

CITY OF HUNTINGTON BEACH

MEETING DATE: January 3, 2005

DEPARTMENT ID NUMBER: PL05-01

Council/Agency Meeting Held: _____	City Clerk's Signature
Deferred/Continued to: _____	
<input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	
Council Meeting Date: January 3, 2005	Department ID Number: PL05-01

CITY OF HUNTINGTON BEACH
REQUEST FOR ACTION

SUBMITTED TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

SUBMITTED BY: PENNY CUI BRETH-GRAFT, City Administrator

PREPARED BY: HOWARD ZELEFSKY, Director of Planning
ROBERT BEARDSLEY, Director of Public works
DAVID BIGGS, Director of Economic Development
KAREN FOSTER, Risk Manager

SUBJECT: OFFERS TO DEDICATE PUBLIC ACCESS EASEMENTS

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CITY CLERK
CITY OF
HUNTINGTON BEACH, CA

Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)

Statement of Issue:

Transmitted for your consideration are four Offers to Dedicate (OTDs) public access easements submitted by the Coastal Conservancy (Attachment No. 1). The Conservancy is requesting the City of Huntington Beach accept the Offers to secure the land for public access in perpetuity. Since the OTDs are developed public accessways, accepting the OTDs would result in the City assuming liability, insurance and maintenance costs. Staff is seeking direction from the City Council as to whether the City should pursue accepting the four OTDs.

Funding Source: Not applicable.

Recommended Action:

Motion to:

"Direct staff not to pursue acceptance of the four Offers to Dedicate."

Alternative Action(s):

The City Council may make the following alternative motion(s):

PL05-01 OTDs

12/21/2004 3:42 PM

E-4

REQUEST FOR ACTION

MEETING DATE: January 3, 2005

DEPARTMENT ID NUMBER: PL05-01

1. "Direct staff to pursue acceptance of the four Offers to Dedicate."
2. "Continue discussion of the Offers to Dedicate and direct staff accordingly."

Analysis:

A. PROJECT PROPOSAL:

Applicant: City of Huntington Beach

Location: Various Locations in Huntington Harbour – See Table Below

This item represents a request from the Coastal Conservancy to have the City of Huntington Beach accept four outstanding Offers to Dedicate (OTDs) prior to their expiration dates. Staff is seeking direction from the City Council as to whether the City should pursue accepting the OTDs. A vicinity map is provided in Attachment No. 2; specific locations are listed below with detailed maps in Attachment Nos. 3 through 6.

No.	Location	Expiration Date
1	15922 Pacific Coast Highway (Simple Green Building)	February 2, 2005
2	Countess Drive (Portofino Development)	March 22, 2006
3	16212, 16222, 16242 & 16246 Pacific Coast Highway	September 26, 2006
4	4212 Warner Avenue (Huntington Harbour Bay Club)	December 20, 2009

B. BACKGROUND

Offers to Dedicate access easements are recorded legal documents that offer interests in land to a government agency or a nonprofit organization. The land interest usually consists of an easement or right-of-way to a public beach or along the shore. It is usually no more than 10 feet wide and can be a trail and/or a stairway. OTDs were created as part of the Coastal Commission permitting process as a way to mitigate the cumulative impacts of new coastal development on coastal resources. OTDs are offers of easements; however, the interest belongs to the property owner until an agency or nonprofit organization officially accepts the OTD. Once the OTD is accepted, the accepting agency obtains title to the easement, just as it would if it were granted directly by the property owner. If no agency accepts an OTD, the interest reverts back to the property owner.

REQUEST FOR ACTION

MEETING DATE: January 3, 2005

DEPARTMENT ID NUMBER: PL05-01

Public agencies as well as land trusts – nonprofit organizations that buy, hold, or manage land, or interests in land, for the purpose of conservation and recreation – can accept OTDs. In order to accept an OTD the following must be submitted to the Coastal Commission and the Coastal Conservancy for review and approval:

1. A resolution approved by the City Council agreeing to accept the OTD and designating an individual to sign legal agreements.
2. Evidence of insurance.
3. A management plan that addresses the following:
 - a. What improvements (if any) will the agency make to open the accessway for public use?
 - b. What maintenance tasks will be performed, how often, and by whom?
 - c. How will less routine situations be handled, such as emergencies, repair needs and complaints?
 - d. What are the expected costs of maintenance, and how will the agency cover them?

