

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
FAX (415) 904-5400
TDD (415) 597-5885



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TO: California Coastal Commissioners and Interested Public

FROM: Jack Ainsworth, Executive Director
Shana Gray, CEA, Statewide Planning Unit
Erin Prahler, Statewide Planning Unit Manager
Kelly Cuffe, Statewide Planning Analyst

SUBJECT: **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 2021-2025 Strategic Plan, which was adopted by the Commission in November 2020.

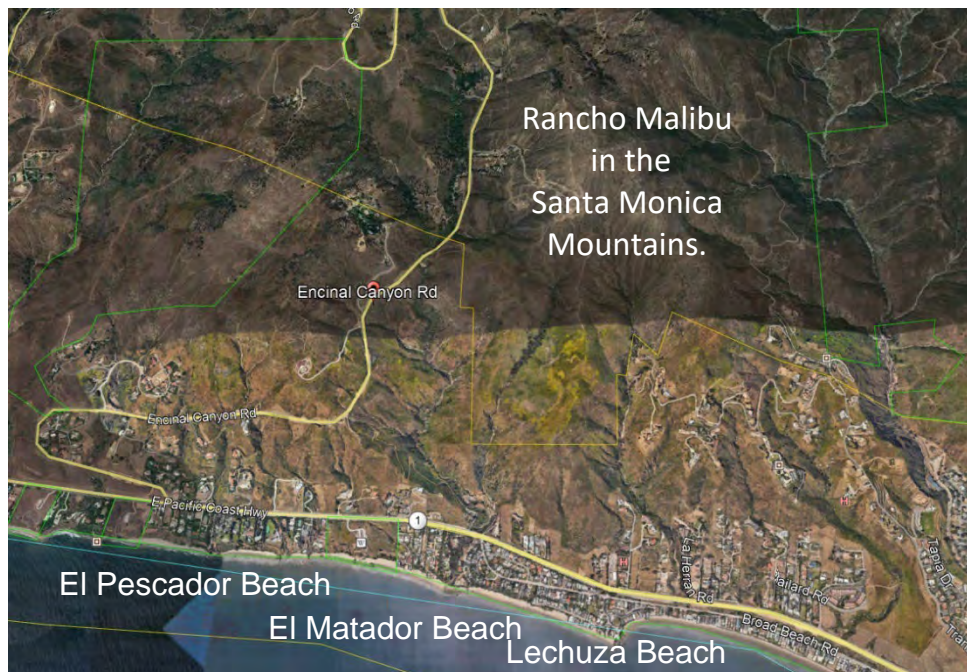


Photo 1. Rancho Malibu Open Space Easement north of El Pescador, El Matador and Lechuza Beaches in Malibu, as required by CDP 5-91-436 (BMIF/BSLF II Rancho Malibu Ltd). The easement, accepted in fee title by Los Angeles County, protects over 162 acres of environmentally sensitive Coastal sage scrub and chaparral habitat. (Photo from Google Maps, 2021).

Staff last provided an annual report to the Commission on the program's status in 2018. This report, therefore, discusses the background of the Open Space/Conservation Easement Program, and summarizes the progress made over the years 2019 thru 2022 to achieve permanent protection of coastal resources through the Program. This report also examines how the Open Space/ Conservation Easement Program relates to the 2021-2025 Strategic Plan.

