This Calendar Item No. 50 was approved as Minute Item No. 50 by the California State Lands Commission by a vote of 3 to 0 at its 2/2/04 meeting.

Minute Item
50

CALIFORNIA STATE LANDS COMMISSION AND
CALIFORNIA COASTAL COMMISSION (PARTIES)

Calendar Item 50 Commission listened to staff presentation pertaining to the consideration of offers to dedicate access easements in Malibu. The item was approved by unanimous vote.

CALENDAR ITEM
50

A 41

S 23

02/02/04
AD 480 W 24665
S. Nelson
J. Lam
V. Massey
C. Fossum

CONSIDER ACCEPTANCE OF OFFER OF DEDICATION OF LATERAL ACCESS EASEMENT

PARTY WHICH HAS RECORDED OFFER OF DEDICATION:
Jonathan Blair Frank, Trustee of the Jonathan Blair Frank Trust UAD 12/28/1998

PARTY TO ACCEPT EASEMENT:
California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, California 95825-8202

INTERESTED PARTY:
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105-2219

BACKGROUND:
Since the adoption of the Constitution of California of 1879, access to California's public trust waterways has been a mandated responsibility of state government. The vast majority of the hundreds of title settlement agreements the State Lands Commission has been involved in since its inception in 1938 have included provision of public access to the waterways involved.

In the 1960's, an organization with the acronym COAAST (Citizens Organized to Acquire Access to State Tidelands) began a "Save the Coast" campaign that eventually resulted in the adoption of Proposition 20 by the State's voters in 1972. Since the Legislature's passage of the Coastal Act in 1976, over 1,200 offers to dedicate (OTDs) public access easements, both vertical or lateral (to or along) the coast, have been made involving California's 1,100-mile coastline.

000232 CALENDAR PAGE
000256 MINUTE PAGE

These OTDs were formally made and recorded by property owners as a condition of approval of permits to develop within the Coastal Zone. Hundreds of these OTDs remain unaccepted. These offers have a 21 year life from the date of recording, and will expire if not formally accepted by a public agency within that time period.

The OTDs were required to ensure protection of existing public rights of use as well as to mitigate and compensate for the impacts to public access caused by development. In many cases, the location of the boundary between the privately owned uplands and the publicly owned tidelands is unsettled. Furthermore, the public may have acquired rights of use through the doctrine of implied dedication and have rights of recreational use in any area subject to the public easement in navigable waters. Therefore, these OTDs may describe and include areas already having public rights of use or public ownership. Acceptance by the Commission of the dedications does not change the nature of the existing rights, but removes any question of the public's right of use of the area described.

The State Lands Commission has been requested by the Coastal Commission to review and, where appropriate, accept offers of dedication of lateral access easements involving sandy beach areas lying adjacent to tidelands managed by the State Lands Commission. Staff of the Commission is involved in an ongoing process with the Coastal Commission to analyze the OTDs to determine which offers the State Lands Commission should accept.

The State Lands Commission has already authorized the acceptance of 188 OTDs along the coast of California between April 2, 1991, and October 20, 2003, the majority of which are located in the Malibu area of Los Angeles County.

The Commission's liability for holding these lateral parcels is limited by Section 831.2 of the Government Code which provides that a public entity is not liable for injury caused by a natural condition of any unimproved public property. There should be no maintenance and little management required for these easements because of the lack of improvements on the parcels and because the easements simply provide the public with the right to access and use the beach.

The OTDs involve sandy beach areas lying between the private structure built on the upper beach and the tidelands which are already state owned and under the Commission's jurisdiction. Therefore, these areas are not only appurtenant to the Commission's existing area of ownership and jurisdiction, but are for all

000233
CALENDAR PAGE
000257
MINUTE PAGE

practical public use purposes integral to it. Staff has reviewed the offer and the property on the attached Exhibit B and recommends approval.

ADDITIONAL BACKGROUND:

At the Commission's October 20, 2003 meeting, the Commission deferred hearing agenda Items #19 (Frank Trust) and #28 (Nathanson) following a request by representative of the two property owners that the two items be postponed because he not had a chance to review information related to the items.