C. STAFF ANALYSIS AND RECOMMENDATION:

All four OTDs are developed accessways along the waterfront. A description of each OTD is provided below:

1. 15922 Pacific Coast Highway (Simple Green Building) – Expiration: February 2, 2005

As a condition of approval from the Coastal Commission for the 26,400 square foot marine and office use building, the applicant was required to dedicate a public access and passive recreational easement along the shoreline. The required easement is 10-foot wide and located along the entire existing bulkhead, along the northwest side of the building and across the parking lot where it connects to Pacific Coast Highway (Attachment No. 3). The OTD tends to serve only the needs of the patrons of the office building since it does not continue the entire length of the bulkhead. However, the OTD does connect to the public sidewalk on Pacific Coast Highway.

2. Countess Drive (Portofino Development) – Expiration: March 22, 2006

As a condition of approval from the Coastal Commission for the construction of 77 residential units, the applicant was required to construct and maintain a 10-foot wide walkway along the existing bulkhead extending from the park to the end of the bulkhead on the Bolsa Chica Channel at the beach to the northwest (Attachment No. 4). The beach to the northwest and the park area to the southeast currently have public access, which was a requirement by the City of Huntington Beach. A condition

3 E-4.3

REQUEST FOR ACTION

MEETING DATE: January 3, 2005

DEPARTMENT ID NUMBER: PL05-01

was also added by the Coastal Commission to allow public access to the walkway from one-half hour before sunrise to one-half hour after sunset. At the time of an inspection of the area, no one was occupying the walkway, nor could access be obtained to the area because the gates were locked. The property owners can obtain access to the walkway by means of gates at their rear property lines.

3. 16212, 16222, 16232, 16242 & 16246 Pacific Coast Highway – Expiration: September 26, 2006

As a condition of approval from the Coastal Commission for the construction of five single-family homes, the applicant was required to allow the public access to a five-foot wide strip of Piedmont Circle, a private street, extending from Pacific Coast Highway to the bulkhead. Additionally, the five-foot walkway over the bulkhead extending from the northwest property line to the southeast property line is included in the OTD (Attachment No. 5). The walkway provides access to the private boat docks for the five property owners. The neighboring property to the northwest currently has an existing walkway over the bulkhead; however, there is no connection between the two properties and they are separated by a block wall. Future connection of the two properties could be accomplished provided the neighboring property approves the connection.

4. 4212 Warner Avenue (Huntington Harbour Bay Club) – Expiration: December 20, 2009

As a condition of approval from the Coastal Commission for the construction of 42 condominium units, 20 boat slips and restaurant upgrades, the applicant was required to construct a ten foot walkway along the bulkhead, Lots C, D & E, and dedicate the entire beach, Lot F, for recreational use. Additionally, ten parking spaces are allocated to accommodate the public visiting the beach area (Attachment No. 6). This OTD is the largest of the five. It provides access to the ten-foot easement along Edgewater Lane and straddles the bulkhead parallel to Warner Avenue ending at the beach area adjacent to the Bay Club.

A specific plan amendment has been approved by the City to allow for the demolition of the Bay Club and tennis courts and construct 11 single-family homes. The California Coastal Commission is currently reviewing the specific plan amendment and the City anticipates Coastal Commission action in 2005. Upon approval of the specific plan amendment, a development proposal will follow for the demolition of the Bay Club and the tennis courts and the construction of 11 single-family homes. The specific plan amendment is conditioned not to encroach onto the public beach area or any other areas of the OTD.

The Departments of Planning, Public Works, Economic Development and Risk Management have reviewed the four OTDs and concur that costs associated with the OTDs will be for day-to-day maintenance, staff time, repairs, insurance and liability. The City would be

REQUEST FOR ACTION

MEETING DATE: January 3, 2005

DEPARTMENT ID NUMBER: PL05-01

assuming liability under the Tort Claims Act and would not be afforded any immunity under the Recreational Use Statute or recreational trail immunity.

With respect to the first and third OTD, the benefits to the general public are minimal based on the extent and location of the OTDs. The OTDs at the Portofino Development and the Huntington Harbour Bay Club have the potential to provide more public benefit due to their adjoining developments and the associated likelihood of greater use. However, in analyzing the OTDs the Risk Management Division of Administrative Services and the Real Estate Division believe that maintenance and liability obligations to the City outweigh the benefits of public access for these OTDs given other existing access opportunities within the Huntington Harbour area.

Staff is requesting direction from the City Council as to whether the City should pursue accepting the Offers to Dedicate. If the City Council decides not to pursue any of the OTDs, no action is necessary. In this case, it is anticipated that the Coastal Conservancy would accept the OTDs due to their interest in maintaining these areas for public access. If the City Council directs staff to pursue some or all of the OTDs, then each OTD will require a resolution approved by the City Council at a future meeting.