Background of the Open Space/Conservation Easement Program

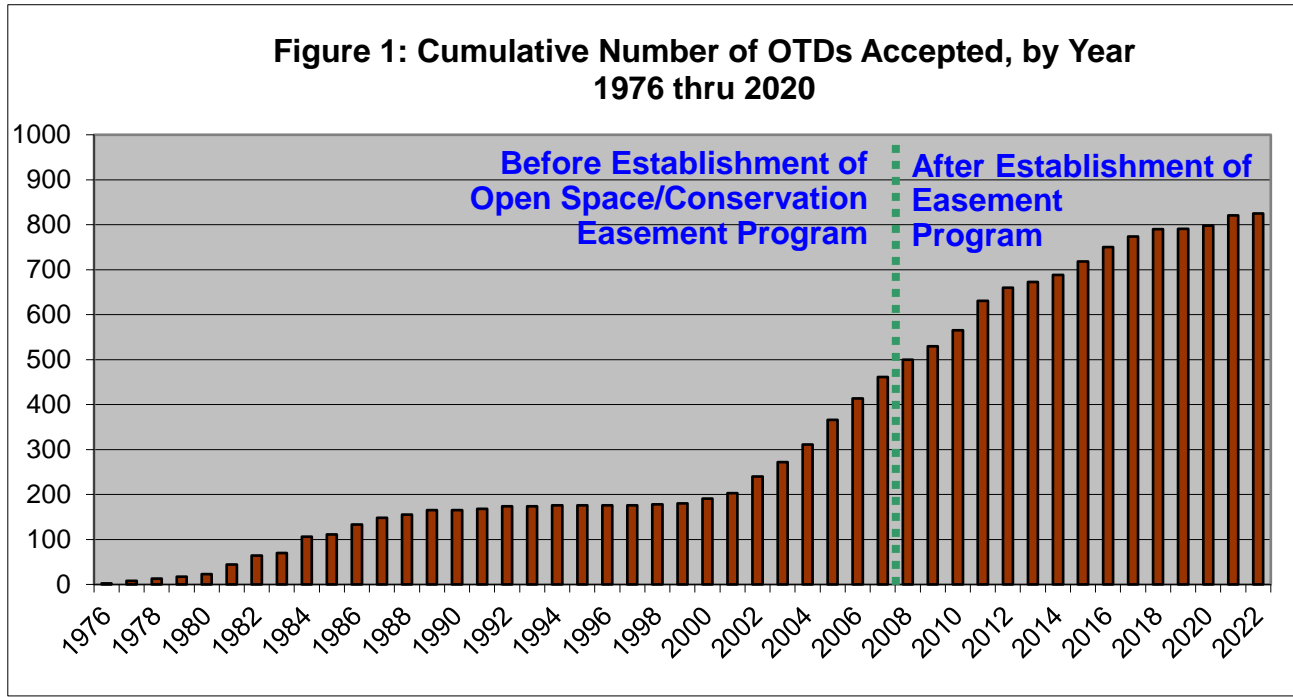
The majority of the open space/conservation easements are secured by the Commission as mitigation for coastal development permits approved by the Commission, either as Offers to Dedicate (OTDs), which are then accepted by a third party, such as a local government or non-profit, or as Grants of Easements, 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, 70 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, from 1977 thru 2022.



Acceptances Achieved in 2019

Based on data collected in the Commission’s Coastal Data Management System (CDMS) database, seven OTDs were set to expire in 2019, however, six of the seven had already been accepted by various accepting entities prior to 2019. The one remaining easement, covering nearly 35 acres of land located inland and south of Jalama Beach, was accepted in June of 2019 by Santa Barbara County.

Acceptances Achieved in 2020

In 2020, staff successfully negotiated acceptance of seven OTDs covering approximately 17.5 acres of sensitive lands. Six of the seven accepted offers (totaling approximately 16.4 acres) are located in Los Angeles County, with the seventh easement located in San Diego County. All six of the easements located in LA County retire lots in the Santa Monica Mountains under the Commission’s Transfer of Development Credit (TDC) Program. As a result of these TDC acceptances by the Mountains Recreation and Conservation Authority (MRCA), the development potential of six small lots was permanently retired. The seventh OTD was accepted by the Friends of Los Peñasquitos Canyon Preserve and consists of two small patches (totaling just over an acre) of wetland habitat to serve as mitigation for development nearby in San Diego County.

Acceptances Achieved in 2021

In 2021, staff successfully negotiated acceptance of 23 OTDs covering over 732 acres of sensitive lands. All of the accepted offers are located in Los Angeles County and all but one retires lots in the Santa Monica Mountains under the Commission’s TDC Program. As a result of these TDC acceptances by the MRCA, the development potential of 22 small lots was permanently retired. The remaining OTD consists of fee title of nearly 162 acres of coastal sage scrub and chaparral nestled north and inland of El Pescador, El Matador and Lechuza Beaches, near Encinal Canyon. This fee title OTD was accepted by Los Angeles County, which already has ownership of open space land adjacent to this area.

Acceptances Achieved in 2022

In 2022, staff successfully negotiated acceptance of four OTDs covering over 88 acres of sensitive lands. All of the OTDs accepted in 2022 are located in Los Angeles County, and all retire lots in the Santa Monica Mountains under the Commission’s TDC Program. As a result of these TDC acceptances by MRCA, the development potential of four small lots was permanently retired.