Commission staff sent copies of all offers to dedicate public access easements on Broad (aka Trancas) Beach in Malibu (including those involving the October 20, 2003, agenda items C18 through C30) to this representative of the Frank Trust and the Nathansons a month before the October Commission meeting. Copies of all previous acceptances by the Commission of offers to dedicate public access easements on Broad Beach were also sent. Commission staff contacted the representative by phone following the October 20th Commission meeting and encouraged him to provide staff with any information or concerns regarding the two items rescheduled to the following meeting. The representative indicated he believed that information could be provided before the end of October. Additional phone messages have not been returned. On November 4, 2003, a letter was sent formally requesting information in writing on any concerns regarding the two items. As of January 20, 2004, staff has not received any information or comments from the representative of the Frank Trust and the Nathansons.

On December 5, 2003, a letter was sent to the Commission staff and Coastal Commission Staff from a neighbor of the Nathansons and Frank Trust property on Broad Beach, requesting that the State Lands Commission not accept the access offers recorded by the Frank Trust and Nathansons in 2002. A copy of that letter is attached as Exhibit C.

On January 7, 2004, Coastal Commission staff responded to the December 5, 2003, letter setting forth its position on the legally binding effect of the recorded offers. A copy of that letter is attached as Exhibit D.

Staff has reviewed the subject correspondence and concluded that the two subject OTD's are compatible, complementary and cumulatively important to the easements previously accepted by the Commission involving 42 lots covering nearly 40% of Broad Beach, as well as the other 154 easements accepted on other beaches along the California coastline. Staff has reviewed the information

submitted by interested parties and the offer related to the property shown on Exhibit B and recommends Commission acceptance of the offer.

OTHER PERTINENT INFORMATION:

Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, Section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code Section 21065 and Title 14, California Code of Regulations, Sections 15060 (c)(3) and 15378.

EXHIBITS:

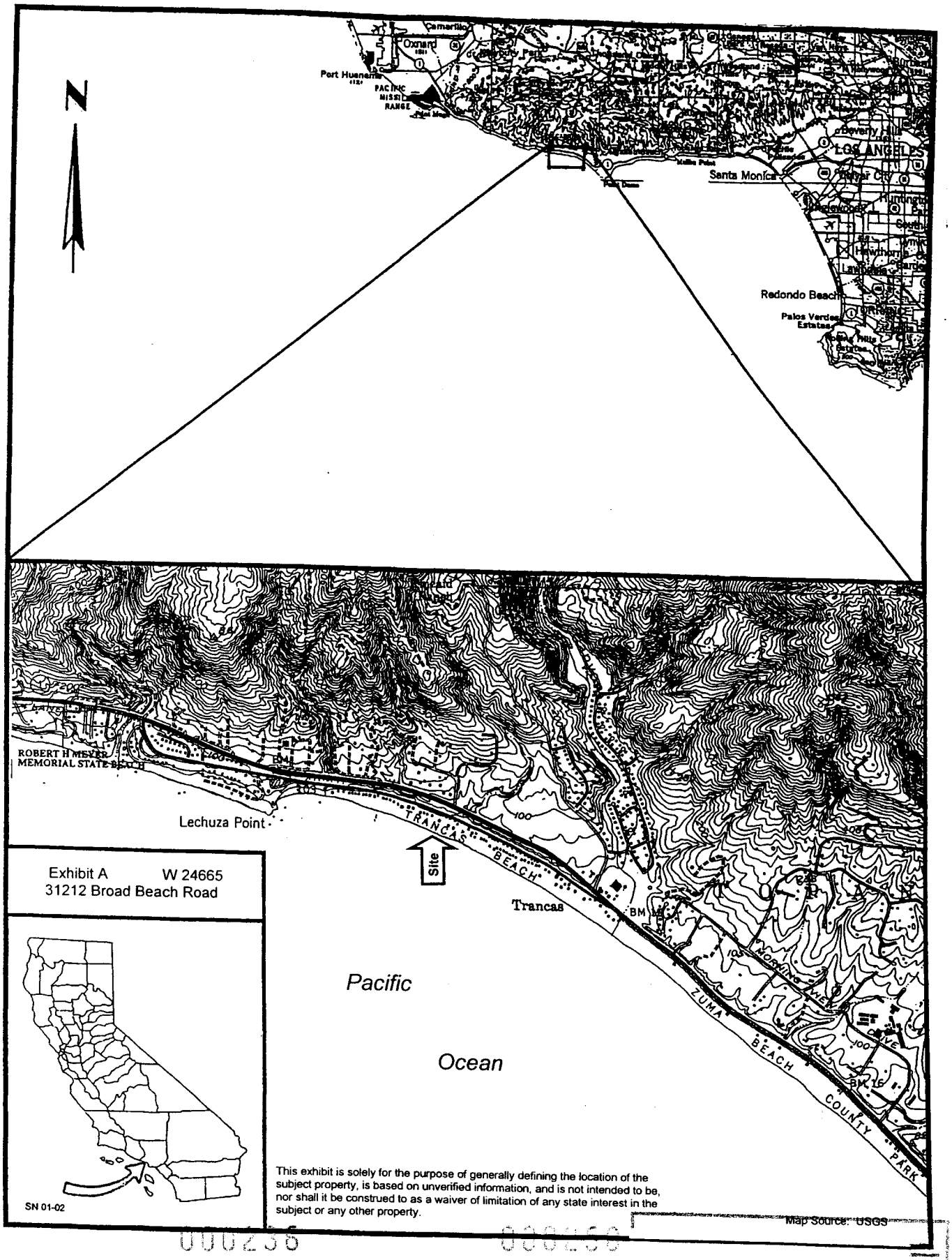
A. Location Map
B. Property Information
C. Letter dated December 5, 2003
D. Letter dated January 7, 2004

