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November 22, 2017

TO: Coastal Commissioners and Interested Parties

FROM: Jack Ainsworth, Executive Director  
Madeline Cavalieri, Statewide Planning Manager  
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RE: **Annual Report of the Open Space/Conservation Easement Program**

The California Coastal Commission's Open Space/Conservation Easement Program continues its work of securing permanent protection for open space lands, including ESHA, steep slopes, agricultural resources, and scenic viewsheds in the Coastal Zone. The Open Space/Conservation Easement Program is in direct accordance with many of the goals, objectives, and actions of the Commission's Strategic Plan, which was approved unanimously by the California Coastal Commission in April 2013.



Open Space Easement at Big Canyon, Upper Newport Bay Ecol. Reserve.

This report discusses the background of the Open Space/Conservation Easement Program, and summarizes the progress made in calendar year 2017 to achieve permanent protection of coastal resources through the Program. This report also examines how the Open Space/Conservation Easement Program relates to the Strategic Plan.

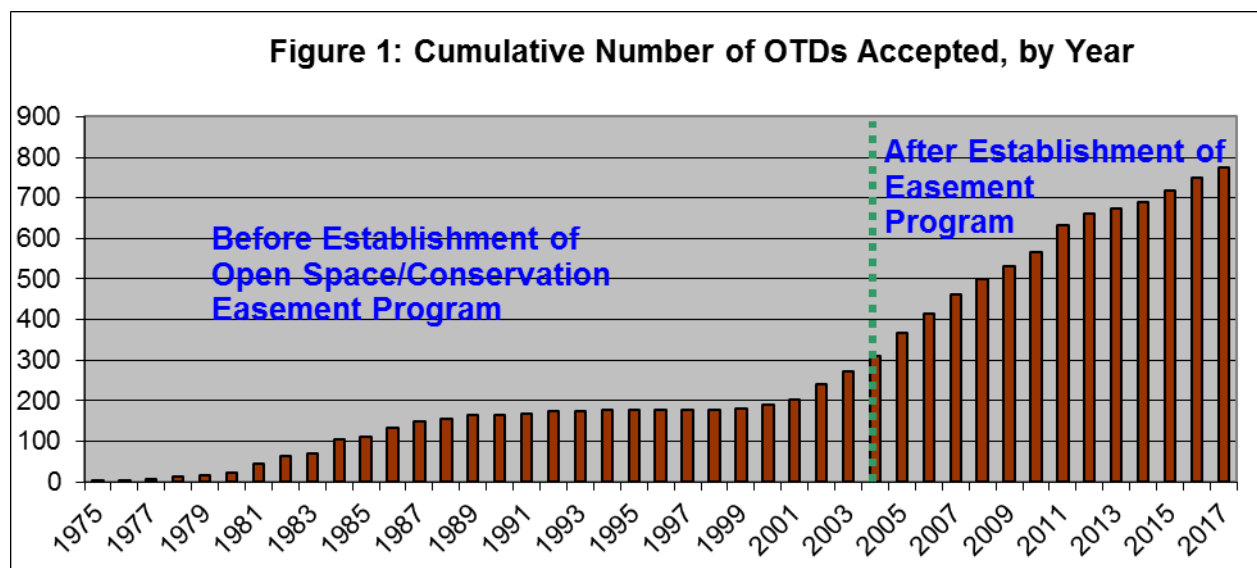
## ***Background of the Open Space/Conservation Easement Program***

The majority of the open space/conservation easements are secured by the Commission as mitigation for coastal development permits approved by the Commission, either as Offers to Dedicate (OTDs), which are then accepted by a third party, such as a local government or non-profit, or as Grants of Easements, where the easement is granted directly to the third party.

Similar to public access OTDs, the public resource benefits of a required open space or conservation OTD are not fully realized until an offer is accepted by a managing entity that agrees to hold and maintain the easement in perpetuity. Most OTDs have an irrevocable term of 21 years, after which they have the potential to expire unless they are accepted. To assure that the Commission’s regulatory efforts result in permanent resource protection for the public, the Commission’s Statewide Planning staff monitors the status of recorded OTDs, and works with a wide variety of potential management entities to facilitate the permanent acceptance of recorded OTDs. To date, 69 different government agencies and non-profit organizations have accepted open space OTDs.