Environmental Status:

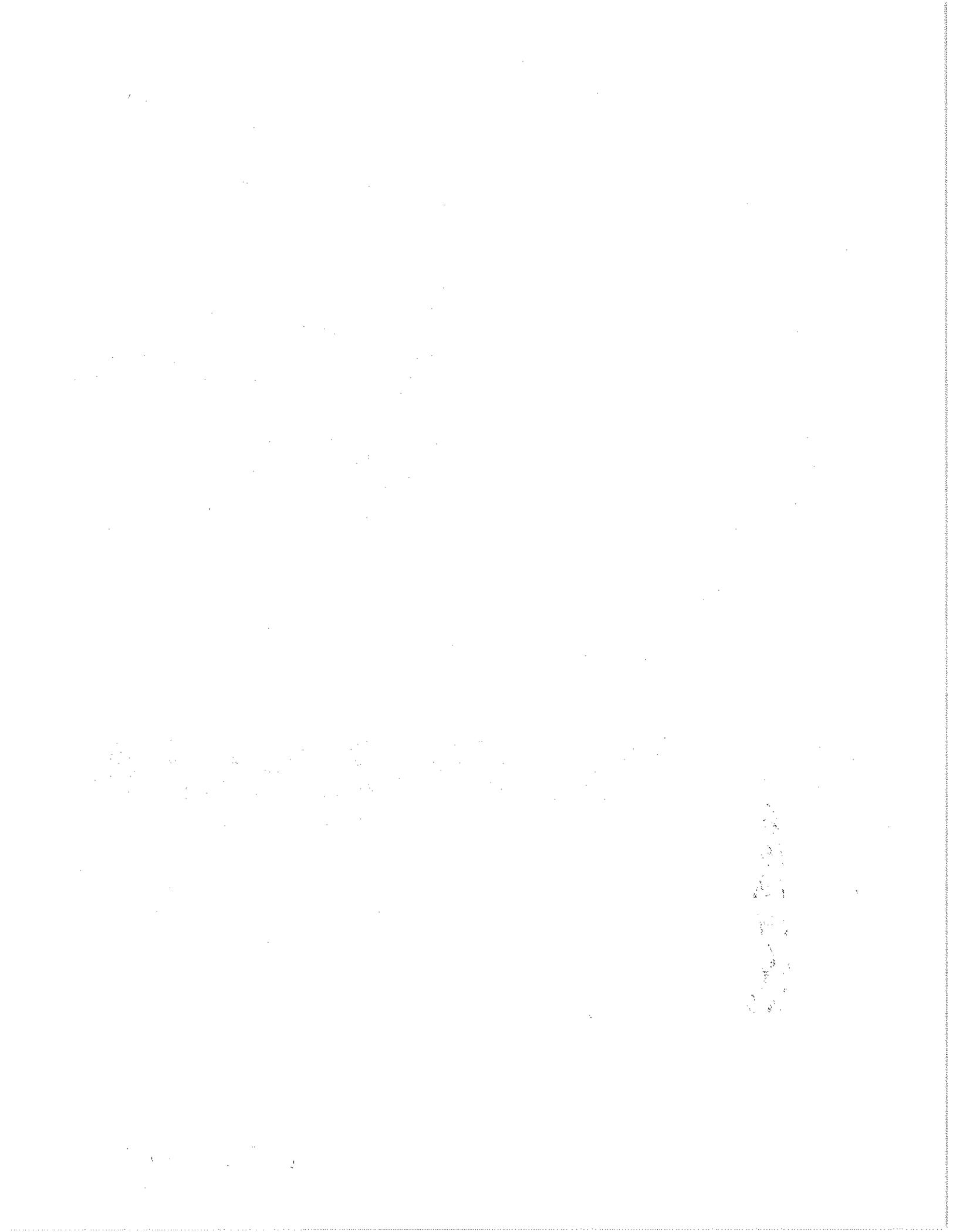
The proposed project is categorically exempt pursuant to Section 15061 (b) (3) of the California Environmental Quality Act because it does not have the potential to cause a significant effect on the environment.

Attachment(s):

City Clerk's Page Number	No.	Description
6	1.	Offer to Dedicate letter from Coastal Conservancy
10	2.	Offers to Dedicate Vicinity Map
12	3.	Offer to Dedicate Map for 15922 PCH (Simple Green Building)
14	4.	Offer to Dedicate Map for Countess Drive (Portofino Development)
16	5.	Offer to Dedicate Map for 16212, 16222, 16242 & 16246 PCH
18	6.	Offer to Dedicate Map for 4212 Warner (Huntington Harbour Bay Club)
20	7.	Interdepartmental memo's

RCA Author: Jason Kelley/Mary Beth Broeren

E-4.5



ATTACHMENT 1

E-4.6



CARRIE A. BLUTH
COASTAL ACCESS CONSULTANT

December 11, 2001

Mary Beth Broeren
City of Huntington Beach, Planning Department
2000 Main St.
Huntington Beach, CA. 92648

Subject: Offers-to-Dedicate Coastal Public Access Easements

Dear Ms. Broeren,

Thank you for your time last week discussing the Offers-to-Dedicate Public Access Easements (OTDs) in the City. Enclosed, please find a summary list of the outstanding OTDs (5 total), which currently exist in Huntington Beach.

