadia, in Exhibit 9;
- d. The Furgatch property, recorded in the Official Records of San Diego County in Book 1981, pages 1855 through 1861 as Document Number 81-120107 on April 20, 1981, and located on the west side of Camino del Mar in the City of Del Mar, as shown in Exhibit 10;
- e. The Anderson property, recorded in the Official Records of San Diego County in Book 1981, pages 872 through 886 as Document Number 81-261758 on Au-

gust 17, 1981, and located at 5824 Camino de la Costa, La Jolla, as shown in Exhibit 11;

- f. The Dinnerman property, recorded in the Official Records of San Diego County in Book 1981, pages 316 through 330 as Document Number 81-261465 on August 17, 1981 and located at 9044 La Jolla Shores Lane, La Jolla, as shown in Exhibit 12; and
- g. The Lillard offer, recorded July 25, 1980 in the Official Records of Los Angeles County as Instrument No. 80-709137, and located on Parcel 3 of Parcel Map No. 4358, Tract No. 10630, in the City of Malibu, as shown in Exhibit 7.

Prior to recording a Certificate of Acceptance on any of the above Offers to Dedicate, the Executive Officer of the Conservancy ("Executive Officer") shall review and approve the condition of title and shall determine that no other public agency or appropriate entity has accepted the Offer or equivalent interest in the property offered for dedication.

The Conservancy further directs the Executive Officer to identify one or more public agencies or nonprofit conservation organizations willing and able to hold and manage these easements for public use, and to request that the Director of General Services transfer ownership of the easement(s) to such entities for permanent public access purposes. This authorization shall serve as the Conservancy's public access implementation plan for transfer of these property interests pursuant to Public Resources Code Section 31107, and the Executive Officer is authorized to take all actions necessary to accomplish it."

Staff further recommends that the Conservancy adopt the following findings:

"Based on the accompanying staff report and attached exhibits, the State Coastal Conservancy hereby finds that:

1. The proposed action is consistent with the authority and responsibilities of the Conservancy under Public Resources Code Section 31104.1 to serve as a repository for lands whose reservation is required to meet the policies and objectives of the Coastal Act;
2. The proposed action is consistent with the purposes and objectives of Sections 31400 *et seq.* of the Public Resources Code;

3. The proposed action is consistent with the Project Selection Criteria and Guidelines adopted by the Conservancy on January 24, 2001; and
 4. The proposed action is consistent with the Policy Regarding Acceptance of Irrevocable Offers to Dedicate adopted by the Conservancy on December 6, 2001.”
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STAFF DISCUSSION:

Project Description: The proposed authorization by the Conservancy is to accept seven Offers to Dedicate public access easements (OTDs) in Los Angeles and San Diego Counties. The proposed authorization also provides for the eventual transfer of ownership of any or all of these easements to appropriate local government or nonprofit organizations for management for public use. Specific descriptions of each OTD are given below.

Santa Catalina Island Company: This includes two separate OTDs—one for a vertical easement, the other for a lateral easement. The easements would provide public access to and passive recreational use of a cove beach located in a private residential community known as Hamilton Cove. The vertical easement is 10 feet wide and runs along the southern property boundary. It extends down a high bluff (approximately 100 feet high) through a series of switchbacks, and connects to the lateral easement (see Exhibit 13). The lateral easement averages 60 feet in width, and runs along the shoreline for approximately one-quarter of a mile, and would provide public access to the small cove beach and to the adjacent shoreline on either side (Exhibit 13). Currently, the only access to the shoreline is from the water or via a private road that runs through the middle of the Hamilton Cove neighborhood. The private road is accessible to the public by permission from the guard at the station located at the entrance to the community, but this fact is not well known, and there are no signs posted to indicate that the public may walk or drive on the private road in order to reach the shoreline.

Conservancy staff have had several discussions with City of Avalon staff, and met with City staff on site in October to discuss the project in detail. While City staff seemed initially enthusiastic about the City’s acceptance of the OTDs, there is apparently little political support for such an undertaking. The cost of developing the vertical easement will be substantial, and that is a concern to the City as well. Under the terms of the

OTD, The Conservancy would be responsible for maintaining the "Easement Area." This obligation might be shared with the Hamilton Cove Homeowners Association or the City of Avalon via a negotiated agreement. Additionally, the lateral easement area contains substantial physical improvements and facilities such as rip rap, a perched beach area, pier and boat dock, restrooms, and concessionaire. While nothing in the OTD expressly dictates that the Conservancy, as the accepting entity, would be responsible for maintenance of the beach and other "Required Shoreline Facilities," dock, restroom, or other improvements, this issue may likewise require resolution, before the easement is opened. The Conservancy should accept the easement now, and continue to work with the City of Avalon on a mutually acceptable way to proceed to open the easements to public use.