Statewide Planning staff developed the Open Space/Conservation Easement program in response to the Commission’s findings on a project to assess implementation of the coastal program in the Santa Monica Mountains (the Regional Cumulative Assessment Project, June 1999). The findings indicated that many OTDs recorded in the early 1980’s as mitigation for development in the Santa Monica Mountains were approaching their 21-year-term date, beginning around the year 2000. Staff accelerated efforts to ensure that these OTDs were accepted by an appropriate entity before the term ran out, and developed a database to track the 21-year-term dates for all other recorded open space and conservation OTDs.

In addition to securing acceptance of outstanding OTDs, program staff devotes its resources to researching OTDs, capturing relevant data pertaining to each easement, such as specific resources being protected, acreage, Assessor Parcel Number or other locational information, identifying potential enforcement issues within easement areas, and coordinating with non-profits to facilitate monitoring efforts. **Figure 1**, below, illustrates the impact of the establishment of the Open Space/Conservation Easement Program.



### ***Acceptances Achieved in 2017***

In the last year, staff successfully negotiated acceptance of 27 OTDs covering 559 acres of sensitive lands. Resources protected by these acceptances include more than 27 acres of riparian and dune habitat immediately adjacent to MacKerricher State Beach in Mendocino County, over 500 acres of chaparral and coastal sage scrub ESHA in the Santa Monica Mountains, and almost five acres of riparian buffer at Big Canyon Creek in the Upper Newport Bay Ecological Reserve in Orange County.

A majority of the easements (24 of 27) were accepted by the Mountains Recreation and Conservation Authority (MRCA) in the Santa Monica Mountains. Several of these easements retire lots in the small lot subdivisions in the mountains, under the Commission’s Transfer of Development Credit (TDC) Program. As a result of these acceptances, the development potential of 16 small lots was permanently retired.

Other accepting entities include the State Coastal Conservancy, Mendocino Land Trust, and the Newport Bay Conservancy, which accepted its first Coastal Commission OTD this year.

**Attachment A** includes the entire list of 2017 acceptances. No offers expired in 2017.

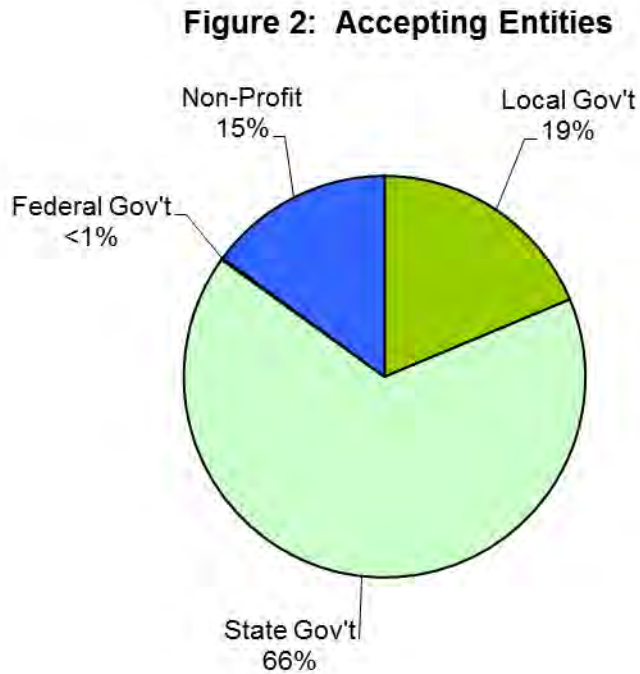
### ***Total Acceptances to Date***

Despite the Commission’s limited resources to implement the Conservation/Open Space Program, staff has been able to negotiate the acceptance of 84% of the current outstanding Open Space OTDS required by the Commission since 1974. The accepted easements protect more than 10,700 acres of wetlands, ESHA, viewsheds, and agricultural and archaeological resources. This number undercounts the actual acreage protected by Commission actions because currently acreage is reported for only 93% of OTDs accepted to date. As time permits, staff continues to research older OTD files in order to determine acreage for past accepted OTDs.