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS NOT SUBJECT TO THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060 (c)(3) BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14 CALIFORNIA CODE OF REGULATIONS, SECTION 15378.

2. ACCEPT THE OFFER TO DEDICATE A PUBLIC ACCESS AND RECREATIONAL USE EASEMENT, RECORDED JULY 18, 2002, IN THE OFFICIAL RECORDS OF LOS ANGELES COUNTY AS INSTRUMENT 02 1667503, AS LISTED ON THE ATTACHED EXHIBIT B.

EXHIBIT A



000238 000238

CALENDAR PAGE MINUTE PAGE

EXHIBIT B

ADDRESS	OWNER AT TIME OF OFFER	CURRENT OWNER	ASSESSOR PARCEL #	OTD EXPIRATION DATE	OTD RECORDING DATA
31212 Broad Beach Road	Jonathan Blair Frank	Jonathan Frank	4470-015-014 Los Angeles County	July 18, 2023	Instrument No. 02-1667503

CALENDAR PAGE 000237
MINUTE PAGE 000291

EXHIBIT C

Direct Fax: 310-907-2118

December 5, 2003

BY FACSIMILE AND U.S. MAIL

Mr. Paul Thayer
Executive Officer
California State Lands Commission
100 Howe Avenue
Suite 100 - South
Sacramento, CA 95825-8202

Mr. Peter M. Douglas
Executive Officer
California Coastal Commission
45 Fremont Street
San Francisco, CA 94105

Dear Messrs. Thayer and Douglas:

The homeowners on Broad Beach Road very much appreciate the continuance of hearing on the offers to dedicate by Messrs. Nathanson and Frank. The purpose of this letter is to explain the rationale for the requested continuance and the reason why the State Lands Commission should take no action on these offers. It is our desire to see the issues discussed in this letter resolved either consensually or, if necessary, through litigation.

In the early 1980's, lateral access was required on virtually every beachfront application to build a single-family residence. Generally speaking what was required was a 25-foot wide lateral access across the width of the property. The 25-feet were measured landward from the mean high tide line.

Then the Nollan case was decided. Nollan held that the action of the California Coastal Commission in requiring such access was extortionate and therefore an unconstitutional taking of private property for public purpose without proper compensation. From that point forward, in order to meet the requirements of Nollan, the Coastal Commission had to make a specific finding of negative adverse impacts on access from the new proposed development in order to justify and require an Offer to Dedicate lateral access.

Because of the configuration of most of the lots and residences on Broad Beach Road, that finding was considered impossible to achieve and therefore no lateral access was required for some years after Nollan.

THE WATER GARDEN
[illegible] STREET · FOURTH FLOOR · NORTH TOWER · SANTA MONICA, CA 90404-4060
TELEPHONE: 310-907-1000 www.agsk.com FACSIMILE: 310-907-2000

CALENDAR PAGE 000238 MINUTE PAGE 000262

For example, in 1989, I obtained a coastal development permit to demolish a one-story single-family residence of about 2,000 square feet and to build a new 5,000-6,000 square foot home. There was no lateral access requirement imposed. The staff report includes an exhaustive discussion of lateral access, including Nollan, and specifically finds no adverse impact from our development.

