

**IMPORTANCE OF “OFFERS TO DEDICATE”  
IN CALIFORNIA’S COASTAL ACCESS**

by

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## APPENDIX A

## APPENDIX B

## ABSTRACT

Offers to Dedicate (OTDs) are required by the Coastal Commission as a condition of receiving a coastal development permit. These are only offers and the interest remains with the landowner until the OTDs are accepted by any government agency or a non-profit agency. The purpose of the OTDs is to mitigate the impact of the proposed project on the public's ability to access the coast. Since most of these easements were generated between 1980 and 1986 and court cases in 1987-89 challenged the relationship between the "exaction" and the development and have made it almost impossible for the Commission to require any more of these public access easements, the OTDs that the California Coastal Commission has now are very crucial. However, not all the OTDs have to be given the same priority in opening them to the public. This study creates a comprehensive GIS database whose need was identified in the Coastal Commission's *Public Access Action Plan*. It also formulates a method of ranking the OTDs based on a scoring method that considers three criteria: date of expiration, proximity to an existing access point as well as topography of the location. These result in a feasibility score and subsequently a priority index that ranks the OTDs as highest, high, medium and low priority for opening as access for the public.

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# **CHAPTER I. Background for Offers to Dedicate**

## **1.1 Introduction**

The California Coast is one of the most splendid coastlines of the world and attracts international and domestic visitors alike to partake of its stunning beauty. The 1100 mile long course is not just tantalizing just for its sandy and sunny beaches, but also for its rocky and wild shores. This coast has inspired myriads of poets, writers, artists and filmmakers through its variety, abundance of life and direct contact with nature (Public Access Action Plan, 1999). There are more than 566 million visitors to this coast annually who generate almost 3% of the total economic activity in California (Public Research Institute, 1997). In view of the importance of the coast in the life fabric of the people, the citizens of California initiated a coastal protection program in 1972 that was later made permanent as the California Coastal Act that was enacted by the state legislature in 1976 (CERES, 2001). This Act created a unique partnership between the California Coastal Commission, acting in behalf of the state working with 15 coastal counties and 58 cities to manage the conservation and development of coastal resources through a comprehensive planning and regulatory program (CERES, 2001).

The California Coastal Act of 1976 had provisions for the maximization of public access to the coast, and was consistent with the provisions of Article X, Section 4 of the California Constitution that states “ *no individual, partnership, or corporation claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this state shall be permitted to exclude the right of way to such water whenever it is required for any public purpose and the Legislature shall enact such law as will give the most liberal construction to this provision so that access to the navigable waters of this state shall always be attainable to*

*the people thereof*” (Public Access Action Plan, 1999, pg. 5). The access policies of the Coastal Act, Section 30210 provide that *“in carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety, and the need to protect public rights, rights of private property owners, and natural resources areas from over use”* (California Coastal Act, 2002). Further, Section 30001.5 (c) stated that one of the basic goals of the state for the coastal zone is to *“maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resource conservation principles and constitutionally protected rights of the private property owners”* (California Coastal Act, 2002).

Article 2 of the Act clearly states that *“development shall not interfere with the public’s right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation”*. It also states that any new development project will have to provide for public access to the shoreline except in cases where there are fragile resources, adequate access already exists or there are no provisions for liability and maintenance of the access way (California Coastal Act, 2002).

The California Coastal Management Program also meets the approval of the federal Coastal Zone Management Act of 1972 that requires that public access to the coast be enhanced as a national policy. Thus this program works at creating public access at both the national as well as state levels.

## **1.2 Partnership Agencies:**

The State Coastal Conservancy was established to help implement the mandates of the Coastal Act, in conjunction with the work of the Commission. The powers of the State Coastal Conservancy extend to acquiring land, funding design and construction of public access projects, providing technical and financial assistance to local agencies and non profit land trusts, accepting interests in land when an agency is unwilling or unable to do so, and managing fees when required by the Commission to do so (Public Access Action Plan, 1999). The main difference between the Coastal Conservancy and the Commission is that one has acquisition powers and the other has regulatory powers. The Coastal Conservancy is a project-oriented organization that works in partnership with local project sponsors to preserve and enhance coastal resources and provide public access. The Coastal Commission works to enforce the Coastal Act through planning and regulatory methods and cannot hold title to land (Public Access Action Plan, 1999).

The Joint Access Program between the California Coastal Commission and the State Coastal Conservancy was created due to the amendment to the coastal Act in 1979. This program gave the Conservancy authority to *“fund, acquire, develop and manage access sites in concert with the Commission’s authorities to plan and regulate development that affects coastal access”* (Public Access Action Plan, 1999, pg. i). Two other agencies, the State Lands Commission and the Department of Parks and Recreation also play a crucial role in coastal zone land management. The Coastal Commission’s role is to implement the Coastal Act through its planning and regulatory powers. At the local level the California Coastal Act is implemented through the Local Coastal Plans. Local Governments develop Local Coastal Plans (LCP) that are comprised of land use policies and zoning ordinances consistent with the Act. Once the Commission

certifies an LCP, the local government becomes the permitting agency for most coastal development. Appeals are heard and decided by the Coastal Commission. As of 1998, 87% of the land in the coastal zone was managed by an LCP (Public Access Action Plan, 1999).

The third partner in coastal zone management is the State Lands Commission (SLC). It is charged with protecting the public-trust tidelands, defined as those lands lying seaward of the mean high tide line. The State Lands Commission regulates development in the state's tidelands. The fourth partner is the California Department of Parks and Recreation (DPR), the most prominent provider of recreation facilities along the coast. As of 1990, the DPR managed 275 park units, 280 miles of coastline, 625 miles of lake and river footage, nearly 18,000 campsites, and 3,000 miles of hiking, biking, and equestrian trails on nearly 1.3 million acres of state park land (CERES, 2002)

Under the Joint Access Program that was established in 1979 when the legislature formally designated the Conservancy and the Commission as the 2 agencies responsible for implementing the access provisions of the Coastal Act, technical assistance documents such as *Happy Trails to You: How to Accept and Manage Offers to Dedicate Access Easements*; and *Limitations on Liability for Nonprofit Land Managers* were funded by NOAA and published in 1997. These documents encourage the acceptance and the opening of public access easement. The Joint Access Program now (since 1999) produces an annual work plan, showing what the Commission, the Conservancy, SLC and DPR will do with regard to reviewing and accepting OTDs. An annual progress report is also submitted to document what was actually accomplished according to the work plan (Cardellino, 2002).