#### **Overall Status of OTDs**

	Total Number by End of 2017	Total Percent by End of 2017
Accepted	774	84%
Expired/Allowed to Lapse	34	4%
Remaining To Be Accepted	111	12%
<b>TOTAL</b>	<b>919</b>	<b>100%</b>

**Attachment B** includes a complete list of accepting entities. Public agencies have accepted 659, or 85% of the total conservation/open space OTDs accepted to date, while non-profit entities have accepted 115, or 15%. **Figure 2** depicts the distribution of accepting entities.

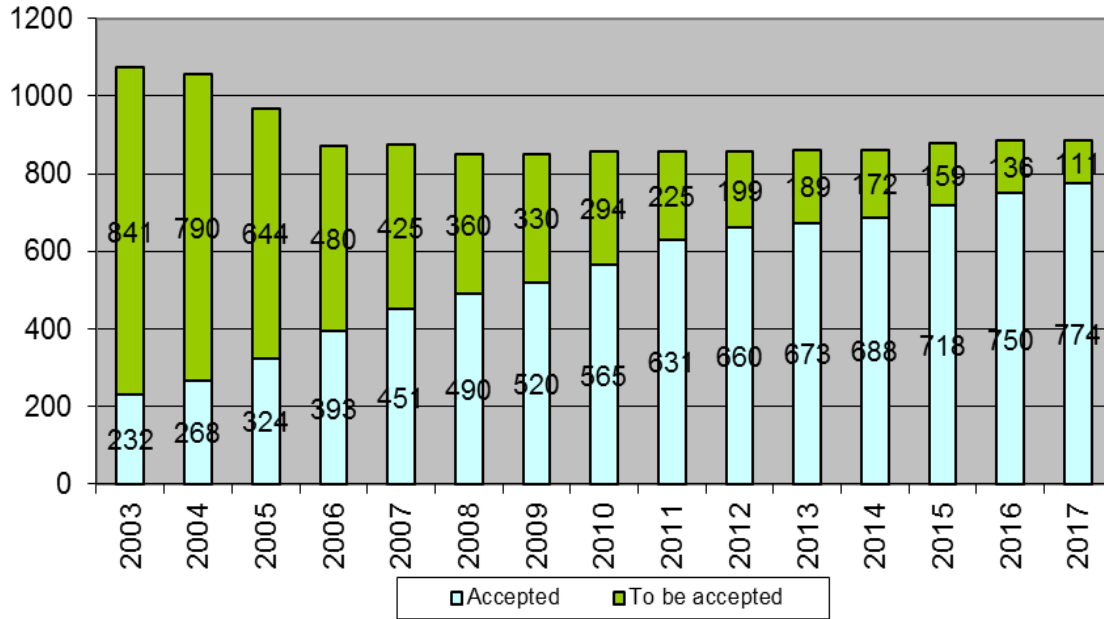


Progress in the last fifteen years since annual reports began is shown below in **Figure 3**<sup>1</sup>.