Thus, over the past 4 years from 2019 thru 2022, Commission staff was able to negotiate and complete the acceptance of 34 open space/conservation easements, protecting a total of approximately 873 acres.

[Attachment A](#) includes the entire list of acceptances for the years 2019, 2020, 2021 and 2022. No offers expired during this time.

Total Acceptances to Date

Despite the Commission’s limited resources to implement the Conservation/Open Space Program over the years, staff has been able to negotiate the acceptance of 90% of all the Open Space/Conservation OTDs required by the Commission since 1974. The accepted easements protect more than 11,870 acres of wetlands, ESHA, viewsheds, and agricultural and archaeological resources.

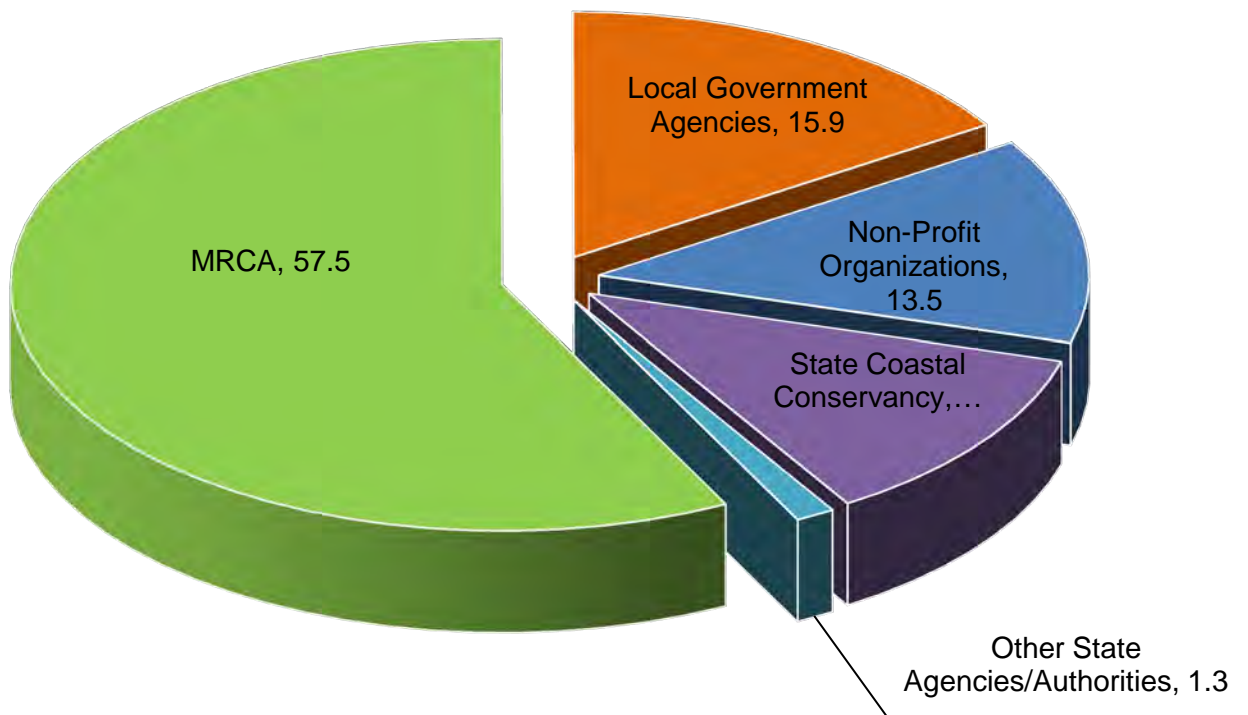
Table 1. Overall Status of OTDs thru 2022

| | Total Number by End of 2022 | Total Percent by End of 2022 |
|--------------------------|-----------------------------|------------------------------|
| Accepted | 825 | 90% |
| Expired/Allowed to Lapse | 35 | 4% |
| Remaining To Be Accepted | 58 | 6% |
| TOTAL | 918 | 100% |

[Attachment B](#) includes a complete list of accepting entities (identified from data collected in the CDMS). Public agencies have accepted 704 easements, or 85% of the total open space/conservation OTDs accepted to date, while non-profit entities have accepted 121, or 15%.