### **1.3 Public access easements on private lands:**

Offers to Dedicate (OTDs) are required by the Coastal Commission as a condition of receiving a coastal development permit. The purpose of the OTDs is to mitigate the impact of the proposed project on the public's ability to access the coast. These are recorded legal documents, which the landowners sign and thus promise to open a part of the property as a right of way to a public beach or a bluff top. These are only offers and the interest remains with the landowner until the OTDs are accepted by any government agency or a non-profit.

The easement, once accepted, can then be transferred from one agency to another as required for development and maintenance. OTDs transfer with the land and an offer is usually for a period of 21 years. If they are not accepted by a government agency or a non-profit within that term, they expire. Once the OTD is accepted the accepting entity obtains title to the easement (Public Access Action Plan, 1999). This easement then is the property of the public and cannot revert back to the landowner.

There are two kinds of OTDs, those that are vertical to the shore and those that are parallel to the shore. They are called 'vertical OTDs' and 'lateral OTDs', respectively. A vertical OTD provides access to the shoreline from the nearest public road; a lateral OTD runs parallel to the shore and is either on the sand or along a bluff top. Verticals are usually 10 ft. wide and laterals are 25 ft. wide. These widths could vary depending upon the topography of the area. Vertical OTDs comprise about 10 percent of all the OTDs recorded to-date, and the vast majority of OTDs are beach laterals. Verticals are scarce and it is nearly impossible to obtain new ones due to landmark Nollan and Dolan court cases in the late 1980s, and they are viewed as precious

commodities. They have the potential to be developed as stairways and walkways that can open up inaccessible stretches of beach.

The Coastal Commission has only regulatory authority and cannot hold any interest in the land by law. This excludes the option of acquiring public access by “direct dedication” where the landowner would transfer the easement rights to the Commission at the time of permit approval itself. Thus the Commission had to go through the indirect means of requiring the OTD. A 21-year limit for acceptance was adopted, with the understanding that would be enough time for local government agencies to accept these easements (Public Access Action Plan, 1999). The 21-year limit often led to more problems. During the transfer of land to another owner, the fact that these OTDs run with the land was usually overlooked and that led to surprise on the part of new landowners and ensuing litigation when the time for acceptance and development arrived.

Most of these easements were generated between 1980 and 1986; court cases in 1987-89 challenged the relationship between the “exaction” and the development (the nexus and the proportionality) and have made it almost impossible for the Commission to require any more of these public access easements. The Commission still requires OTDs, however they are typically beach laterals required as a condition of obtaining a seawall permit. The nexus there is clear. The Commission is trying to get away from permitting seawalls because of their impact on beach erosion.

#### **1.4 Procedure for acceptance and opening for public use of OTDs:**

According to the Public Access Action Plan, 1999, there are three main steps in the process of opening an OTD after the permit is approved with the OTD condition:

1. Acceptance of OTDs by government or non-profit agencies

2. Willingness and ability of the accepting agency to develop, improve, maintain and accept liability for the easement to make the area useable, e.g., provision of public road, facilities etc.
3. Opening of the easement to the public and maintenance in perpetuity.

Figure 1 on the following page shows the complete process in acceptance of an OTD. This is a lengthy process where 10-20 years are set aside for looking for an accepting agency, probably taking into account potential lawsuits and litigation by property owners. If the law mandating the acceptance of all OTDs by the California Coastal Conservancy (*SB 1962 Polanco*) were to be passed earlier the time allotted for finding a willing agency to accept the OTD would have been significantly less.

Before the OTDs can be accepted by some state agency such as the California Coastal Conservancy or the Santa Monica Mountains Conservancy, state law mandates that the OTDs be reviewed again by the Department of General Services to ensure the protection of interests of the state (Figure 1). This process usually ends up taking more time and creates an additional backlog that according to the Conservancy and the Commission is unnecessary. The California State Lands Commission and Department of Parks and Services have exemptions from this process, and extending this exemption to the other agencies would “significantly reduce the processing time” (Public Access Action Plan, 1999, pg. 23). There is a recent bill introduced in the Legislature by State Senator Polanco that exempts the Conservancy from this review process. Passage of this bill would be of significant assistance to the California Coastal Commission to accept any OTDs that face expiration.