Sometime later, the Coastal Commission was determined to obtain lateral access without making the requisite finding as required by Nollan. The end result was to suggest that a site specific study is necessary in order to determine what adverse effects would result from the proposed project and then make it clear to the homeowner or its representative that such a study is not necessary if lateral access is "proposed" by the homeowner itself. The transparency is quite obvious. The homeowner wants to develop and get it over with. The obstacles to coastal development are so expensive in any event that this additional unknown and non-specific obstacle of a "site specific study" promises only more delay and expense and is easily avoided by the homeowner coming forward with its "proposal" to grant lateral access. To add insult to injury, the lateral access which is "required" as part of the "proposal" is far more onerous than that which was found to be unconstitutional in Nollan. Specifically, on Broad Beach the lateral access which is exacted now can run, depending on lot configuration, as wide as 100 feet and, depending upon the future erosion of dunes between the sandy beach and the residence, the lateral access can actually extend some 250-300 feet in width, or over one-half of the entire lot. Carried to that logical extreme, the Coastal Commission is exacting "proposals" which in effect result in the creation not just of lateral access but of a public beach from the mean high tide line right up to the residence with no compensation to the homeowner.

Illustrative of the fact pattern which concerns us greatly is the experience of Greg Nathanson and Blair Frank in obtaining their coastal permits in 2002. The following is a brief description of their experiences.

A. Greg Nathanson.

The Nathanson permit was granted on March 6, 2002, and issued on July 8, 2002. Condition 6 is titled "Offer to Dedicate Lateral Public Access." There is no discussion of Nollan. The condition requires "an easement for lateral public access and passive recreational use along the shoreline." The easement "shall be located along the entire width of the property, from the ambulatory mean high tide line landward to the ambulatory seawardmost limit of dune vegetation on the subject site as generally illustrated on the site plan." The condition goes on to provide that if at any time in the future "there is no dune vegetation seaward of the approved deck/patio line, such easement shall be located along the entire width of the property from the ambulatory mean high tide line landward to the seawardmost limit of the approved deck/patio line."

The Nathanson lot is 428 feet deep. The depth of the required lateral easement up to the existing dune line is 97-1/2 feet. When extended through the dunes to the deck of the house that lateral easement becomes one of 272-1/2 feet in depth, over half of the lot itself!

The staff report is factually inaccurate and sugarcoats a rationale for the public access condition, as follows:

> "In past permit actions, the Commission has required that all new development on the beach, including new single family residences, provide for lateral public access along the beach in order to minimize any adverse effects to public access. In order to conclude with absolute certainty what adverse effects would result from the proposed project in relation to shoreline processes, a historical shoreline analysis based on site-specific studies would be necessary. Although this level of analysis has not been submitted by the applicant, the Commission notes that because the applicant has proposed, as part of the project, an offer to dedicate a lateral public access easement along the southern portion of the lot, as measured from the mean high tide line landward to the ambulatory seawardmost limited dune vegetation, it has not been necessary for Commission staff to engage in an extensive analysis as to whether imposition of an offer to dedicate would be required here absent the applicant's proposal." (Emphasis supplied)

B. Blair Frank

The Deed Restriction has attached to it the staff report for Frank. It shows that the permit application was filed on April 3, 2002.

The same type of lateral access as procured from Nathanson was also procured from Frank.

The factually misleading language which appears in the Nathanson staff report also appears in the Frank staff report to sugarcoat the exaction of lateral access.

If the Coastal Commission or the State Lands Commission desires to discuss these issues further and to explore a consensual resolution of all access issues impacting Broad Beach Road, I would be pleased to facilitate such a discussion.

I would appreciate it if you would provide a copy of this letter to each commissioner.

Thank you for your consideration

Respectfully,

Marshall B. Grossman

MBG/sb
(dictated but not read)

cc: Commissioners, State Land Commission
Commissioners, California Coastal Commission

THE WATER GARDENS
1620 26TH STREET · FOURTH FLOOR · NORTH TOWER · SANTA MONICA, CA 90404-4060
TELEPHONE: 310-907-1000 www.agsk.com FACSIMILE: 310-907-2000

STATE OF CALIFORNIA—THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, GOVERNOR

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

EXHIBIT D

January 7, 2003

Paul Thayer, Executive Officer
California State Lands Commission
100 Howe Avenue
Suite 100 – South
Sacramento, CA 95825-8202

Re: Offers to Dedicate Lateral Public Access on Broad Beach, Malibu (Nathanson and Frank Properties)

Dear Mr. Thayer:

I am writing in response to the letter dated December 5, 2003 to you and Peter Douglas, Executive Director, Coastal Commission from Marshall B. Grossman. Mr. Grossman's letter urges the State Lands Commission not to accept the Offers to Dedicate Lateral Public Access easements along the beach that Greg Nathanson and Blair Frank recorded in 2002. At the State Lands Commission meeting in October 2003, John Bowman appeared on behalf of Nathanson and Frank and requested a postponement of action on acceptance of these offers. As explained below, the Offers to Dedicate are legally valid and cannot be challenged at this time. Therefore, acceptance of these Offers by the State Lands Commission is appropriate.