The State Coastal Conservancy appreciates the City's review and consideration of these OTDs. Indeed, it is only with the help of local government that we can fulfill our mutual goals related to maximizing and securing opportunities for public access to, and along, the coast. Therefore, the Coastal Conservancy is eager to support the City's efforts towards accepting and managing these important easements for the benefit of the public

I have included a booklet prepared by the Coastal Commission and the Coastal Conservancy on accepting and managing OTD access easements. It is however, geared towards a land trust or other non-governmental organization, but may be of interest generally. If you have any questions about the acceptance process as it applies to a public agency, please let me know, and I will get you the answers you need, as soon as possible.

Also included is a staff report and resolution from a local government entity accepting multiple coastal OTDs that were obtained through the Commission's regulatory process, in connection with the Coastal Act. These documents may be helpful to review, as one example of public agency action with respect to this type of an offer.

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PLANNING DEPARTMENT

December 12, 2001

I would be happy to provide you with all of the OTD files, as well as any other information you may need, upon your request. Thank you very much for your time and attention to this matter.

Sincerely,

Carrie A. Bluth

Carrie A. Bluth
Coastal Access Consultant
State Coastal Conservancy

Enclosures: [3]

E-4.8

Huntington Beach/City

Orange County

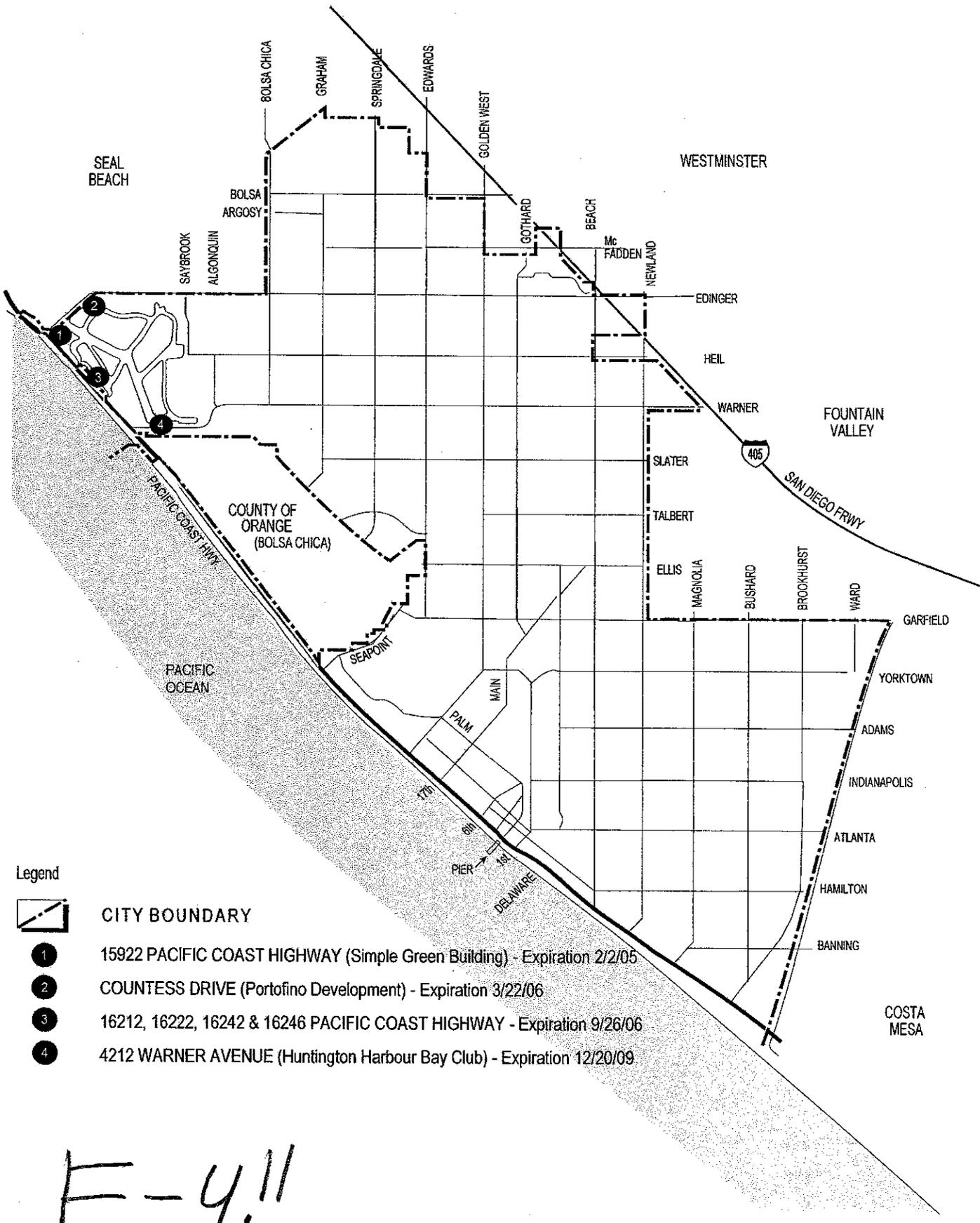
<i>Permit No.</i>	<i>Applicant</i>	<i>Location</i>	<i>APNS</i>	<i>History</i>
Offer to Dedicate (Lateral)				
5-83-797	Crocker National Bank/Huntington Beach	Countess Drive Huntington Beach Orange		OTD Recorded 3/22/1985 OTD Expiration Date: 3/22/2006 OTD Accepted: Managed By: Open: Yes
P-79-5948	Noble, Joseph & Barbara	16280 & 16288 Pacific Coast Highway Huntington Beach Orange		OTD Recorded 9/26/1985 OTD Expiration Date: 9/26/2006 OTD Accepted: Managed By: Open: No
5-83-758	Miller/Nahas	15922 Pacific Coast Highway Huntington Beach Orange	0178-0067-0001	OTD Recorded 2/2/1984 OTD Expiration Date: 2/2/2005 OTD Accepted: Managed By: Open: No
5-88-967	Huntington Harbor Bay Club	4121 Warner Avenue Huntington Beach Orange	0178-0291-0026	OTD Recorded 12/20/1988 OTD Expiration Date: 12/20/2009 OTD Accepted: Managed By: Open:
Offer to Dedicate (Other)				
P-79-5340	Mansion Properties	Palm Avenue Huntington Beach Orange		OTD Recorded 5/13/1982 OTD Expiration Date: 5/13/2003 OTD Accepted: Managed By: Open: No