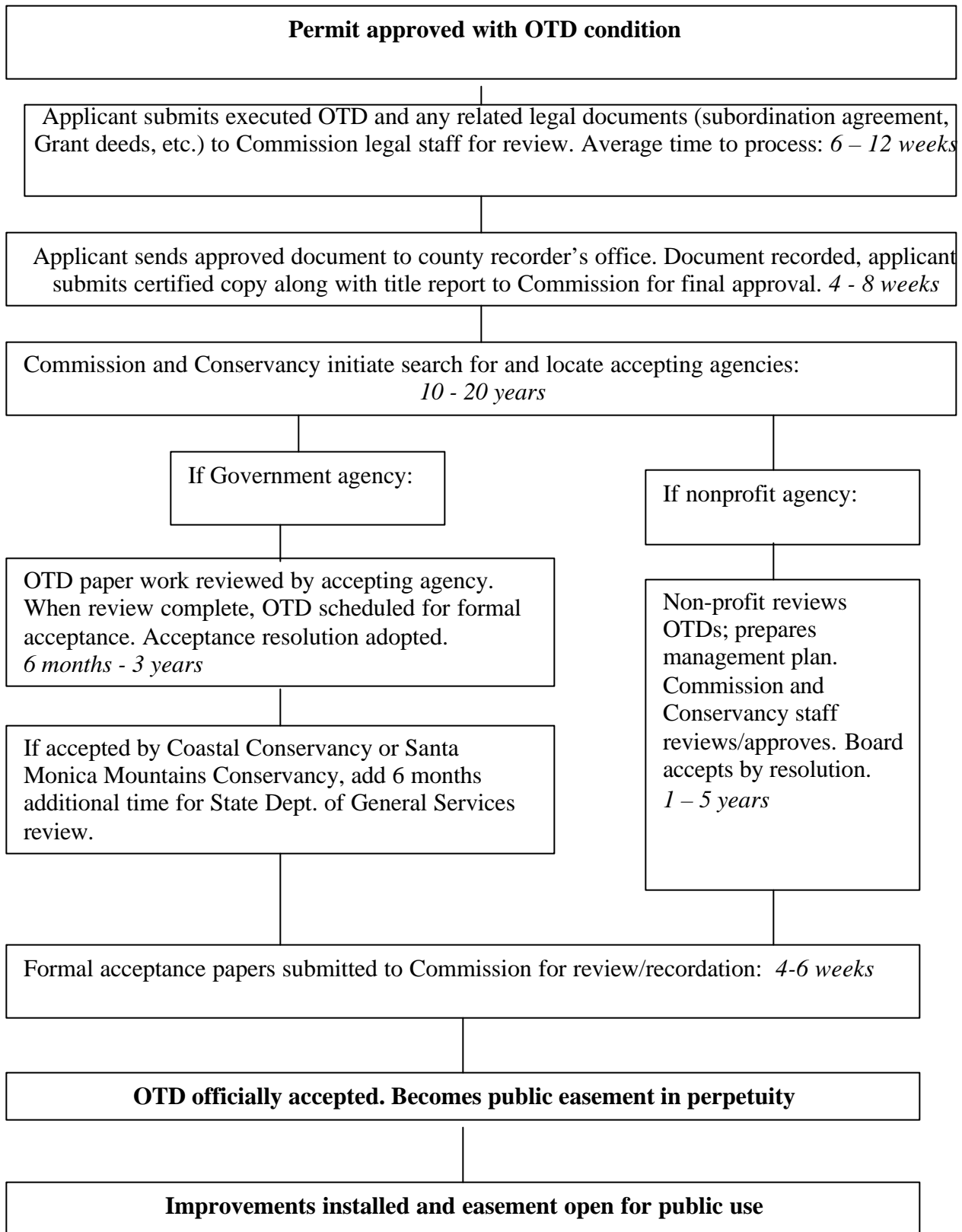


Figure1 Procedure for OTD Acceptance (Source: Public Access Action Plan, 1999, pg. 16)

### **1.5 Challenges to the ‘nexus and the proportionality’ of the OTDs:**

James Patrick Nollan had been leasing a piece of property in the Ventura County Court and had an option to buy the property later. He applied for a permit to buy the land and rebuild a bigger house on that property. The Commission reviewed the permit and decided to grant it on the condition that he offer to dedicate a part of the property for public access to the beach and a neighboring park. This decision was challenged by Nollan in the Ventura County Superior Court based on the “Taking” clause in Amendment V (*“nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation”*) and Amendment XIV (*“nor shall any State deprive any person of life, liberty, or property”*) of the constitution. Nollan won the case in the county court but was defeated in the Supreme Court after the Commission provided evidence that the permit only put a restriction on the use of the property and did not constitute “taking” of the property.

However, as a result of *Nolan vs. California Coastal Commission* an “essential nexus” test was introduced that shifted the burden of justifying the exaction to the government. A proportional impact on the access had to be shown caused due to the development on that property. This led to successive court cases such as *Brittingham vs. California Coastal Commission (Public Access Action Plan, 1999)*<sup>1</sup> that made the process of extracting any more OTDs essentially impossible for the fear of litigation and the ever-increasing costs of defending the permit conditions.

## **1.6 Bills that ease the process of acceptance of OTDs:**

A Bill called *AB 2291 Knox* was introduced and passed in 1996, that provides for reimbursement of attorney's fees from the state Board of Control up to limit of \$25,000 (California State Senate, 1996). This bill was envisioned to promote the acceptance and development of public access ways by the local and non-profit agencies that earlier were reluctant to do so for the fear of litigation. Since these OTDs were created by the state, for the general population of the entire state, it is reasonable that the state take the lead in paying litigation costs for the defense (Public Access Action Plan, 1999)

Another bill called *SB 1962 Polanco* was introduced in the legislature by Senator Polanco in February of 2002 and passed in the assembly and the senate in August of 2002. This bill mandates the State Coastal Conservancy to accept any outstanding offers to dedicate public access ways that have not been accepted by a local government or non-profit organization within 90 days of the expiration date. It would also require the conservancy to open at least 3 public access ways each year, and prepare an annual report to the legislature pertaining to public access (California State Senate, 2002). This bill excludes the Conservancy from review by the Department of General services as well as gives full authority to 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 additionally provides that the conservancy should retain a power of entry with the option to reclaim or assign the interest under specified circumstances (California State Senate, 2002). The bill also mentions that no money from the general fund must be used to open the OTDs.

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<sup>1</sup> Mendocino Land Trust accepted an OTD and opened it for public use. This property was owned by Brittingham who sued the Land Trust for inconsistencies with the California Environmental Quality Assessment (CEQA)

### **1.7 Involvement of Local Coastal Plans (LCPs):**

At a minimum, every Public Access Component should contain the policies and accompanying zoning ordinances necessary to implement Coastal Act sections 30210 through 30214. In addition the component should also echo Coastal Act section 30009 and confirm that the LCP access policies shall be given the most liberal construction possible so that public access to the shoreline is protected and provided consistent with the Coastal Act and California Constitution (Public Access Action Plan, 1999). While this policy is followed to a certain extent by most jurisdictions, the translation of the law into the Local Coastal Plans is not adequate. The Land Use Plans (LUPs) haven't been updated for a long time and show inconsistencies with the current conditions. Also, most LUPs don't identify the non-profit or government agencies in the area that can be charged with accepting and/or opening the public access. There is a pressing need to update all the existing LCPs such that the State Coastal Act requirements can be successfully passed to the grassroots level.

Here I have described the background to the OTD; its history, agencies involved and the process by which these are converted into public access. In the following chapters I will detail out the project beginning from the methodology used, results obtained and finally the recent development and the conclusion to the study.

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inconsistencies. Land Trust eventually won but a considerable amount of money was spent on this case.

## **CHAPTER II. Methodology**

### **2.1 Purpose of study:**

This study was conducted to create a comprehensive database for the California Coastal Commission and California Coastal Conservancy. The need for a GIS database was identified in the Coastal Commission's Public Access Action Plan<sup>2</sup>. This database is envisioned to be extensively used by the above-mentioned agencies for the acceptance and the project development process for public access to the coast.