The Santa Catalina Island Company OTDs expire May 15, 2002.

Brown: This is an open space easement on the bluff face of the parcel to prevent any alteration of landforms, placement or removal of vegetation, or erection of any structures on the bluff face without additional permit approval. This easement is designed to maintain the scenic and visual qualities of the coast. The property is located in the City of Encinitas, and lies immediately adjacent to Beacons Beach. Beacons Beach is managed by the City, but is owned by the California Department of Parks and Recreation. Beacons Beach is immediately adjacent to Encinitas State Beach. The City is unwilling to accept OTDs lying adjacent to state beaches, believing it is preferable for State Parks to accept them. To date, Conservancy staff has not been successful in convincing the City to accept this easement, but ideally it should be transferred either to the City or to State Parks at a later date. Under the express terms of the OTD, the fee owner of the property is obligated to hold the accepting entity (the Conservancy) harmless and indemnify the accepting entity from any liability claims. Likewise, the owner of the underlying fee, and not the Conservancy, is obligated to maintain the easement. The Brown open space OTD expires March 10, 2002.

Furgatch: This OTD is a sandy beach lateral allowing for passive and recreational uses on a residential lot in the City of Del Mar. Public access to this beach lateral is available at 29th Street, located about 250 feet to the south of the property. Del Mar City Beach extends from 29th Street south to Torrey Pines

State Beach, directly adjacent to the lateral OTD, and the public regularly uses the lateral. City of Del Mar staff had indicated that the City would accept the OTD, but became reluctant to move forward when the property owner threatened to sue. Conservancy staff has continued to work with City staff to answer legal and other questions, but as of the date of writing this report, no firm commitment from the City has been received. The City already maintains the property, and City staff has indicated that it would continue to do so. The Conservancy should accept this OTD and, if possible, transfer it to the City of Del Mar at the earliest opportunity. The Furgatch OTD expires April 20, 2002.

Anderson: This is a sandy beach lateral OTD in the community of La Jolla, City of San Diego. The easement offered by the OTD extends from the toe of the bluff on the property to the mean high tide line. The site is adjacent to La Jolla Hermosa Park, but is not accessible from the park. The high sheer bluffs bordering the OTD and the lack of public access to the top of the bluff appear to make vertical access infeasible, which is why the City of San Diego is not interested in accepting this easement. (See photograph in Exhibit 14.)

The OTD was required as a condition of a residential development permit. Conservancy staff has had several conversations with City staff, and the City has refused to accept this OTD because of its remote location and the City's belief that it would be infeasible to develop a vertical accessway to the small cove where the lateral sits. Due to the severe constraints on public use of the site, the City has not been able to justify its acquisition of the easement. The Conservancy should accept the OTD and transfer it to the State Lands Commission at the earliest opportunity. The Anderson OTD expires August 17, 2002.

Dinnerman: This is another sandy beach lateral OTD in the La Jolla community, required as a condition of a residential development permit (see Exhibit 15). The easement area runs seaward to the mean high tide line from the base of the seawall, creating a parallelogram shape about 20 feet wide and 55 feet long, on the beach. It is located near the southern end of Torrey Pines City Beach, which the City of San Diego maintains. The public uses the beach where the OTD is located, and the City's lifeguard patrols respond to emergencies there as needed. The City has remained consistent in its refusal to accept the easement, because it does not want to take on the added maintenance responsibility. However, maintenance of the property is

minimal, and the Conservancy would not be taking on any active management responsibilities by accepting the OTD. The Dinnerman OTD expires August 17, 2002.