E-4.9

ATTACHMENT 2

E-4.10



Legend



CITY BOUNDARY

- 1
- 2
- 3
- 4

- 15922 PACIFIC COAST HIGHWAY (Simple Green Building) - Expiration 2/2/05
- COUNTESS DRIVE (Portofino Development) - Expiration 3/22/06
- 16212, 16222, 16242 & 16246 PACIFIC COAST HIGHWAY - Expiration 9/26/06
- 4212 WARNER AVENUE (Huntington Harbour Bay Club) - Expiration 12/20/09

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OFFER TO DEDICATE
LOCATION MAP

CITY OF HUNTINGTON BEACH GENERAL PLAN



ATTACHMENT 3

E-4.12



OFFER TO DEDICATE

15922 Pacific Coast Highway (Simple Green Building)

 Public Access Easement

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ATTACHMENT 4

E-4.14



OFFER TO DEDICATE

Countess Drive (Portofino Development)

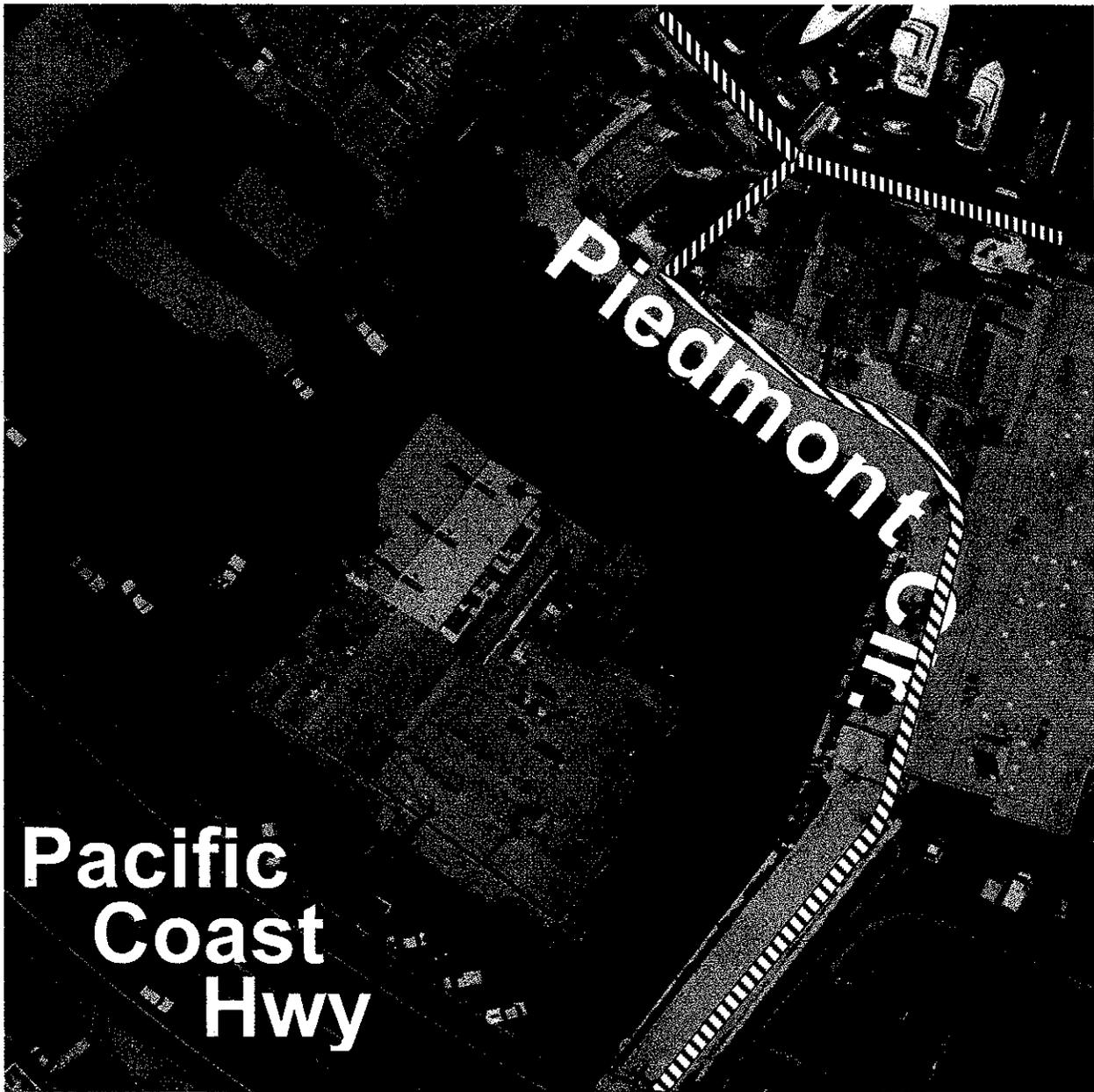


Public Access Easement

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E-4.16

ATTACHMENT 5



OFFER TO DEDICATE

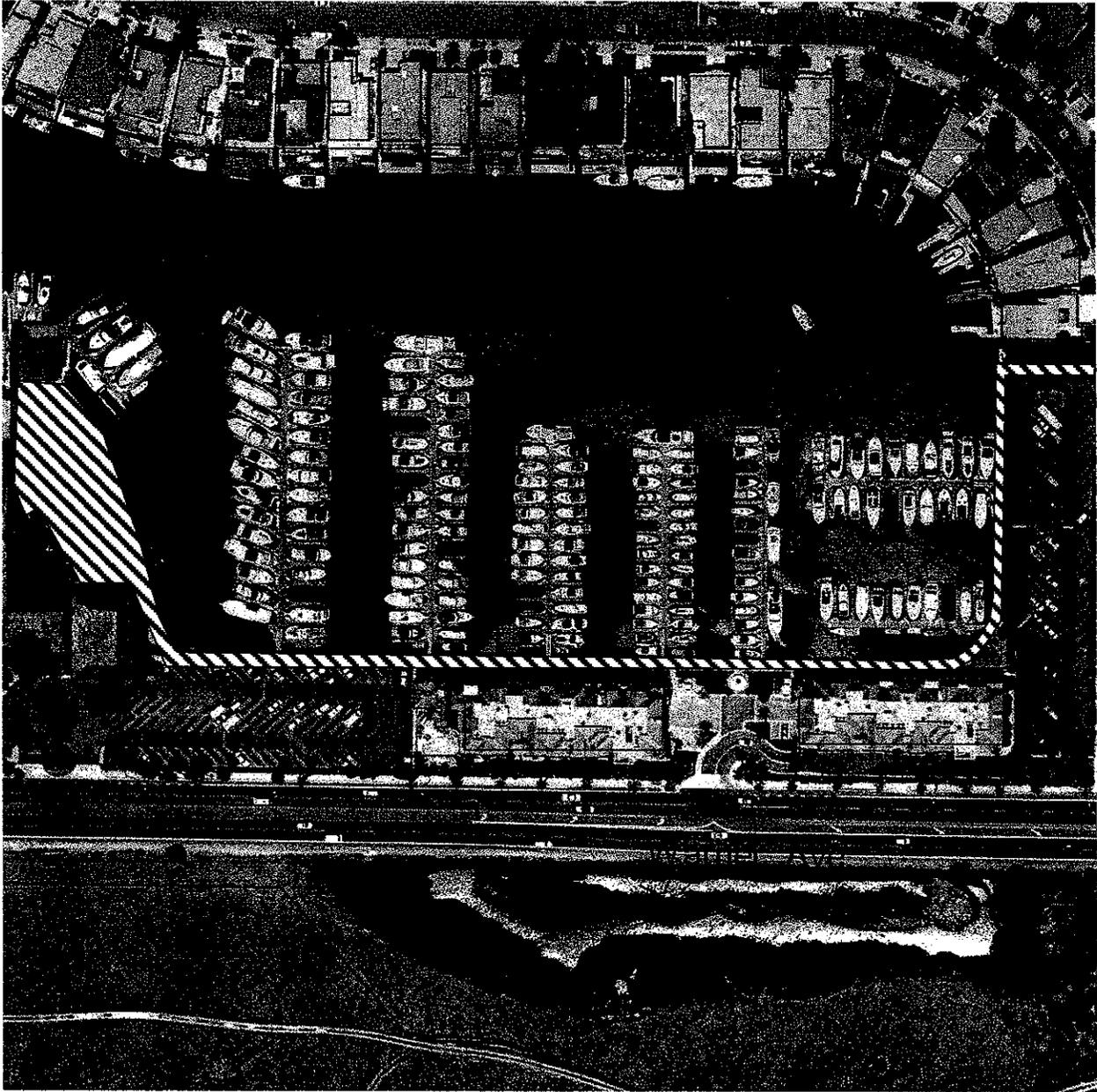
16212, 16222, 16242 & 16246 Pacific Coast Highway