### **2.2 The objectives of this study were:**

1. Creation of a GIS database with the Vertical OTDs and their attributes
2. Linking of locations and attributes to photographs
3. Entry of existing public access points within 1000 feet of OTDs
4. Formulation of criteria for analysis of each OTD
5. Analysis of feasibility of opening each OTD to the public

### **2.3 Data Collection:**

The data was collected from paper document files that the California Coastal Commission has for each vertical OTD. The OTD locations were delineated using the descriptions and in some cases, maps of the area. USGS topo-sheets<sup>3</sup> were used as base maps and these locations were

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<sup>2</sup> Recommendation 5, pg 24

<sup>3</sup> A digital raster graphic (DRG) is a scanned image of a U.S. Geological Survey (USGS) standard series topographic map, including all map collar information. The image inside the map neatline is georeferenced to the



then entered as a layer in ArcView 3.3. Each OTD point was linked to an attribute table containing information about the OTD - name of the property, address, date of expiry, parcel number etc. The existing access points were imported from the “California Coastal Access” database using the “distance raster” criterion where only those existing access ways were selected that were within a distance of 1000 feet from an OTD.

#### **2.4 Presentation of Spatial and Attribute Information:**

Each OTD was represented using “point features” and was linked to its attributes and a ‘hotlink’ that connected to pictures of the coast from the website - <http://californiacoastline.org><sup>4</sup>. By clicking on each OTD point, a window opens up with the picture of the location as well as related information, such as the name, address, date of expiration and parcel number.

#### **2.5 Analysis of Spatial and Attribute Information:**

A ranking system was created using three criteria - date of expiration, topography and proximity from existing access points. Based on this ranking, each OTD was given a combined score that indicated the priority for acceptance and development as an access way.

The date of expiration was divided into three ranges: 1-2 years (highest priority), 3-5 years (Medium priority) and 6-10 (Low priority). These were then given a scale of 1-3 (3 being the

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surface of the earth and fit to the Universal Transverse Mercator projection. The horizontal positional accuracy and datum of the DRG matches the accuracy and datum of the source map. The map is scanned at a minimum resolution of 250 dots per inch.

<sup>4</sup> The pictures were taken by Gabrielle Adelman (pilot) and Kenneth Adelman (photographer) from a Robinson R44. The helicopter was flown southeast-bound along the coast at altitudes ranging from 150 to 2000ft, but typically 500-700ft. The image frames are approximately half-overlapping, meaning the shutter was depressed when the image had moved halfway across the viewfinder. A sort algorithm is applied to the data to merge the photographs from multiple passes into a continuous coastline.

highest priority).

Topography was divided into four classes - best development potential, good development potential, medium and low development potentials. The locations with good development potentials were those where the topography was relatively even and there was a presence of adequate road. The areas with poor potential were those where the bluff was too steep and looked unstable and there were no roads nearby. These were ranked on a scale of 1-4 (4 being the best for development).

Proximity from existing access ways was considered as a criterion because the California coastal Act mandates a presence of an access way every 1000 feet on the coast. However if there is already an existing access way within this distance then the OTD need not be opened for access. OTDs with access ways within 1000 feet were given a score of 1, OTDs with access ways within 1 mile a score of 2, within more than 1 mile, a score of 3. And where there was no access ways, a high score of 4.

Finally these scores were combined to come up with a ranking system where the highest priority would be given to the OTD with the highest score. This feasibility index was calculated using a simple formula. Refer to Appendix B for the Feasibility Index of all OTDs.

**FI = (E + P + T) / 15 \* 100**, where

*E – Score on expiration*

*P – Score on proximity*

*T – Score on topography*

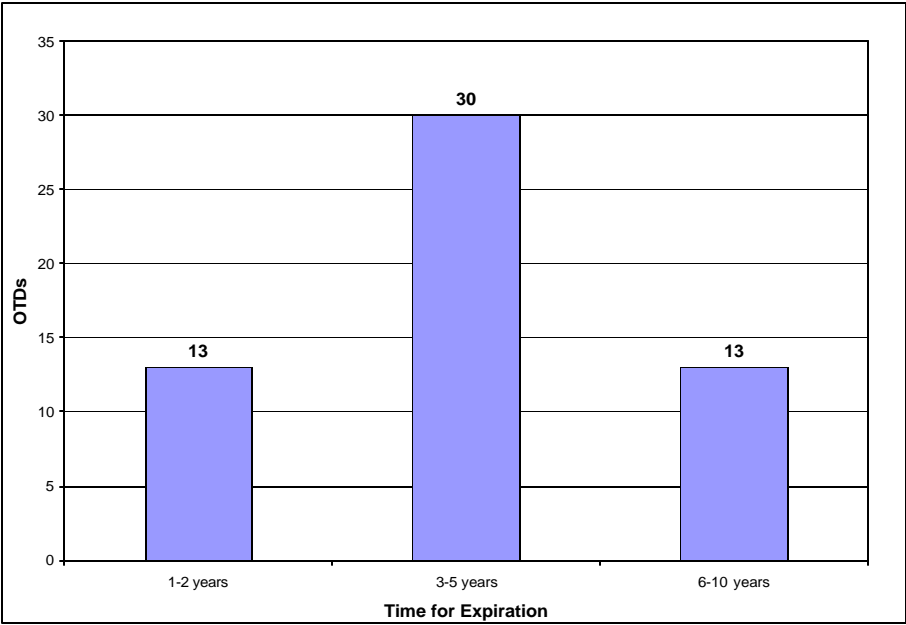
*15 is the maximum score possible*

# CHAPTER III. Results

The present goal of the California Coastal Commission is to accept and open all the existing OTDs before they expire. Although the bill *SB 1962 Polanco* mandates the acceptance of all OTDs within 90 days of expiration, it is not necessary to open them all to the public. My results show that there are many OTDs that are within a close proximity to existing access points, making them redundant as potential access ways. There are also many OTD locations that I feel will pose problems of structural instability if they are built upon as well as potential hazard to public safety. These criteria along with the date of expiration constitute the feasibility index developed in the study.

### 3.1 Year of expiration:

**Thirteen** OTDs are high priority, **30** are medium priority and **13** are low priority (Figure 2). For the complete list of OTDs and the year of expiration, refer to Appendix A.



**Figure 2** Outstanding Vertical Public Access OTDs Expiring by Year

### 3.2 Proximity from existing access point:

Eleven OTDs are within the 1000 ft. criterion and are not essential for public access (Table 1).

For the complete “distance from nearest access point” information, refer to Appendix B.