Lillard: This is a vertical access trail approximately 150 feet in length, extending from Broad Beach Road toward the ocean. It terminates on the landward side of a private street, Sea Level Drive. The ocean is located on the other side of Sea Level Drive. As a result, this accessway would not be opened until public access is secured across Sea Level Drive to the beach. The offered easement is five feet in width from Broad Beach Road to the bluff edge, and ten feet in width down the bluff face to Sea Level Drive. Because of the topography and the narrowness of the access trail, development of public access at this location may require construction of a stairway to surmount the bluff face. Several private stairways already exist on this same bluff, within one hundred feet of the subject site. The site is adjacent to property for which the Conservancy and the Mountains Recreation and Conservation Authority have sought public purchase for access and recreation, and that effort is still in process. If the purchase is accomplished, MRCA may wish to take title to the subject trail as well.

Project Financing: The acceptance of these OTDs involves only administrative costs of staff analysis and Department of General Services review. The only OTD for which the Conservancy may incur maintenance costs would be the lateral at Hamilton Cove on Catalina Island. The Brown open space OTD specifically states that the easement shall be maintained by the Grantor. Furgatch will continue to be maintained by the City of Del Mar, and the Anderson easement is not accessible to the public. The Dinnerman easement does not have any public facilities that will require active maintenance. Finally, the Lillard OTD will not be opened unless and until access to the beach has been secured and, thus, involves no immediate maintenance costs.

Site Description: Please see site maps and photographs of the OTDs in Exhibits 1 through 7.

Project History: In January 1995 the Coastal Commission completed its computerized database of all the OTDs it had required through permit actions. For the first time it became possible to sort the OTDs by location, expiration date, type, and permit number. It was immediately apparent that several hundred OTDs had expiration dates between 2001 and 2008. Both Conservancy staff

and Commission staff were concerned about getting the OTDs accepted prior to their expiration and undertook a variety of outreach and assistance efforts to encourage and support local governments and nonprofit organizations to accept the OTDs and open the easements for public use.

Commission staff and Conservancy staff have approached the local governments where these OTDs are located to discuss the process for accepting the easements, and to convince the local governments that local ownership is preferable to Conservancy ownership. The City of Del Mar is tentatively scheduled to consider accepting the Furgatch OTD in February, and the City of Avalon is currently evaluating the Hamilton Cove OTDs. Both of these Cities are concerned about the costs of possible litigation. As discussed above, the City of San Diego has multiple objections to accepting the Anderson and Dinnerman OTDs. With respect to the Lillard OTD, as noted above, an appropriate local public entity, MRCA, has been contacted, but is currently unprepared to accept the OTD.

PROJECT SUPPORT: This is essentially an administrative action. No letters of support were solicited.

**CONSISTENCY WITH
CONSERVANCY'S
ENABLING LEGISLATION:** Public Resources Code Section 31104.1 directs the Conservancy to serve as repository for lands whose reservation is required to meet the objectives and policies of the Coastal Act of 1976 (Public Resources Code Sections 30000 *et seq.*) Pursuant to this authority, the Conservancy may accept dedication of fee title, easements, development rights or other interests in lands, including interests required to provide public access to recreation and resources areas in the coastal zone.

In its action on the permits referenced in the seven OTDs which are the subject of this recommendation, the California Coastal Commission determined that it could not approve development consistent with the policies and objectives of the Coastal Act, except on condition that public access be provided. Reservation of the dedicated easement areas is required to meet the policies and objectives of the Coastal Act, and it is appropriate under Section 31104.1 that the Conservancy serve as a repository for these interests in property until they can be transferred to an appropriate entity for public use and management.

Public Resources Code Section 31402 provides that, in order to assure that an adequate system of public accessways is provided along the entire coastline, the Conservancy may acquire fee title or lesser interests in areas required for public access to significant coastline resources. By accepting these OTDs, the Conservancy preserves the possibility for public access to scenic areas of the coast, even though at present these easements may not connect to larger beaches or trails.

CONSISTENCY WITH
CONSERVANCY'S
PROJECT SELECTION
CRITERIA & GUIDELINES:

The proposed project is consistent with the Conservancy's Project Selection Criteria and Guidelines adopted January 24, 2001, in the following respects:

Required Criteria

Promotion of the Conservancy's Statutory Programs and Purposes: As discussed above, this proposed project is consistent with the purposes of Division 21 of the Public Resources Code by accepting the dedication of property interests required to meet the objectives of the Coastal Act.

Support from the Public: This is essentially an administrative item since no perceptible changes in use of these properties will occur. Therefore, no letters of support have been solicited.