Mr. Nathanson owns a beachfront parcel at 30916 Broad Beach Road, Malibu. In 2001, he applied for a coastal development permit to construct a new residence, garage and pool. In a letter from his agent dated September 22, 2001, Mr. Nathanson included, as part of his project description, an offer to dedicate a lateral public access easement along the beach on his property. The Commission approved his project in Coastal Development Permit No. 4-01-148 on March 6, 2002. As required by one of the permit conditions, Mr. Nathanson recorded the irrevocable offer to dedicate an easement for lateral public access along the beach on May 10, 2002. Mr. Nathanson complied with all conditions and the Commission issued the permit on July 8, 2002. The Commission issued a permit amendment on July 26, 2002. Construction of the residence that was approved in the permit, as amended, is underway.

Mr. Frank owns a beachfront parcel at 31212 Broad Beach Road, Malibu. In early 2002, Mr. Frank applied for a coastal development permit for a new residence, garage, guest house and pool. The project description in his permit application includes an offer to dedicate a public lateral access easement along the beach. The Commission approved his project in Coastal Development Permit No. 4-02-27 on June 10, 2002. As required by one of the conditions of approval, Mr. Frank recorded the irrevocable offer to dedicate an easement for

lateral public access along the beach on July 18, 2002. After compliance with all conditions, the Commission issued the permit on August 20, 2002. Construction of the approved residence is now well underway.

There is no basis for a challenge to the validity of these offers to dedicate at this late date. Any attempt to do so by Nathanson and Frank should be rejected because both property owners included the offer of a lateral public access easement as part of their proposed project. They cannot now decide to carry out their projects in a manner that does not conform to the project descriptions that they themselves provided and that the Coastal Commission relied on.

Furthermore, even if they had not included the offers to dedicate as part of their project descriptions, it is too late for objections to the permit conditions requiring dedication of an easement for lateral public access. A person who objects to a Commission action, including a permit condition, may challenge it in Superior Court within 60 days of the final action. Public Resources Code section 30801 states: "Any aggrieved person shall have a right to judicial review of any decision or action of the commission by filing a petition for a writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure, within 60 days after the decision or action has become final." In this case, neither Nathanson or Frank, nor any other person, challenged the Commission's decision within the allotted time period. Nathanson and Frank accepted the permits, recorded the irrevocable Offers to Dedicate, and proceeded with construction. Despite their failure to follow the Coastal Act's explicit requirements for challenging a decision, Nathanson and Frank and/or Mr. Grossman apparently now wish to effectively invalidate the Offers to Dedicate, by asserting that they are improper and therefore the State Lands Commission should not accept them. However, the Coastal Act's 60-day limitations period bars such an action.

In several lawsuits, courts have rejected attempts by property owners to revoke or otherwise invalidate an offer to dedicate an easement that was required by a coastal development permit, when the Coastal Commission's decision was not challenged within the 60-day limitations period. In *Daniel v. County of Santa Barbara* (9th Cir. 2002) 288 F.3d 375, 383, the United States Court of Appeals for the Ninth Circuit rejected a constitutional challenge to Santa Barbara County's acceptance of an offer to dedicate a public access easement that was required by a Coastal Commission permit condition. The court noted: "[u]nder established federal law, a taking occurs when an option to take an easement is granted, not when the option is exercised." Thus, a challenge to the validity of a requirement to offer to dedicate an easement must be brought when the permitting agency imposes the requirement. The court found that Daniel, a subsequent property owner, could not challenge the County's acceptance of an offer of easement that, years earlier, was required by a permit condition, was not challenged within 60 days, and was recorded by a prior property owner.