<b>Name of OTD</b>	<b>Distance</b>
Lee, NCR - 77 - CC - 66	<i>950 ft. from Smith River County Park Access to the South</i>
Schnaubelt Fisheries NCR - 78 - C - 279	<i>700 ft. from Noyo Harbor Access to the South</i>
Cannery Row Plaza Ascotiation 3-83-77	<i>800 ft. San Carlos Beach Park and 900 ft. from Cannery Row Access</i>
Pebble Beach Company 3-84-226	<i>200 ft. from Spanish Bay Shoreline Access</i>
Pebble Beach Company 3-84-226	<i>600 ft. from Fanshell Beach Access</i>
Pebble Beach Company 3-85-25	<i>500 ft. from Stillwater Cove Access</i>
Sansone, 4-85-175	<i>500 ft. from Path to Beach Access and 1000 ft. from the Stairway to Beach Access</i>
Cohen, 4-82-566	<i>50 ft. from Path to Beach Access</i>
Young and Golling 5-85-299	<i>1000 ft. from Corral State Beach Access and 1000 ft. from Malibu Beach R.V. Park Access</i>
Friedman, 5-83-456	<i>900 ft. from Las Tunas State Beach Access to the East</i>
Abbott, 5-88-784	<i>300 ft. from Linda Lane City Park Access</i>

**Table1** List of OTDs that are within 1000 ft. from and existing Access point

### 3.3 Topography analysis:

The topography analysis showed that the following OTDs were in locations not suitable for public access (Table 2). As is visible in Plate 1, this cliff has reinforcement, thus geologically unstable and would pose potential hazards to the public if built upon.

<b>Name of OTD</b>	<b>Description of Location (From photographs)</b>
Werner	<i>Road exists, stiff cliff</i>
Redwood Community College District,	<i>Stiff cliff</i>
Matson	<i>Stiff cliff, not suitable for overlook as road runs too close</i>
Taylor	<i>Stiff cliff</i>
Santa Lucia Company	<i>Stiff cliff, unsuitable for public access</i>
Goldbaum	<i>Hazardous location</i>

**Table 2** OTDs with unfeasible topography



**Plate 1** Pagan OTD, hazardous cliff and reinforcement visible

### 3.4 Feasibility Index:

According to the feasibility index created for the 56 OTDs, **11** are of highest priority that the Conservancy should consider first for acceptance and opening (Table 3). **Thirteen** are of high priority, **25** of medium priority and **7** of low priority. For the comprehensive ranking and calculations refer to Appendix B.

<b>Name of OTD</b>	<b>Priority</b>	<b>Name of OTD</b>	<b>Priority</b>
Simonson	<i>Highest</i>	Trinity Development Corporation	<i>Medium</i>
Arcata School District	<i>Highest</i>	Kimberley	<i>Medium</i>
Stamps	<i>Highest</i>	Wood	<i>Medium</i>
Leeb	<i>Highest</i>	Dennen Family Trust	<i>Medium</i>
Pebble Beach Company	<i>Highest</i>	Roberts	<i>Medium</i>
Roberts	<i>Highest</i>	Matson	<i>Medium</i>
Lewis	<i>Highest</i>	Point West Villas, Inc.	<i>Medium</i>
Chevron USA	<i>Highest</i>	Pagan	<i>Medium</i>
Geffen	<i>Highest</i>	Summer Woods Homeowner's Asc.	<i>Medium</i>
Elmore	<i>Highest</i>	Cannery Row Plaza Asc.	<i>Medium</i>
Title Insurance & Trust Company	<i>Highest</i>	Pebble Beach Company, 3-84-226	<i>Medium</i>
Mueller	<i>High</i>	Pebble Beach Company, 3-84-226	<i>Medium</i>
Campbell	<i>High</i>	Pebble Beach Company, 3-85-25	<i>Medium</i>
Pebble Beach Company, 3-84-226	<i>High</i>	DeYoung	<i>Medium</i>
Pebble Beach Company, 3-84-226	<i>High</i>	Sansone	<i>Medium</i>
Pebble Beach Company, 3-84-226	<i>High</i>	Young and Golling	<i>Medium</i>
Pebble Beach Company, 3-84-226	<i>High</i>	Friedman	<i>Medium</i>
Pebble Beach Company, 3-84-226	<i>High</i>	California Rec. Co.	<i>Medium</i>
Cohen	<i>High</i>	Abbott	<i>Medium</i>
Weidenkeller	<i>High</i>	Poseidon Restaurant	<i>Medium</i>
YMCA of Los Angeles	<i>High</i>	Lee	<i>Medium</i>
Ackerberg	<i>High</i>	Werner	<i>Low</i>
Turnstone Corporation	<i>High</i>	Follette	<i>Low</i>
Mariner's Mile Marine Center, Ltd.	<i>High</i>	Redwood Community College District	<i>Low</i>
Klamath Community Services District	<i>Medium</i>	Ross	<i>Low</i>
North Coast Export Co.	<i>Medium</i>	Taylor	<i>Low</i>
EFS	<i>Medium</i>	Santa Lucia Company	<i>Low</i>
Schnaubelt Fisheries	<i>Medium</i>	Goldbaum	<i>Low</i>

**Table 3** Priority Index for all outstanding Vertical OTDs

Thus it is obvious that not all the OTDs have the same priority and considering limited time and resources available to the California Coastal Conservancy, it will be prudent if the OTDs are opened as public access in the order of priority shown above.



## CHAPTER IV. Conclusion

### 4.1 Recent developments:

October of 2002 marked a great victory for the California Public Access Program. In the two cases being fought in the U.S. Supreme Court, *Cole v. County of Santa Barbara* and *Daniel v. County of Santa Barbara*, the Supreme Court denied review of the two cases where the landowners sued Santa Barbara county for accepting and opening the OTDs on their beach front properties without compensation. The property owners lost the case as the Court upheld the requirements of public access to the beach. The court said that since the easement was promised long before the development and not contended in the courts in the stipulated time, the landowners lost any rights to “*accept the benefits from the permit and then go back years later to try to undo the public access easement*” (Sara Wan, in a press release, 2002).

Another much publicized lawsuit by David Geffen and the City of Malibu v. California Coastal Commission<sup>5</sup> recently was arbitrated in favor of the Commission and the victory is seen as a milestone in the fight for public access.

However, a suit was filed in 1997 by Rodolphe Streichenberger on behalf of the Marine Forests Society (an NGO) when the California Coastal Commission refused to grant the group a permit to operate a marine habitat made out of recycled tires off the Balboa Pier. In 2001, the Sacramento Superior Court judged the Coastal Commission as being unconstitutional. The 3rd District Court of Appeals in January 2003 also supported this judgment. The decision, ironically,

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<sup>5</sup> This case was based on the “nexus and proportionality” principle argued in the *Nollan* case.

had nothing to do with property rights. It concerned the manner of appointing coastal commissioners and the Constitution's separation of the legislative branch, which passes laws, and the executive branch, which enforces them. But, in February 2003, Governor Gray Davis signed legislation that sets the term of office for legislative appointees to the California Coastal Commission to four-year terms, thereby allowing the agency's continued existence.