 Public Access Easement

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ATTACHMENT 6

E-4.18



OFFER TO DEDICATE

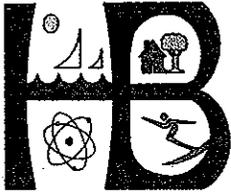
4212 Warner (Huntington Harbour Bay Club)

 Public Access Easement

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E-4.20

ATTACHMENT 7



CITY OF HUNTINGTON BEACH

Inter Office Communication

Planning Department

TO: Robert Beardsley, Director of Public Works
Clay Martin, Director of Administrative Services
Karen Foster, Risk Manager

FROM: Howard Zelefsky, Planning Director

DATE: November 10, 2004

SUBJECT: OFFERS-TO-DEDICATE PUBLIC ACCESS EASEMENTS (OTDs)

Offers to Dedicate access easements are recorded legal documents that offer interests in land to a government agency or a nonprofit organization. The land interest usually consists of an easement or right-of-way to a public beach or along the shore. It is usually no more than 10 feet wide, and can be a trail and/or a stairway. OTDs were created as part of the Coastal Commission permitting process as a way to mitigate the cumulative impacts of new coastal development on coastal resources. OTDs are only offers of easements; however, the interest belongs to the property owner until an agency officially accepts the OTD. Once an OTD is accepted, the accepting entity obtains title to the easement just as it would if it were granted directly by the property owner.

Currently there are four outstanding OTDs located in the City of Huntington Beach, of which the earliest will expire February 2, 2005. Attached you will find an overview of OTDs along with a description of the OTDs located in the City of Huntington Beach.

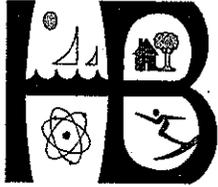
Earlier last year, Planning, Public Works and Real Estate Services evaluated the OTDs and determined that staff's recommendation was not to accept any of the OTDs (See previous comments attached.) Because none of the OTDs were near expiration a decision was made to defer bringing the item to City Council until a later date. Due to the impending expiration of one of the OTDs, we now anticipate scheduling this item for the January 3, 2005 City Council meeting to seek direction as to whether the City should accept the OTDs.

Given the issues involved with the OTDs, we will prepare a joint RCA for signatures by Planning, Public Works and Administrative Services. Please review the attached documents and provide comments by Wednesday, December 8, 2004 as to whether the City should pursue accepting the OTDs and any other concerns/comments you may have. If you have any questions or comments, contact Jason Kelley at extension 1553.