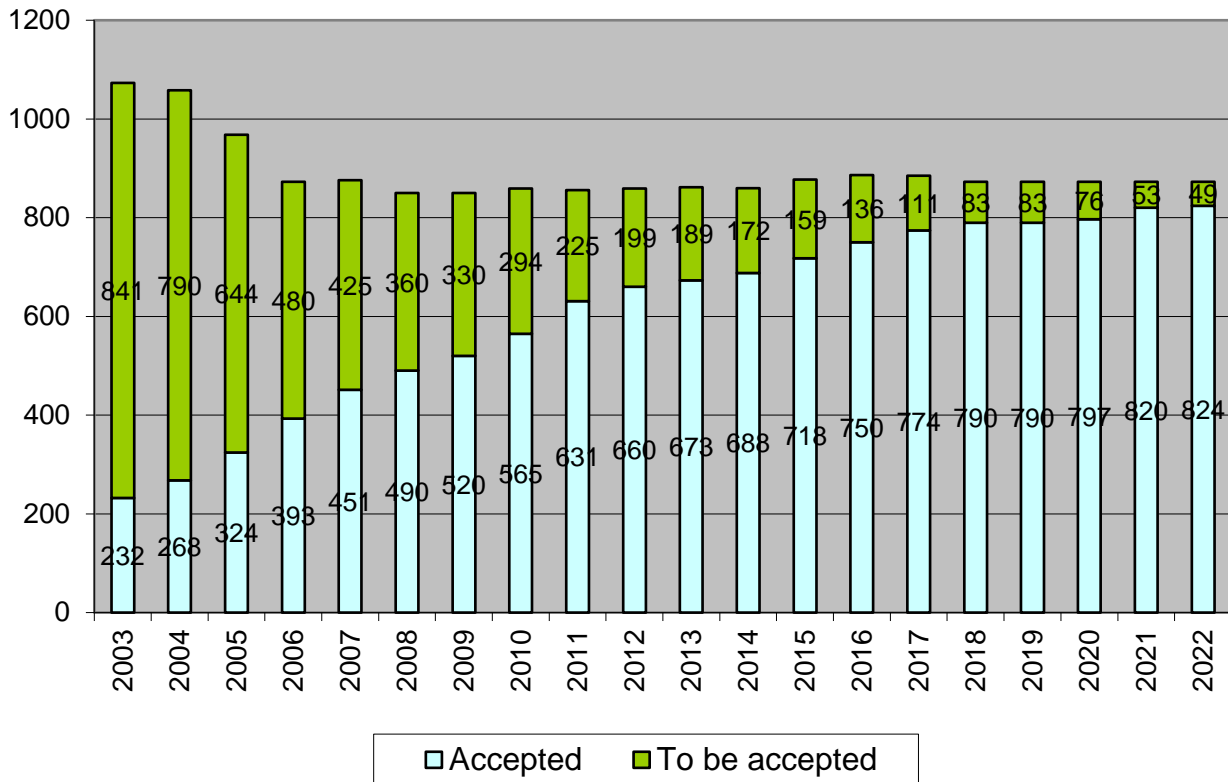
Figure 2 depicts the distribution of accepting entities.

Figure 2: Accepting Entities - Percentage of Open Space/Conservation OTDs Accepted thru 2022



Progress in the last nineteen years (that is, between 2003, when annual reports began, and 2022) is shown below in **Figure 3**¹.