#### **4.2 Conclusion**

The fight for public access is just but the methods of implementation have been less than perfect. I feel that adequate compensation should be provided to the landowners at the time of acceptance of the easements. This way they may not feel that their constitutional rights are being encroached upon, and thus resort less to expensive and time-consuming lawsuits to fight for their interests.

Streamlining of the acceptance and the opening process by creating proper coordination and communication would further help the cause. Finally the Commission should identify the priority OTDs and use mapping tools such as those developed in this study to create a contextual basis for decisions regarding the acceptance and development of the OTDs. It's also important to update the land parcel data and the current ownership status to expedite the process such that the valuable OTDs that have already been acquired are not lost to expiration.

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# APPENDIX A

Name	Expiration	Location	LCP Recommendation	Description	Area Number	Parcel Area Topography
1 Lee, NCR - 77 - CC - 66	2003	West of Indian Road, Smith R Ranchland Div., N of Mouth of Smith R., Del Norte	LCP recommends that access not be developed in this fragile, bluff area	20 footwide OTD runs along the southern boundary of an ocean front property developed with mobile homes. The OTD is located on the road serving the development from South Indian Road west to the MHTL where it connects to a lateral OTD	102-005-16	Road exists, smooth topography
2 Simonson, 79 - P - 47	2004	Smith River, Fort DickSmith River Area, Del Norte	Accessway Recommended	25 foot wide OTD begins at Fred Height Drive west of Hwy 101 and extends south along an improved, nearly level road to the edge of the Smith River	105-020-39	Road exists, smooth topography
3 Mueller, NCR - 78 - CC - 736	2004	Regua Resort, Pat Murphy Rd, Mouth of the Klamath R. on the N. Bank, Del Norte	Development Recommended	25 foot wide OTD begins at the western end of Patrick Murphy Memorial Drive. The easement extends westward on the park's private road through the park and to the ocean shoreline. While the public currently uses the easement area, acceptance of this OTD will make the use legal	140-020-01	No picture available
4 Klamath Community Services District	2005	Klamath Townsite/Klamath Area, Del Norte	Recommended for Day use facilities	20 foot wide accessway between parking/recreation area and men's restroom. This OTD would provide access from Highway 101 west of the Klamath River through property developed with water treatment facility		No picture available
5 Arcata School District, 1 - 84 - 18	2005	1611 Peninsula Road, Manila, Humboldt	Development of existing undeveloped trail	10 foot wide vertical easement over and across the property to the dunes and ocean		Road exists, smooth topography
6 North Coast Export Co., NCR - 77 - CC	2006	West end Bay Street, Manila, Humboldt	To be developed	25 foot wide OTD extends from New Navy Base Road to the ocean in an industrial area that is fronted by recreational lands including sand dunes and beach. The OTD connects to an existing lateral shoreline easement.	401-121-06	No picture available
7 Stamps, NCR - 77 - CC - 276	2004	West Navy base Road, Manila, Humboldt	To be developed	25 foot wide OTD runs along the southern property boundary from Park Street to the west property boundary. OTD would connect to the dunes and the beach to the west.	111-1-11	Road exists, smooth topography
8 Wiener, 1 - 91 - 196	2013	33980 Schoefer Lane, Fort Bragg, Mendocino	Development Recommended	25 footwide OTDs connect together to provide a continuous vertical easement from Ocean Drive to the bluff edge and to the cove below with a sandy and rocky area from the base of the bluff to the mean high tide line. Minimum improvements required.	017-320-024	Road exists, stiff cliff
9 EFS, 1 - 89 - 028	2010	17200 Ocean Drive, Fort Bragg Area, Mendocino	Development Recommended	EFS OTD is now Follie OTD because Follie purchased part of the lot	017-320-049	Stiff cliff but can be built into an overhook
10 Follie, 1 - 92 - 212	2014	33381 Pacific Way, Mendocino	Development Recommended	15 footwide OTD runs from North Harbor Drive to and along Noyo Harbor. Access to and on a deck overlooking Noyo Harbor to be protected by this OTD	018-140-044	Can be built upon
11 Schnaubelt Fisheries, NCR - 78 - C	2004	32410 North Harbor Drive, Fort Bragg, Mendocino	Public Access Recommended	10 footwide OTD extends along the southern property line from Hwy 1 to the shoreline north of Hare Creek. Easement connects to the eastern end of Hwy View Street leading to the ocean location of OTD open for revision as college also owns adjacent property		Stiff cliff
12 Redwood Community College District,	2005	West of Hwy 1, south of Ocean View Drive on Todd Point, Fort Bragg, Mendocino	Access required beyond property to Hare Creek Beach	10 footwide OTD runs along entire southerly border. Easement connects to a 25 foot wide lateral blufftop easement that also extends down the bluff face to the mean high tide line. Interest of other residents in this road have to be obtained	118-010-034	Stiff cliff but can be built into an overhook
13 Trinity Development Corporation	2005	45260 Caspar Point road, Caspar, Mendocino	Acceptance of existing OTD on a fractionally owned parcel in the Jefferson Subdivision	10 footwide OTD extends along the southern edge of the road that leads from South Caspar drive west to the peninsula. The easement then runs from the eastern abutment of a bridge down a steep and eroding bluff to the mean high tide line	118-380-004	Road exists, stiff cliff but can be built as an overhook
14 Ross, 1 - 88 - 039	2013	45525 South Caspar Drive, Mendocino	Acceptance of OTD to ensure historic public use	25 footwide easement runs along southern perimeter of property, from Hwy 1 to bluff edge. Near a natural geologic feature known as blowhole	121-280-004	Road exists, moderate slope, can be built upon
15 Kimberley, 1 - 89 - 151	2010	7700 North Hwy 1, Mendocino	Acceptance recommended to continue historic use of area by the public	23 footwide OTD extends from Hwy 1 to the mean high tide line along the north boundary of a parcel that fronts a steep 100 foot bluff. The easement is adjacent to a stream and acceptance of the OTD will provide a link to the adjacent State Park land	123-010-014	Stiff cliff but can be built into an overhook
16 Wood, 1 - 83 - 223	2004	West of Hwy 1, Mendocino	No specific Recommendation			

