

COASTAL CONSERVANCY

Staff Recommendation
June 4, 2009

TRANSFER OF PUBLIC ACCESS EASEMENTS

Project No. 09-014-01
Project Manager: Joan Cardellino

RECOMMENDED ACTION: Authorization to transfer two public access easements in Huntington Harbor to Orange County Coastkeeper, and further authorization for the Executive Officer to carry out such transfers of public access easements in the future without additional specific Conservancy action.

LOCATION: Huntington Harbor, City of Huntington Beach, Orange County

PROGRAM CATEGORY: Public Access

EXHIBITS

- Exhibit 1: [Project Location](#)
 - Exhibit 2: [Site map Portofino Cove](#)
 - Exhibit 3: [Site map Piedmont Circle](#)
 - Exhibit 4: [Site map Huntington Harbor Bay Club](#)
 - Exhibit 5: [December 4, 2002 Staff Recommendation](#)
 - Exhibit 6: [Project letters](#)
-

RESOLUTION AND FINDINGS:

Staff recommends that the State Coastal Conservancy adopt the following resolution pursuant to Sections 31103 and 31400 *et seq.* of the Public Resources Code and Section 13734 of Title 14 of the California Code of Regulations:

“The State Coastal Conservancy hereby:

1. Directs the Executive Officer to transfer ownership of the each of the easements described below to the Orange County Coastkeeper for permanent public access purposes. Any transfer pursuant to this authorization will comply with the requirements of Public Resources Code Section 31402.3 and the Executive Officer is authorized to take all actions necessary to accomplish the transfer. The easements subject to this resolution are located within Huntington Harbor and are described as follows:

TRANSFER OF PUBLIC ACCESS EASEMENTS

- a. A lateral access easement at Portofino Cove, accepted by the Conservancy through a certificate of acceptance recorded in the Official Records of Orange County as instrument No. 2006000138219, on 03/01/06, and located at the terminus of Countess Drive in the City of Huntington Beach, Orange County Tract No. 11716, Book 537, pages 17 to 19, as shown in Exhibit 2;
 - b. A lateral access easement at Piedmont Cove, accepted by the Conservancy through a certificate of acceptances recorded in the Official Records of Orange County as document number 2006000633224, on 9/22/06, and located at 16212-16246 Piedmont Circle, City of Huntington Beach, Orange County Assessor's Parcel Number 028-143-34, as shown in Exhibit 3.
2. 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:
 - a. Transfer to an appropriate public agency or nonprofit organization any public access easement or other less-than-fee interest in property ("accessway") which was acquired by the Conservancy through the acceptance of an offer to dedicate an interest in real property that was recorded pursuant to the Coastal Act (Division 20 of the Public Resources Code) in order to provide public access or to protect open space. In connection with any such transfer, the transfer instrument or another concurrently recorded instrument shall reserve to the Conservancy a future contingent interest by which all right, title and interest in the accessway will revert to the Conservancy in the event that the public agency or nonprofit organization ceases to exist or is no longer able to or fails to maintain the accessway for the purposes specified in the original offer to dedicate.

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 project is consistent with the current Project Selection Criteria and Guidelines.
2. The proposed authorizations are consistent with the purposes and objectives of Chapter 9 of Division 21 of the Public Resources Code, regarding establishing a system of public coastal accessways and will assist the Conservancy in carrying out its responsibilities thereunder.
3. Orange County Coastkeeper is a nonprofit organization, existing under the provisions of Section 501(c)(3) of the Internal Revenue Service Code, whose purposes, which include the preservation and restoration of land for public access and recreation, are consistent with Division 21 of the Public Resources Code."

PROJECT SUMMARY:

Staff recommends authorization to transfer two public access easements in Huntington Harbor to Orange County Coastkeeper, (OCC) and delegation of authority to the Executive Officer of the Conservancy for future such easement transfers.

Transfers of Accessways to OCC

The Conservancy acquired two public access easements in Huntington Harbor when the Offers to Dedicate (OTDs) that created them were approaching expiration. In March and September 2006, respectively, the Conservancy accepted the Portofino Cove and Piedmont Circle OTDs. In March 2007 the Conservancy provided a grant to OCC to manage the public access easement at Portofino Cove and, at its meeting of February 26, 2009, the Conservancy authorized an additional grant to OCC for management of the same easement for up to five more years. At that time, OCC was not ready to accept title to the easement. However, as it has managed the easement very successfully over the past 2 years, the OCC board has now agreed to hold the easement at Portofino Cove, and is prepared to hold additional public access easements in the Huntington Harbor at Piedmont Circle and at the Harbor Bay Club. The OTD for the easement at Harbor Bay Club has not yet been accepted by the Conservancy and it is expected that OCC will accept it prior to its termination. (See Exhibits 1 and 2.) OCC has been reliable and effective in managing the Portofino Cove easement, and has been responsive to homeowner's concerns while ensuring appropriate public use.

OCC is dedicated to protecting and preserving Orange County's marine habitats and watersheds through education, advocacy, restoration and enforcement. OCC recently added property management for the purpose of providing public coastal access and recreation to its repertoire of activities. The organization has been active in Orange County since 1999 and runs a variety of programs dealing with the issues of water quality.

Site Description:

All three properties are located in Huntington Harbor in the City of Huntington Beach. (See Exhibits 1-4). The Portofino Cove easement runs along a sidewalk that rims a small peninsula located on the eastern side of the harbor. It is open to public use and has amenities such as benches, trash cans and signage, and is currently managed by OCC. Similarly, the easement at Piedmont Cove runs along a sidewalk that edges the harbor on the western side. It runs directly in front of 5 residences, but will open up a long section of the sidewalk that circumnavigates the harbor. It is held by the Conservancy but not yet opened to the public.