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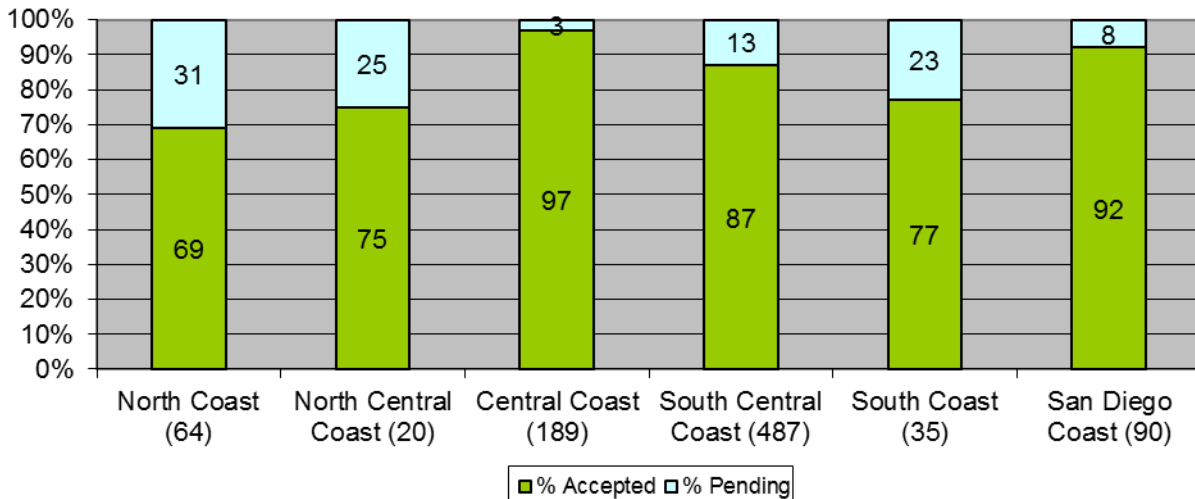
<sup>1</sup> The overall total number of OTDs changes each year. Staff initially began this project with a written log of OTDs. However, as staff commenced in-depth research of the files containing OTDs it was found that each record in the log did not necessarily correspond to a recorded OTD. In many cases, the log noted that an OTD was required for a permit condition, but for various reasons, the permit was not issued and the OTD was never recorded. Additionally, the log did not reflect if a recorded OTD had been superseded or extinguished. Also, new OTDs are recorded and added to the total each year.

**Figure 3: Status of OTDs Over Time**



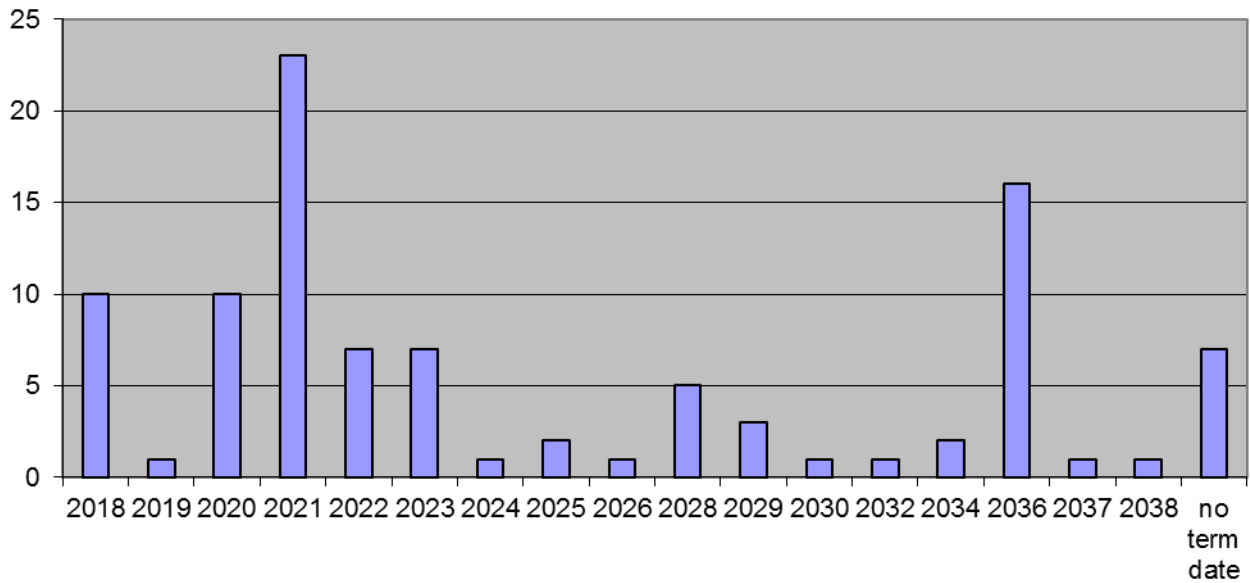
The Commission has achieved acceptance rates of nearly 70% in all districts, as shown in **Figure 4**, below. The acceptance rate in the Central Coast District in particular is of note. Ninety-seven percent of OTDs in this district have been accepted, primarily by the counties in this district (Santa Cruz, Monterey, and San Luis Obispo). The San Diego Coast District is nearing acceptance of nearly all of its OTDs as well.