Name	Expiration	Location	LCP Recommendation	Description	Area Number	Parcel Area Topography
17 Derrnen Family Trust, 1- 92- 211 - 2014	2014	5150 N. Hwy. 1, Heritage House Inn, Albion, Mendocino	No specific recommendation	5 footwide trail easement extends from Hwy. 1 to the bluff above Park Gulch Beach along the southern property line before descending to the beach below by sloping trail and an existing stairway.	123-010-018	Road exists, moderate slope, can be built upon
18 Roberts, NCR - 77 - CC - 41	2003	4330 Highway One, Mendocino	Acceptance Recommended OTD requires the coastal boundary of accepting public agency or private association coastal terrace between Hwy. 1 and bluff edge. The bluff where it connects to a lateral blufftop easement.	123-010-020	Stiff cliff but can be built into an overlook	
19 Campbell, 1- 81- 085	2004	2300 Hwy. 1, One Mile South of Albion, Mendocino	LCP policy 4.9.9 requires dedication of vertical and lateral pedestrian OTD ; LCP policy 4.9-10 recommends relinquishing of existing OTDs located south of Salmon Creek	LCP policy 4.10.9 recommends that this OTD be extinguished because of hazardous bluffs high, sheer cliffs make this area not feasible for shoreline and planned access nearby.	123-290-003	Stiff cliff but can be built into an overlook
20 Mason, NCR - 77 - C - 60	2003	2800 Hwy. 1, Mendocino	LCP policy 4.12.4 requires an OTD at this site	10 footwide OTD extends from Highway One to the ocean access	(31-001-002	Stiff cliff, not suitable for overlook as road runs too c
21 Taylor, 1-85- 019	2006	34100 S. Hwy. 1, Mendocino	LCP recommends that the property owner continues to maintain the vertical path and stairway and keep it open to public	The easement area is developed with an existing 5 foot wide improved blufftop pathway over a nearby level, landscaped coastal terrace. OTD also includes the existing wood and concrete stairway.	143-161-002	Stiff cliff
22 Point West Villas, Inc. 3- 83 -115	2009	100-112 Esplanade, city of pacifica, San Mateo	LCP recommends vertical and lateral public beach access with adequate off- street parking at this site	20 foot wide OTD extends over a paved pathway and a parking lot from Palmetto Avenue to the shoreline along the course of the south bank of Millagra Creek at the southern property line of an existing RV park		Existing accessway, smooth topography, road exists
23 Pagan, 3- 83 - 212	2008	528-700 Palmetto Avenue, San Mateo	LCP recommends development	10 footwide OTD extends from Cove Lane to the beach below the Moss Beach Distillery restaurant. The beach and shoreline are located within the Fitzgerald Marine Reserve		Re-enforcement visible on the cliff, stairway not suitable
24 Leeb, 81 - 24	2003	150 Beach Way, Moss Beach, San Mateo	LCP designates the Seascape arroyos where the OTD is located as Neighborhood Shoreline access	OTD has been constructed and provides vertical access to the County owned beach		Road exists, smooth topography
25 Summer Woods Homeowner's 2012 Asc. 3-81	2012	Summer Drive, Rio Del Mar, Santa Cruz	LUP requires maximum public access along this area	OTD has been developed as a public outdoor plaza and a vertical stairway to the beach. There is no legal mechanism requiring the developer to provide public access.		Road exists, smooth topography
26 Carney Row Plaza Asc. 3-83-77	2006	300-400 Carney Row, Monterey	LCP recommends acceptance and provide public access	OTD located along the 17 mile drive, all are open to public	007-091-021	Road exists, smooth topography
27 Pebble Beach Company, 3-84-226	2008	Spanish Bay, Pebble Beach Shoreline, Del Monte Forest Area, Monterey	LCP recommends acceptance and provide public access	OTD located along the 17 mile drive, all are open to public	007-091-021	Road exists, smooth topography
28 Pebble Beach Company, 3-84-226	2008	Point Joe, Pebble Beach Shoreline, Del Monte Forest Area, Monterey	LCP recommends acceptance and provide public access	OTD located along the 17 mile drive, all are open to public	007-091-021	Road exists, smooth topography
29 Pebble Beach Company, 3-84-226	2008	Point Joe, Pebble Beach Shoreline, Del Monte Forest Area, Monterey	LCP recommends acceptance and provide public access	OTD located along the 17 mile drive, all are open to public	007-091-021	Road exists, smooth topography
30 Pebble Beach Company, 3-84-226	2008	Bird Rock, Pebble Beach Shoreline, Del Monte Forest Area, Monterey	LCP recommends acceptance and provide public access	OTD located along the 17 mile drive, all are open to public	007-091-021	Road exists, smooth topography
31 Pebble Beach Company, 3-84-226	2008	Fan Shell Beach, Pebble Beach Shoreline, Del Monte Forest Area, Monterey	LCP recommends acceptance and provide public access	OTD located along the 17 mile drive, all are open to public	007-091-021	Road exists, smooth topography
32 Pebble Beach Company, 3-84-226	2008	Seal Rock, Pebble Beach Shoreline, Del Monte Forest Area, Monterey	LCP recommends acceptance and provide public access	OTD located along the 17 mile drive, all are open to public	007-091-021	Road exists, smooth topography
33 Pebble Beach Company, 3-84-226	2008	Cypress Point, Pebble Beach Shoreline, Del Monte Forest Area, Monterey	LCP recommends acceptance and provide public access	OTD located along the 17 mile drive, all are open to public	007-091-021	Road exists, smooth topography
34 Pebble Beach Company, 3-84-226	2008	Midway Point, Pebble Beach Shoreline, Del Monte Forest Area, Monterey	LCP recommends acceptance and provide public access	OTD located along the 17 mile drive, all are open to public	007-091-021	Road exists, smooth topography
35 Pebble Beach Company, 3-85-25	2006	Sillwater Cove, Del Monte Forest Area, Monterey	LCP requires that the public access be provided	OTD follows the Garraza Creek Corridor from Highway One to Garraza State Beach. Public has been using the informal trail upon which the OTD is located for years to access the beach	243-231-18	Road exists, smooth topography
36 Roberts, 3-85-106	2007	Highway One, Garraza Creek Area, Monterey	LCP encourages public access at this site	10 foot wide OTD is located at the northern end of Otter Cove located on a rocky marine terrace overlooking the coast. The OTD terminated at the Malpaso Beach		Road exists, smooth topography
37 Lewis, 3-84-207	2007	Aurora Del Mar, Otter Cove Area, Monterey	LCP recommends public access	10 foot wide OTD starts at Highway One, follows the Burns creek drainage to a small seasonal beach.		Stiff unstable cliff but a stairway exists
38 DeYoung, P-79-189	2007	Highway One, Big Sur Area, Monterey	LCP encourages public access at this site	10 foot wide OTD goes from Highway One to the shoreline. The first part of the easement is relatively level, and the slope increases toward the ocean bluff area		Stiff cliff, unsuitable for public access
39 Santa Lucia Company, 3-82-1	2013	Highway One, Big Sur, Monterey				