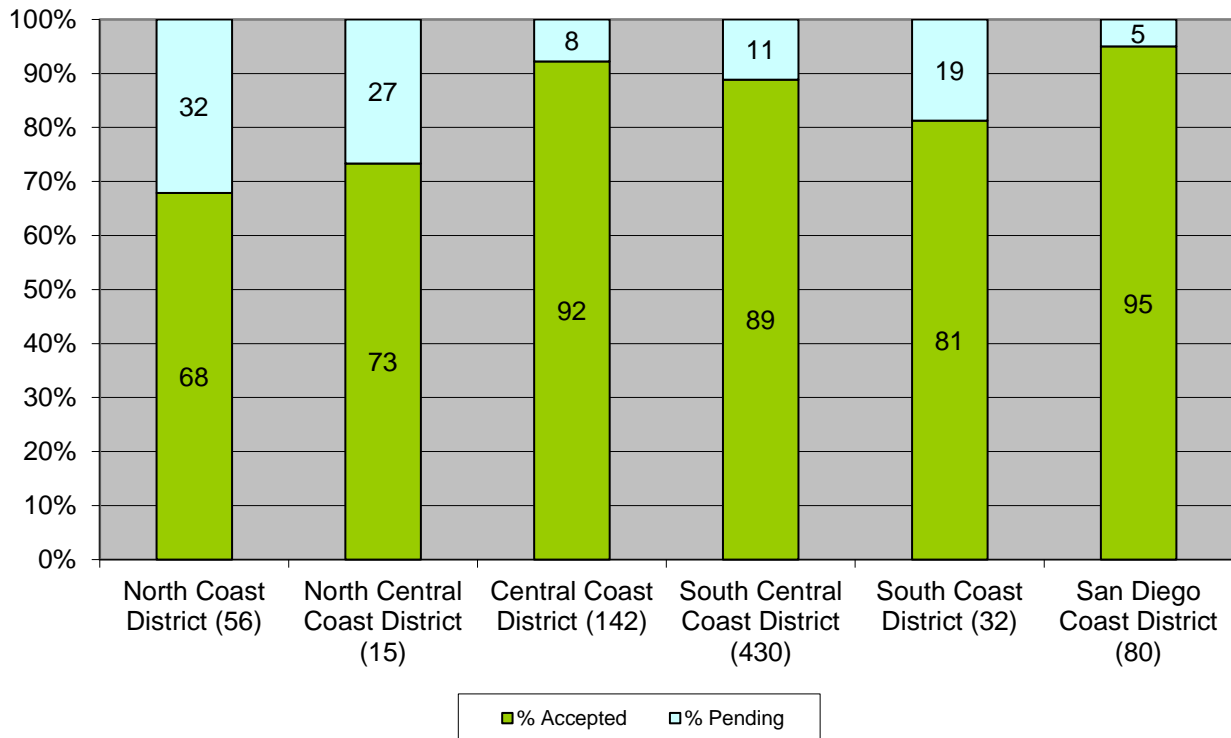
Figure 3: Status of OTDs Over Time



¹ 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.

As shown in **Figure 4**, below, the Commission has achieved acceptance rates of nearly 70% or more throughout all districts. The acceptance rate in the Central Coast, South Central Coast and San Diego Coast Districts are particularly of note, as they have near or over 90% acceptance rates. Ninety-two percent of OTDs in the Central Coast District have been accepted, primarily by the county agencies (Santa Cruz, Monterey, and San Luis Obispo Counties). Eighty-nine percent of OTDs in the South Central Coast District have been accepted, with 95% of OTDs accepted by MRCA, 3% accepted by Local governments, and 2% accepted by non-profits. Ninety-five percent of OTDs in the San Diego Coast District have been accepted; with OTDs, accepted pretty evenly by non-profits, state and local governments.

Figure 4: Percent of Open Space/Conservation OTDs Accepted and Pending by District, thru 2022



As **Figure 5**, below, indicates, a large number of OTDs are approaching their term date in 2023 and 2036. Staff has commenced work on the research and documentation for most of these upcoming OTDs and is working hard to get ahead of the 21-year expiration dates. At least nine of the OTDs expiring in 2023 have already been accepted in 2022. We will be reporting on all of the 2023 items in the 2023 annual report.