The Harbor Bay Club site is different from the other two in that it is wider and presents the opportunity to create a small waterfront park within a protected corner of the harbor. The OTD at Harbor Bay Club is due to expire in the fall of 2009, and OCC will accept it prior to that time.

Project History: Since 2000 the Conservancy has been actively involved in accepting OTDs and in helping local governments and nonprofit organizations accept and manage OTDs. The City of Huntington Beach has been steadfast in its refusal to accept and manage public access easements in the harbor area, so the Conservancy has needed to secure them. In March and September 2006 the Conservancy accepted the Portofino Cove and Piedmont Circle OTDs. Negotiations between the property owners at Piedmont Circle and the Coastal Commission regarding an amendment to the Coastal Development Permit has prevented the Conservancy from taking any actions there to open the easement to public use, but the amended permit was issued last fall and the homeowners are now complying with the terms. OCC has been managing the easement across the harbor at Portofino Cove since 2007.

The Conservancy has authorized the transfer of easements in the past, primarily to the California Department of Parks and Recreation. However, the goal is to transfer all the public access

easements currently held by the Conservancy to local management entities, and in that regard a more expedited process to authorize such transfers is desirable.

Delegation of Authority to Transfer Public Access Easements.

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.

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 the transfer of Conservancy-held easements and other less-than-fee interests in real property that have created by acceptance of OTDs 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.

Legislation passed in 2002, amending the Conservancy's enabling legislation by adding Sections 31402.1, 31402.2 and 31402.3, requires the Conservancy to accept Coastal Act access OTDs prior to expiration and provides the Conservancy the authority to transfer the easements created by the acceptance of OTDs to an appropriate public agency or nonprofit organization for development, management, or public use. The 2002 legislation also provided that the transfer of any such easement is not subject to the usual requirement of Department of General Services

approval pursuant to Government Code Section 11005.2. Following this change in legislation, the Conservancy, at its meeting of December 4, 2002, delegated to the Executive Officer the authority to accept coastal access OTDs that were under threat of expiration, as required by the 2002 legislation. (See Exhibit 4). That delegation did not include the authority to subsequently transfer the easements created by the acceptance of the OTD and held by the Conservancy.

The proposed delegation of authority would allow the Executive Officer to approve these transfers. It is in the interest of the state to have access easements held and managed by local entities. The Conservancy currently holds over 100 easements derived from OTDs and staff expects eventually to transfer most, if not all of them, to local government or nonprofit organizations for management. It would be far more efficient for the Conservancy to delegate the authority for such transfers to the Executive Officer. Transfer of fee title interests, however, would continue to be subject to authorization by the Conservancy and approval of the Department of General Services.

The proposed delegation of authority would extend solely to the transfer of the easement interest. It would not apply to any other action, such as funding for development, improvement or other actions with respect to the accessway.

PROJECT FINANCING

Coastal Conservancy	\$0
Total Project Costs	\$0

Transferring ownership of public access easements does not require any funding. Staff anticipates working with OCC to develop site plans for the easements at Piedmont Circle and Huntington Harbor Bay Club, but that will be subject to future authorizations. Likewise, the proposed delegation of authority does not involve any expenditure of funds.

CONSISTENCY WITH CONSERVANCY'S ENABLING LEGISLATION:

Pursuant to Section 31402.2 of the Public Resources Code, the Conservancy is required to accept any Offer to Dedicate a public access easement that has not been accepted by another entity within 90 days of its expiration, and pursuant to Section 31402.3(b) the Conservancy may transfer public access easements or other less-than-fee interests in property to an appropriate public agency or nonprofit organization for development, management or public use. The transfer of easements to OCC and the proposed delegation of authority are consistent with this authorization. In addition, the transfers will comply with the requirements of Public Resources Code Section 31402.3.

As discussed above, under the Project Summary section, the delegation of authority is also consistent with the provisions of Public Resources Code Sections 31103.

CONSISTENCY WITH CONSERVANCY'S 2007 STRATEGIC PLAN GOAL(S) & OBJECTIVE(S):

Consistent with **Goal 2, Objective 2D** of the Conservancy's 2007 Strategic Plan, the proposed authorizations will ensure that OTDs are accepted and opened to the public.

CONSISTENCY WITH CONSERVANCY'S PROJECT SELECTION CRITERIA & GUIDELINES:

The proposed project is consistent with the Conservancy's Project Selection Criteria and Guidelines, last updated on September 20, 2007, in the following respects:

Required Criteria

1. **Promotion of the Conservancy's statutory programs and purposes:** See the "Consistency with Conservancy's Enabling Legislation" section above.
2. **Consistency with purposes of the funding source:** No Conservancy funds are being used by this project.
3. **Support of the public:** See letters of support in Exhibit 6.
4. **Location:** The OTDs proposed for transfer are located within the coastal zone of the City of Huntington Beach.
5. **Need:** As the Conservancy is the easement holder, transfer of the easements to OCC cannot occur without Conservancy participation.
6. **Greater-than-local interest:** Local ownership and maintenance of public access easements derived from OTDs so that they may be used and enjoyed by the public is a statewide program that reaches beyond the immediate users of any one individual access point.

CONSISTENCY WITH LOCAL COASTAL PROGRAM POLICIES:

The Local Coastal Program is included in the Coastal Element of the City of Huntington Beach's General Plan. This project is consistent with Objective C2.5.1 regarding maintaining and enhancing existing public access to the shoreline and waterways in Huntington Harbor, where feasible, and where privacy and habitat will not be impacted.

COMPLIANCE WITH CEQA:

The mere transfer of an easement with no change in use and with no development or other change in the physical characteristics of the easement does not constitute a "project" for purposes of the California Environmental Quality Act. Similarly, the delegation of authority is an administrative function that does not qualify as a project under CEQA.