**Figure 4: Percent Accepted by District, to Date**



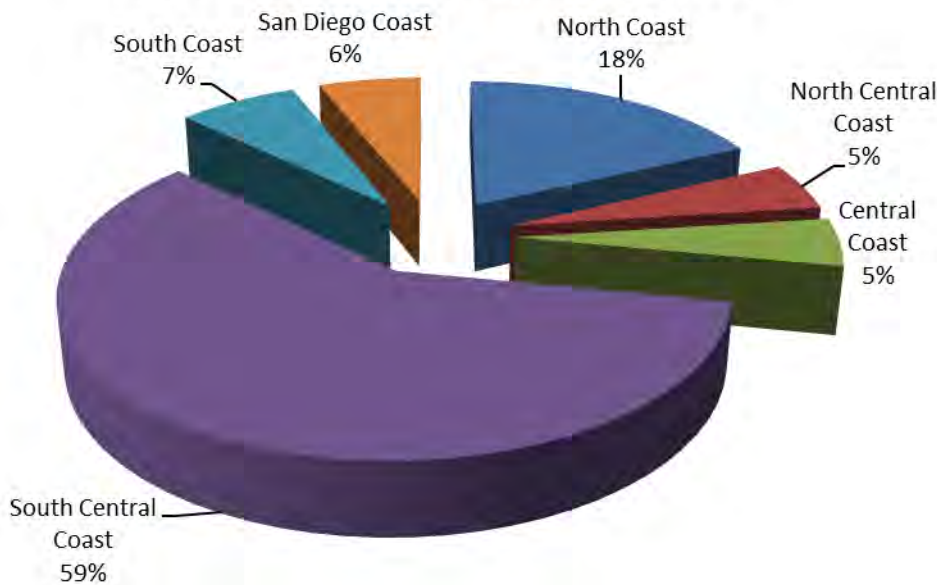
As **Figure 5**, below, indicates, a large number of OTDs are approaching their term date in 2018, 2020, and 2021. Staff has commenced work on the research and documentation for most of these upcoming OTDs.

**Figure 5: OTDs to be Accepted, by Year of Expiration**



**Figure 6**, below, shows that the bulk of the outstanding OTDs are in the South Central Coast District in the Santa Monica Mountains. Commission staff maintains a strong working relationship with MRCA staff, enabling an efficient acceptance process for these OTDs.

**Figure 6: OTDs to be Accepted, by District**



**Attachment C** lists the OTDs that remain to be accepted.

### ***Other Protected Open Space Land***

In addition to requiring Offers to Dedicate and Grants of Easement to ensure that adverse environmental impacts of development are avoided or minimized, the Commission has also required deed restrictions (DRs) to protect sensitive areas. There are currently approximately 1,700 recorded deed restrictions protecting open space lands. Staff has tracked these recorded documents since the late 1970s, formerly in handwritten logs that staff has only partially transferred to the Commission’s database. Currently, as new DRs are recorded, data is captured digitally. Because of limited staff resources and the necessity for staff to focus on the time-sensitive nature of OTDs, research and data transfer for the older DRs is not complete. Hence, while approximately 1,700 open space deed restrictions have been identified, the Commission is not currently able to report or comprehensively monitor the number of acres protected, specific locations or types of resources protected. This will be pursued as a future task as resources allow.

### ***Alignment with the Commission’s Strategic Plan***

As noted earlier, the Open Space/Conservation Easement Program aligns with several of the goals and objectives of the Commission’s Strategic Plan.

Goal 1: Maximize Public Access and Recreation

Objectives of Goal 1 include enhancing public access through constraints analysis and expansion of the California Coastal Trail (CCT) System through planning. Statewide Planning staff maintains a database of open space easements and deed restricted areas, including locational information which can then be used to identify sensitive areas in the proposed alignment of the CCT (some easements allow public access, but most do not).