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

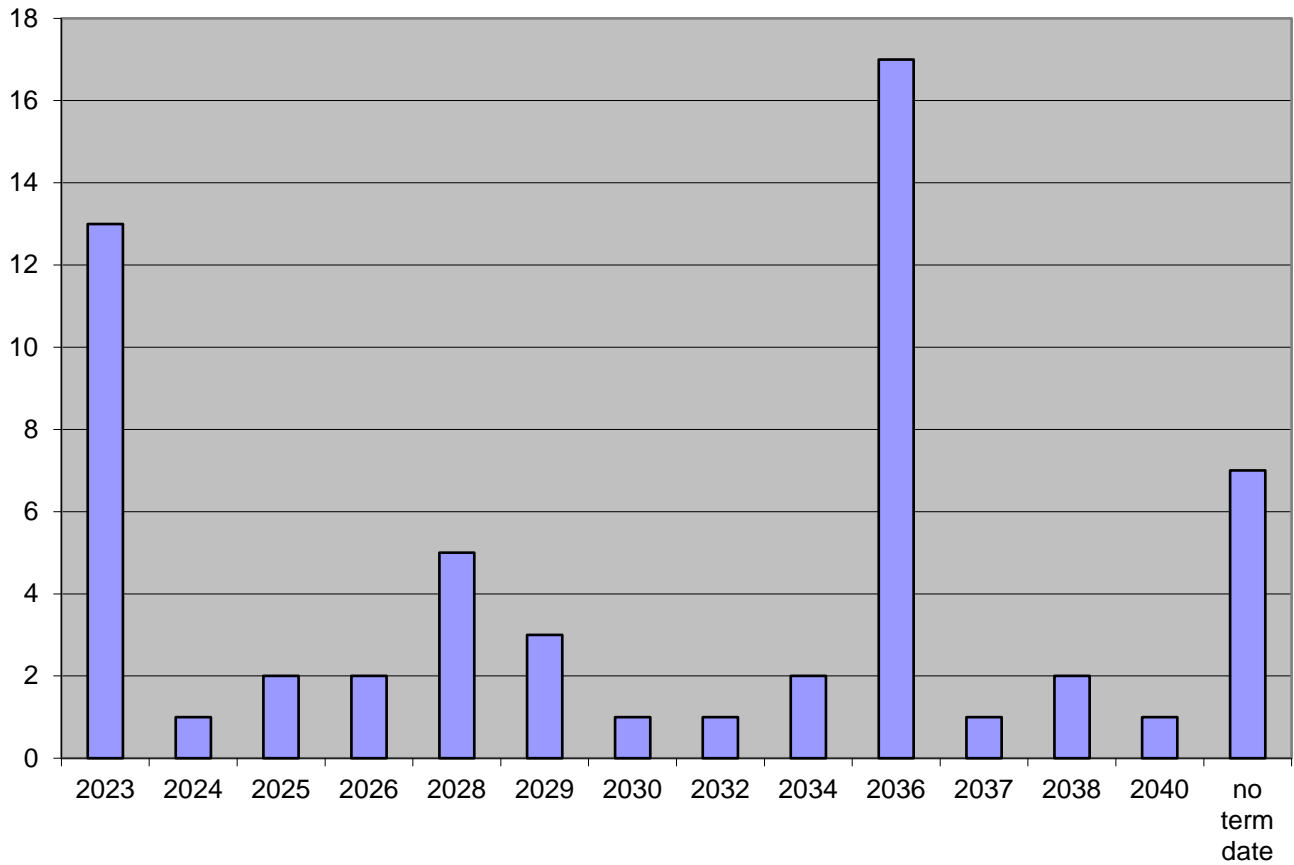
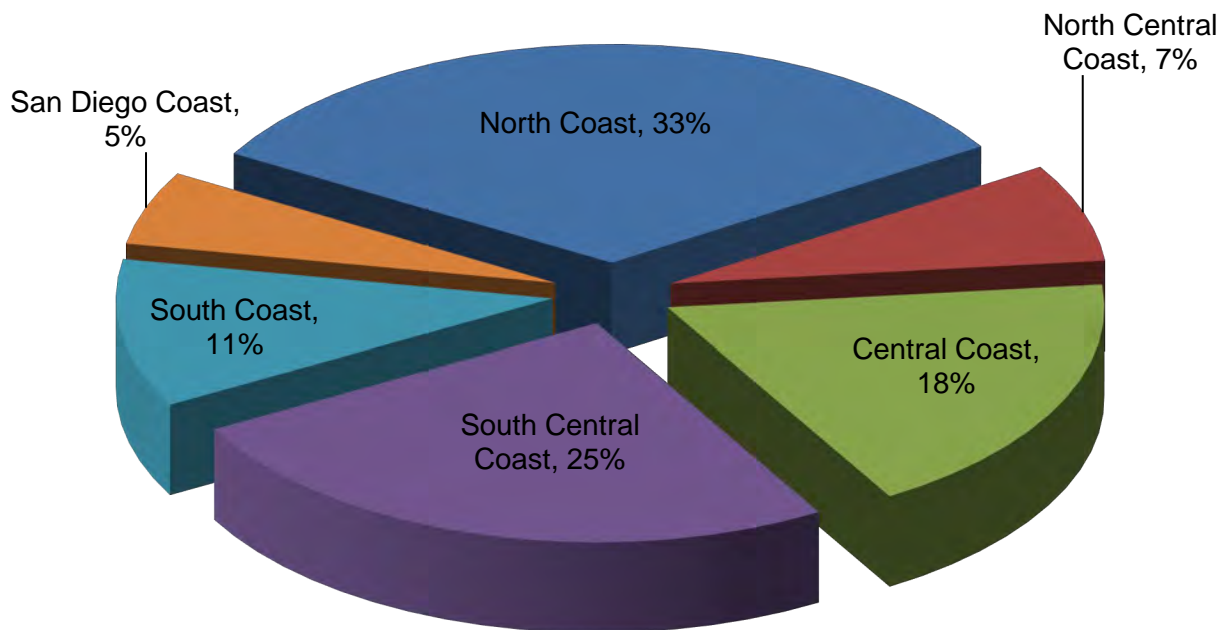