Location: These OTDs are all located within the coastal zone and will preserve public coastal access.

Need: Preserving access points for now and the future is very important in order to ensure that the ever-growing population has access to a variety of beach locations and experiences.

Additional Criteria

Urgency: As mentioned above, it is critical that the Conservancy act now to accept these OTDs so that the acceptance process can conclude prior to their expiration dates.

CONSISTENCY WITH
THE COASTAL ACT:

Acceptance of these dedications is required to meet the policies and objectives of the Coastal Act for vertical and lateral access to the California coast, as required by California Coastal Commission permits. Section 30210 of the Coastal Act states that "maximum access...shall be provided for all the people." This authorization seeks to ensure the continued preservation of

public access opportunities in Los Angeles and San Diego Counties. By accepting these OTDs the Conservancy would preserve the ability to transfer public access easements to another entity that can open and manage them for public use.

CONSISTENCY WITH
LOCAL COASTAL
PROGRAM POLICIES:

Acceptance of the Santa Catalina Island Company OTDs is consistent with the City of Avalon's Local Coastal Program public access policy number 3. This policy states "Development in the Hamilton Beach area shall leave the beach immediate upland area for public recreation and beach activity." The Conservancy's acceptance of these OTDs ensures that this policy can be carried out.

Acceptance of the Brown open space OTD is consistent with the City of Encinitas' General Plan. The plan identifies bluff erosion as an important issue in the Leucadia neighborhood of the city, which is where the Brown OTD is located. The Brown OTD prevents any changes to the vegetation on the bluff face at the time the OTD was recorded to preserve the natural quality of the site and maintain the views.

Acceptance of the Furgatch OTD is consistent with the City of Del Mar's Local Coastal Program Land Use Plan goals and policies for public access. Goal IV-A is to "Provide physical and visual access to coastal recreation areas for all segments of the population without creating a public safety concern, overburdening the City's public improvements, degrading the City's natural resources, or causing substantial adverse impacts to adjacent private properties."

Acceptance of the Anderson and Dinnerman OTDs is consistent with the general community goals of the La Jolla Community Plan and Local Coastal Program Land Use Plan. Specifically, a stated goal is to "Enhance existing public access to the ocean, beach, and park areas . . . along the shoreline in order to be of greatest benefit to neighborhood residents and visitors to the community." By accepting these OTDs the Conservancy enhances and preserves existing public access on the Dinnerman property, and preserves the possibility of public access to the Anderson property at some point in the future.

There is at present no approved Local Coastal Program (LCP) for the Malibu area. In 1986, prior to the incorporation of the City of Malibu, the Coastal Commission approved the Los Angeles County Malibu LCP, which designates the Lechuza

Beach area as a high priority for the provision of additional public beach access. Acceptance of the Lillard OTD, in conjunction with other proposed public actions, would provide such access to Lechuza Beach.

COMPLIANCE

WITH CEQA: Acceptance of each of the seven OTDs is categorically exempt from the California Environmental Quality Act (CEQA) under 14 Cal. Code of Regulations Section 15313 (Class 13), regarding the acquisition of land for wildlife conservation purposes, including preserving access to public lands and waters where the purpose of the acquisition is to preserve the land in its natural condition; and under 14 Cal. Code of Regulations Section 15317 (Class 17), regarding the acceptance of easements in order to maintain the open space character of an area.

Acceptance of the Santa Catalina Island Company lateral OTD is also categorically exempt from CEQA under 14 Cal. Code of Regulations Section 153301(c), to the extent that the easement consists, in part, of pedestrian walkways and similar facilities which are being altered only by the acceptance of the OTD and not by any physical change to the existing conditions.

Acceptance of the Lillard OTD is also categorically exempt from CEQA under 14 Cal. Code of Regulations Section 15316. The project is limited to the acquisition of public parkland for the purpose of preserving natural open space and permitting public access to the beach. No management plan has been prepared for the public park, and no development of additional facilities will take place until a management plan and environmental analysis have been prepared.

The subsequent transfer of any of these OTDs, as additionally authorized by the Board resolution, is also exempt from CEQA pursuant to 14 Cal. Code of Regulations Section 15325.

Staff will file Notices of Exemption upon approval of the acceptance of each OTD.