Name	Expiration	Location	LCP Recommendation	Description	Area Number	Parcel Area Topography
40 Sansone, 485-175	2006	West Side Balboa Avenue, San Luis Obispo	LCP policy C.2 requires vertical public access	The landward end of the easement is 5 feet in width for a distance of 200 feet then widens to 15 feet near the bluff top. Parcel "A", Co 74-151 foot high bluff face to the MHTL. The OTD extends down a 204		Road exists, smooth topography
41 Cohen, 482-566	2004	9025 Balboa Avenue, San Luis Obispo	Public access recommended in this area	OTD extends over an ocean front lot along the southern boundary 5 feet in width for a distance of 164 feet before widening to 15 feet for the remaining seaward portion of the property. The easement extends down the bluff to the MHTL.		Road exists, smooth topography
42 Weidenkeller, 485-230	2007	272 Butte Drive, Los Osos, San Luis Obispo		10 footwide OTD is located on a coastal terrace fronting the bay in a developed residential area and extends along the eastern property line from Butte Drive to the seaward boundary. The OTD extends down the bluff to the MHTL.		Road exists, smooth topography
43 Chevron USA, Inc 205-27	2005	Chevron Plant, Carpinteria, Santa Barbara	Chevron Acceptance an improvement for public access recommended	Chevron oil facility on a coastal terrace and extends laterally along the blufftop over several parcels before connecting vertically to Carpinteria Avenue across one of the parcels.	1-170-142322	Road exists, smooth topography
44 YMCA of Los Angeles, 309-05	2013	Canada De La Cuarta, Hollister Ranch, 4 miles W. of Gavota, Santa Barbara	LCP recommends acceptance and development.	OTD provides vehicle access from the adjacent parking lot at Gavota State Park to Hollister Ranch where the easement connects to Lateral blufftop and beach easements. This OTD extends along Rancho Real Road and across the YMCA Cuarta canyon beach access	83-700-32, 83-690-22	Road exists, smooth topography
45 Young and Galling, 585-299	2007	26500, 02, 04, 08, Latiago Shore Road, Dan Blocker Beach, Los Angeles	Property owners were required to construct and operate a stairway for the general public until the OTD is accepted	10 footwide vertical easement goes from Latiago Shore Road to the MHTL		Road exists, smooth topography
46 Goldbaum, 588-794	2010	26530, PCH, Dan Blocker Beach, Los Angeles	Geological study required	10 foot wide OTD begins at Pacific Coast Highway and terminates at a narrow sandy beach. Easement is in area of known geologic hazards.		Hazardous location
47 Friedman, 583-456	2005	19016, Pacific Coast Hwy., Las Tunas Beach, Los Angeles	No recommendations	OTD is 3 feet wide. It is relatively level from the Pacific Coast Highway, then drops down about 10 ft. to the beach		Road exists, smooth topography
48 Gefen, 583-703	2004	22126-22132 Pacific Coast Highway, Carbon Beach, Los Angeles		9 foot wide, relatively level easement goes from Pacific Coast Highway to the MHTL		Road exists, smooth topography
49 Aderberg, 584-754	2006	22466 Pacific Coast Highway, Carbon Beach, Los Angeles		10 foot wide relatively level easement goes from PCH to the MHTL. It is located on the top of (and at the edge of) a pre-existing tennis court. It is located in the middle of Carbon Beach		Road exists, smooth topography
50 Emore, 585-691	2008	Avenue Del Presidente and Avenue Las Palmeras, Orange	OTD includes clause restricting the agency accepting the OTD from opening the accessway to the public unless the Trestles Beach accessway is closed	15 foot wide OTD runs the entire length of the subject property along the eastern boundary to the southern boundary including access to public lands adjacent to and south of the property at San Clemente State park and Trestles Beach.		Road exists, smooth topography
51 Turnstone Corporation, 587-318	2008	2429 & 2431 West Pacific Coast Hwy., Manner's Mile Marine Center, Newport Harbor	LCP recommends public access	OTD includes two developed accessways: a 10 footwide ground-level accessway between two buildings extending from PCH to the bulkhead, and a 5 footwide accessway from PCH to a second level view deck with stairs connecting to a lateral easement along the shore		No picture available
52 Manner's Mile Marine Center, Ltd	2006	2439, 2505, 2507 West Coast Highway, Manner's Mile Center, Newport Harbor, Orange	LCP required public access in the project area	OTD consists of two accessways: a 10 foot wide ground level accessway located on the driveway and extending from PCH to the western side of the bulkhead and a 5 foot wide second level accessway from street to a view deck on the second floor.	84-725	No picture available
53 California Rec. Co., 584-574	2006	1137, 1353, 1701 Bayside Drive, SE of Jamboree, Road and Bayside Drive, Newport Bay	LCP policies support shoreline access in the project area	OTD includes three 10 foot wide easements extending from Bayside Drive to the bulkhead on portions of three developed parcels 1. Runs along the E. border of property 5-84-574 to a harborside bulkhead. 2, 3. Extend through a parking lot to a craft marina.	5-84-574	No picture available
54 About, 588-784	2011	Southwest end of Avenoso Lane, San Clemente, Orange	Acceptance and development recommended	OTD ranges from 5 to 20 feet in width and extends from Avenoso Lane into the canyon along the western boundary to the property line bordering Linda Lane public park.		Road exists, smooth topography
55 A- Title Insurance & Trust Company	2004	4100 Calle Isabella, San Clemente, Orange	Cannot be opened to the public until the Trestles Beach access is closed down			Road exists, smooth topography
56 Poseidon Restaurant	2012	1670 Coast Boulevard, Beach Front parcel, Del Mar, San Diego		10 foot wide easement extends along northern property boundary from the northern driveway at Coast Boulevard 299-231-07 through a parking lot in the site and to a sandy beach		Road exists, smooth topography