Figure 6, below, shows that the bulk of the outstanding OTDs are in the North Coast (33%), Central Coast (18%) and South Central Coast (25%) Districts. Commission staff will continue to work with Del Norte and Humboldt County staff to get OTDs in those two counties accepted and protected. Commission staff is already working on getting several of the OTDs located in the Central Coast accepted by the Watsonville Wetlands Watch, a non-profit that we have been working with for years. For OTDs 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 (OS/CE) Program aligns with several of the goals and objectives of the Commission's Strategic Plan. The 2021-2025 Strategic Plan provides a framework of goals, objectives and actions that support the objective of effective implementation of the Coastal Act to protect the coast for present and future generations.

Goal 2: Maximize Public Access and Recreation for All

Objectives of Goal 2 include enhancing public access through monitoring of required and recorded public access easements and expanding recreational opportunities through planning, permitting and enforcement. Expansion of the California Coastal Trail (CCT) System through planning and coordination with other state agency and non-profit partners is also a priority objective of the Strategic Plan. Statewide Planning staff collects and maintains information on open space easements and deed restricted areas within the Commission's Coastal Data Management System (CDMS), including locational information which can then be used to identify sensitive areas in the proposed alignment of the CCT (some open space/conservation easements allow public access, but many do not).

Goal 3: Protect and Enhance Coastal Resources

The Strategic Plan focuses on several areas for achieving the goal of protecting coastal resources, including the protection of wetlands and environmentally sensitive habitat areas, agricultural resources, marine resources, and coastal water quality

By securing permanent protection of lands dedicated to habitat preservation and agriculture, the Open Space/Conservation Easement Program advances achievement of this goal. Since the inception of the program, more than 11,800 acres of sensitive coastal resources have been permanently protected.

A specific objective of Goal 3 calls for the protection of coastal agriculture. OTDs, Grants of Easements, and Deed Restrictions are all effective mechanisms for protecting agricultural uses in the coastal zone. To date, more than 2,000 acres (17% of the total acreage of protected lands), extending through more than half of the coastal counties, have been permanently preserved for agricultural use through easements and deed restrictions required as mitigation for impacts from development.

Goal 4: Support Resilient Coastal Communities in the Face of Climate Change and Sea Level Rise

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 550 acres of wetlands and wetland buffers have been put into permanent protection through the use of easements and deed restrictions.

Goal 6: Continue to Enhance the LCP Planning Program and Refine Implementation of the Regulatory Program

The Commission's Local Coastal Plan (LCP) Program addresses the responsibilities of the Commission and local governments relative to land use and resource planning within the coastal zone of each local jurisdiction. At the core of the Commission's LCP Program is the unique planning partnership between the Commission and coastal jurisdictions to implement the state's Coastal Management Program and support locally-issued coastal development permitting, consistent with the Coastal Act.

Working with local governments to update LCPs where feasible is one of the objectives of Goal 6. 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 7: Expand and Enhance the Enforcement Program

Condition compliance continues to be a major workload issue for the Commission and Objective 7.1 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 often 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 8: Continue to Develop and Maintain Partnerships and Enhance Public Presence

The Commission's Strategic Plan Goal 8 includes actions to improve communications, collaboration, and coordination outside of the Commission, including participation in working groups, collaboration with academic institutions to obtain the best available scientific information, and collaboration with non-governmental agencies on coastal issues

The Open Space/Conservation Easement Program benefits from clear communication and strong partnerships with other state government, local government and local jurisdiction staff to conduct research and data collection on OTDs and to complete the OTD acceptance process. Many of these relationships are long lasting, and mutually beneficial, so consideration, respect and follow through is important in dealing with such relationships.

Goal 9: Enhance Information Management and E-Government

Goal 9 includes such actions as making information on past and present permit and planning items readily available to the public and digitizing Commission records. 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 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 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.