Attachment

c: Penny Culbreth-Graft, City Administrator
William P. Workman, Assistant City Administrator
Scott Hess, Planning Manager
Mary Beth Broeren, Principal Planner

E-4.21



CITY OF HUNTINGTON BEACH
InterOffice Communication
Economic Development Department

TO: Howard Zelefsky, Director of Planning

FROM: David C. Biggs, Director of Economic Development 

DATE: December 9, 2004

SUBJECT: **Comments on Offers to Dedicate Public Access Easements**

Real Estate Services agrees with Planning staff's recommendation to not accept the four outstanding Offers to Dedicate Public Access Easements OTDs. Given the City's significant liability exposure, as described in Karen Foster's December 8, 2004 email, in addition to other costs associated with these acquisitions (e.g. security, maintenance, and insurance), we do not believe that the very limited potential public benefit warrants pursuing these properties.

cc: Penny Culbreth-Graft, City Administrator
William P. Workman, Assistant City Administrator
Robert Beardsley, Director of Public Works
Clay Martin, Director of Administrative Services
Karen Foster, Risk Manager
Scott Hess, Planning Manager
Mary Beth Broeren, Principal Planner

File / KASM

E-4.22

Kelley, Jason

From: Broeren, Mary Beth
Sent: Wednesday, December 08, 2004 4:32 PM
To: Kelley, Jason
Subject: FW: Offers to Dedicate Public Access Easements

-----Original Message-----

From: Zelefsky, Howard
Sent: Wednesday, December 08, 2004 3:33 PM
To: Broeren, Mary Beth
Subject: FW: Offers to Dedicate Public Access Easements

-----Original Message-----

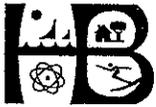
From: Foster, Karen
Sent: Wednesday, December 08, 2004 1:20 PM
To: Zelefsky, Howard; Beardsley, Robert; Martin, Clay
Subject: Offers to Dedicate Public Access Easements

I am concurrence with staff's recommendation not to accept any of the OTDs. The maintenance, insurance costs and liability exposure to the City far outweigh the potential benefit to the public by the acceptance of the OTD. The City would be assuming liability under the Tort Claims Act and we would not be afforded any immunity under the Recreational Use Statute or recreational trail immunity. Currently, the City's has a liability self insured retention of \$1 million.

Karen Foster

E - 4.23

12/21/2004



CITY OF HUNTINGTON BEACH
INTERDEPARTMENTAL COMMUNICATION

TO: Jason Kelley, Assistant Planner
FROM: Jo Claudio, Associate Civil Engineer
DATE: March 12, 2003
SUBJECT: OFFERS-TO-DEDICATE ACCESS EASEMENTS (OTD's)

**THE FOLLOWING COMMENTS ARE MADE IN REGARD TO THE FIVE OTD's
LOCATED IN THE CITY OF HUNTINGTON BEACH:**

A. Seacliff on the Greens Development – Expiration Date: 5-13-03

The Public Works Department concurs with the Planning Department's belief that it is unnecessary to accept the Coastal Commission's required OTD. The fact that current ownership of the property rests with the County of Orange, and that both the City and County are mutually working to develop the property as part of the Harriett M. Weider Regional Park provides for even better long-term public use and benefit than the OTD represents.

B. 15922 PCH – Simple Green Building – Expiration Date: 2-2-05

The maintenance and liability obligations related to this OTD appear to outweigh the benefit of public access at this location, since there appears little likelihood that the access will be extended/connected to become part of a continuous route. This OTD should be reconsidered in late 2004 to see if conditions or circumstances have changed.

C. Portofino Development – Expiration Date: 3-22-06

The physical and psychological impression created by the gates (who is going to be responsible for unlocking ½ hour before sunrise and locking ½ hour after sunset) is inconsistent with an open, public accessway. The maintenance, operation and liability obligations related to this OTD appear to outweigh the benefit of public access along the bulkhead. Furthermore, there appears to be no easy way to make a physical connection between the beach area and the walkway at the top of the bulkhead level at its southeasterly terminus. The City's determination concerning public access at the time of initial approval of the Portofino Cove development still appears to be appropriate for this location. Public Works does not recommend accepting this OTD, but this recommendation should be reconsidered in late 2005 to see if conditions or circumstances have changed.

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D. 16212, 16222, 16242 & 16246 PCH – Expiration Date: 9-26-06

Similar to the two OTD's listed as "B" and "C" above, the benefit to the general public appears to be outweighed by the maintenance and liability obligations. In addition, Piedmont (the entry drive) has a controlled vehicular gate and a locked pedestrian gate, making it extremely difficult (and unlikely) that free, open access can be achieved. This OTD should be "flagged" for reconsideration in three years from now (Spring 2006).

E. 4212 Warner Avenue (Huntington Harbour Bay Club) – Expiration Date 12-20-09

An amendment to the Huntington Harbour Bay Club Specific Plan is currently in process (along with Local Coastal Plan Amendment 01-01, Zoning Text Amendment 01-5, and Environmental Assessment 01-6) for the property related to this OTD. Public Works recommends letting that process take its course before making any decisions; particularly, since this OTD doesn't expire until December 20, 2009, which is more than 6-1/2 years in the future.

JC:jm

E-4.25