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PROCEDURAL GUIDANCE FOR BEST MANAGEMENT PRACTICES TO ENSURE IMPLEMENTATION OF PUBLIC ACCESS REQUIREMENTS

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I. PURPOSE OF THIS PROCEDURAL GUIDANCE FOR BEST MANAGEMENT PRACTICES FOR PUBLIC ACCESS CONDITIONS

The purpose of this procedural guidance for Best Management Practices (BMP) is to provide detailed instructions to ensure that public access conditions, when imposed by local government through approved coastal development permits, are implemented. This BMP identifies the steps for local government planners on how to track public access conditions and provisions in legal documents and to ensure that Offers to Dedicate (OTD) Public Access Easements are accepted in a timely manner. The overall goal is to ensure that the public access requirements imposed by local governments result in new and/or permanently protected public access to and along the California coast.

II. BACKGROUND

The California Coastal Act of 1976 (Coastal Act) mandates that public access to and along the ocean be protected, provided and enhanced (Public Resources Code Sections 30210-12). In authorizing the Coastal Act, the California Legislature found 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 resources conservation principles and constitutionally protected rights of private property owners” (30001.5).

One of the main regulatory tools that the California Coastal Commission (CCC) has implemented over the years to achieve this mandate is the imposition of Public Access easements. These easements, which traverse from the public road paralleling the coast to the shoreline as well as along the coast, are obtained through conditions imposed by coastal development permit approvals. When Local Coastal Programs (LCPs) are certified, provisions for requiring these easements are included, thus both the CCC and local governments have the legal ability to require these easements when threshold criteria is met. The Vertical easements are most valuable in that, when opened, they provide new opportunities for the public to get to the coast, often between other privately developed properties which may limit public access either physically, visually or both.

These easement and OTD documents are recorded at the County Recorder’s Office and are then included in the chain of title for the property. An OTD means that the coastal permit applicant irrevocably offers to dedicate a Public Access Easement to an acceptable public or private entity, on behalf of the people of the State of California, for a set time frame, usually 21 years, which must be accepted to become an easement. In order to ensure that the OTD is accepted in a timely manner, the agency requiring the OTD must create and maintain a database which tracks all OTDs that are recorded as well as the 21 year time frame. Once accepted, the OTD becomes a Public Access Easement, ready to be developed and opened by a responsible entity.

III. BEST MANAGEMENT PRACTICES TO ENSURE IMPLEMENTATION OF PUBLIC ACCESS EASEMENT REQUIREMENTS

When a local government approves a coastal development permit (CDP) with a condition requiring the permittee to record a Public Access Easement, the purpose of this condition is to mitigate the impact of the approved development upon public access opportunities. Once the permittee has complied with the condition to record the Public Access Easement or OTD, the next steps to ensure that the easement or OTD is turned from a paper document into an on-the-ground pathway are usually taken on by the local government staff. This BMP procedural guidance offers detailed information as to what those steps are to ensuring public access requirements of a coastal development permit have been met; if these steps are not taken, then the mitigation required by the local government will not result in the intended public accessway.

- A. In order to track and ensure timely acceptance of Public Access Offers to Dedicate, the following steps should be completed by the local government staff:
 1. Identify the Department responsible for overseeing the Public Access Easement Program. This Department would typically be responsible for tracking all Public Access OTDs and Easements within the jurisdiction (e.g. Vertical easements to the shoreline, Lateral easements along the beach, bluff top trails, segments of the California Coastal Trail, etc).
 2. Develop a database to collect this information. Include basic information such as:
 - i. applicant name
 - ii. APN location of Easement
 - iii. address of Easement
 - iv. date Public Access document recorded
 - v. document recording number
 - vi. date the OTD term runs (often 21 years after the date of recording)
 - vii. coastal development permit number
 3. The designated Department should work closely with the Department issuing the permit (who would ensure that any “prior to issuance” permit conditions are met, including recordation of legal documents) as well as Legal staff (who are responsible for reviewing and approving the legal document before it is recorded). Identify internal procedures for notifying the responsible department when:
 - i. A coastal development project is recommended by staff to require a Public Access dedication and the project is scheduled for a public hearing. Tracking projects in the pipeline will help to ensure that all proposed dedications are accounted for if and when this condition is imposed.

- ii. The governing body (e.g. City Council/Board of Supervisors) approves the project with the requirement to record a public access easement on title to the property.
 - iii. The legal document is approved by the Legal Division of the city/county government and the CCC.
 - iv. When the legal document is recorded at the County Recorder's office, send a copy to the designated department and the CCC.
 - 4. Ensure the designated Department keeps the database up to date:
 - i. Within 30 days receipt of new information (e.g. recording of a new legal document, acceptance of an OTD); enter this information into the database.
 - ii. Send the database list of recorded OTDs to the appropriate potential accepting Department (e.g. Parks or Open Space) annually so as to keep them informed of upcoming Public Access opportunities.
 - iii. If any OTD is within one year of the 21 year term, inform the appropriate potential accepting Department so they can take immediate steps to accept the OTD before the deadline.
 - 5. When a violation of public access conditions requiring recordation of legal documents is identified (often by the permit-issuing Department), enter that information into the database, so that all staff reviewing the database are informed of the pending violation.
 - 6. Send a copy of the database annually to the CCC to ensure that the CCC's database of CCC required OTDs and other dedications also includes the City/County required dedications.
 - 7. Request a copy of the CCC's database annually to ensure that the City/County is informed about all public access opportunities within their jurisdiction.
- B. To ensure that accepted Access Easements are actually opened for public use, the following steps should be incorporated by the local government staff:
 - 1. Once an OTD is accepted, the Public Access Easement is ready to be developed and opened for public use. Identify the Department responsible to implement this task; it is usually assigned to the Parks Department.
 - 2. Set up internal process to inform the identified Department when the Easement is legally available for use as a Public Access Easement.
 - 3. Provide any supporting materials (e.g., staff report, geologic reports, etc.) to the Department.
 - 4. The Department should prioritize construction and development of all Vertical Access Easements as providing new accessways to the coast as a main mission of the Coastal Act, as being implemented through the LCP.
 - 5. The Department should ensure that the new accessway is open and maintained in good condition in perpetuity.