Goal 2: Protect Coastal Resources

The Strategic Plan states, “*protecting and restoring sensitive coastal resources is...one of the highest priorities of the Commission.*” By securing permanent protection of lands dedicated to habitat preservation and agriculture, the Open Space/Conservation Easement Program advances achievement of this goal. To date, since the inception of the program, more than 10,700 acres of sensitive coastal resources have been permanently protected.

A specific objective of Goal 2 calls for the protection of coastal agriculture. OTDs, Grants of Easements, and Deed Restrictions are all effective mechanisms for protecting agricultural use in the Coastal Zone. To date, more than 1,900 acres (18% of the total acreage of protected lands), extending through more than half of the coastal counties, have been permanently preserved for agricultural use through the use of easements and deed restrictions required as mitigation for impacts from development.

Goal 3: Address Climate Change through LCP Planning, Coastal Permitting, Inter-Agency Collaboration, and Public Education

Some of the objectives of this goal include developing guidance for addressing the impact of sea level rise, including providing buffers for coastal wetlands and adaptation planning, which includes protecting wetland, marine and terrestrial habitats. More than 400 acres of wetlands and wetland buffers have been put into permanent protection through the use of easements and deed restrictions.

Goal 4: Strengthen the LCP Planning Program

Working with local governments to update LCPs where feasible is one of the objectives of Goal 4. When applicable, Statewide Planning staff share easement data with local governments to facilitate LCP work. For example, staff created a GIS layer depicting open space easements, deed restricted areas, and TDC donor lots in the Santa Monica Mountains which was then provided to County staff as part of its LCP planning efforts.

Goal 5: Improve the Regulatory Process, Compliance and Enforcement

Condition compliance continues to be a major workload issue for the Commission and Objective 5.3 lays out actions to improve the condition compliance work of staff.

The Open Space/Conservation Easement Program is part of the final process of condition compliance. Since the vast majority of easements stems from permit conditions, the acceptance



of an Offer to Dedicate is the final step in ensuring that the impacts of approved development on coastal resources are mitigated. As OTDs come up for acceptance, Statewide Planning staff reviews conditions on the ground whenever possible, sometimes revealing unpermitted development or inappropriate uses of the easement areas. Staff then begins a dialog with District staff and Enforcement staff to attempt resolution. A prior example of resolution is in Half Moon Bay, where an unpermitted structure had been located in an open space deed restricted area, immediately adjacent to an open space easement protecting riparian habitat. Resolution of the violation was achieved by cooperative effort on the part of Statewide Planning staff, Enforcement staff, the local government and the property owner. The structure has been removed and the area is currently being restored. Other recent examples of violation resolution via collaborative efforts on the part of Statewide Planning and Enforcement staffs have occurred in Moss Landing, the Santa Monica Mountains, and Carlsbad.

The California Code of Regulations Section 13574 for LCP implementation contains provisions for Local Government reporting of Open Space Easements and Public Documents. Such provisions are usually included in LCP ordinances governing issuance of coastal development permits. Future monitoring of OTDs will need to review the implementation of these provisions and recommend enhancements for improved tracking and monitoring.

*Goal 6: Enhance Information Management and E-Government*

Goal 6 includes such actions as making “*the Commission’s permit and planning records ...available to the public via the Internet*” and completing “*the Commission’s digital document library for all Commission actions from 1973 to the present, including converting paper records to a searchable digital format, linking to the Commission’s final adopted reports, and linking all records to the CDMS. Make CDMS data available online as appropriate and as feasible.*” As OTDs are accepted and as new easements and deed restrictions are recorded, digital copies of the documents are archived by Statewide Planning staff, in preparation for linkage to the CDMS and the future public site.

***Future Efforts of the Open Space/Conservation Easement Program***

Staff is committed to maintaining the Open Space/Conservation Easement Program in order to ensure permanent mitigation for impacts on coastal resources. Staff will continue to capture resource data and make it available to enhance coastal management. In order to benefit staff and local planners in permit and LCP work, staff continues to further develop the attribute data describing the lands protected by OTDs and Deed Restrictions. In addition, staff continues to work with nonprofits and public agencies in order to enable them to carry out monitoring of the easements to assure ongoing protection. Without such capacities, coastal resources previously protected through Commission regulatory actions could be at risk of being lost.