The California Courts of Appeal have also rejected belated challenges to Coastal Commission permit conditions requiring dedication of an easement in three cases: *California Coastal Commission v. Superior Court (Ham)* (1989) 210 Cal.App.3d 1488, 1496-97; *Rossco Holdings, Inc. v. State of California* (1989) 212 Cal.App.3d 642, 659-661, *cert. denied* (1990) 494 U.S. 1080; and *Cole v. County of Santa Barbara* (Appeal No. B147339) (unpublished

decision dated December 17, 2001: 2001 WL 1613856 (Cal.App.2 Dist.). In *Ham* and *Rossco*, when a party sued the State for damages for inverse condemnation, claiming that a Coastal Commission permit condition requiring an offer to dedicate an easement resulted in a taking of property, the court held that the suits were barred because the property owner did not challenge the permit condition in a mandate action filed within the Coastal Act's 60-day limitation period.

More recently, the Superior Court for the County of Los Angeles rejected a challenge to acceptance of Offers to Dedicate that were recorded in 1983, 1991, and 2000, stating: "Geffen is barred, by the time limits set forth in section 30801 and by his failure to exhaust administrative remedies, from making any contention that he could have made to the Commission at the time that it demanded the offers of dedication from him." (See enclosed Minutes Entered, December 6, 2002, in *City of Malibu v. Access for All* (Case No. BC277034)).

Similarly, Nathanson and Frank, as well as other interested parties, had the opportunity to seek judicial review of the Coastal Commission decision to require the offers to dedicate within 60 days of Commission approval of the permits. Since they failed to do so, it is now too late to raise challenges to the validity of the offers.

In addition to the Coastal Act's limitations period, the doctrine of waiver also bars these challenges to the Offers to Dedicate. In *Rossco Holdings, Inc. v. State of California* (1989) 212 Cal.App.3d 642, 654, *cert. denied* (1990) 494 U.S. 1080, the court held that where the landowners complied with the Coastal Commission permit condition and proceeded to develop the property as authorized in the permit, the doctrine of waiver prevents them from bringing a later action seeking damages for inverse condemnation due to the permit condition. "A landowner cannot challenge a condition imposed upon the granting of a permit after acquiescence in the condition whether by specifically agreeing to the condition or failing to challenge its validity, and accepting the benefits afforded by the permit." (citations omitted). Nathanson and Frank accepted the permits, recorded the offers to dedicate, and are constructing the approved residences. They did not object to the lateral public access easement condition when the Commission acted on their application, or file suit within 60 days to challenge the Commission's action. In fact, they each proposed the offer to dedicate a lateral access easement as part of their project. Accordingly, Nathanson and Frank are barred from objecting to the offers to dedicate because they waived the right to challenge the validity of the permit conditions and failed to exhaust administrative remedies.

Finally, we would like to point out that Mr. Grossman's letter relies on the *Nollan* case to support his claim that the Offers to Dedicate are invalid. (*Nollan v. California Coastal Commission* (1987) 483 U.S. 825). The U.S. Supreme Court decided the *Nollan* case in 1987, five years *before* Nathanson and Frank obtained their coastal development permits and recorded the Offers to Dedicate. Thus, the property owners and any other aggrieved person had the opportunity to challenge the Commission's actions if they believed that they conflicted with the *Nollan* decision, but they failed to do so.

For the reasons stated above, the Offers to Dedicate that Nathanson and Frank recorded are valid and irrevocable. Numerous courts addressing this issue have held that parties who did not file a timely challenge to the Commission's permit condition requiring an offer to dedicate may not subsequently revoke the offer or pursue claims seeking to invalidate the offer. Accordingly, it is appropriate for the State Lands Commission to accept the Offers at this time.

Sincerely,

Sandra Goldberg

SANDRA GOLDBERG
Staff Counsel

Enclosure
cc: Peter Douglas
Linda Locklin
Curtis Fossum

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 12/06/02

HONORABLE DAVID P. YAFFE JUDGE | DEPT. 86

HONORABLE JUDGE PRO TEM | R. HART DEPUTY CLERK; M. LOMELI, COURTROOM ASST.

NONE Deputy Sheriff | D. CASE, CSR #8739 Reporter | ELECTRONIC RECORDING MONITOR

9:30 am BC277034

CITY OF MALIBU

VS

ACCESS FOR ALL
R/F 9/9/02 DENIED 10/4/02

Plaintiff Counsel: JENKINS & HOGIN
BY: GREGG KOVACEVICH (X)
HATCH & PARENT

Defendant Counsel: BY: STANLEY RODEN (X)
ATTORNEY GENERAL
BY: DANIEL OLIVAS (X)

JEFFREY BERNSTEIN (X)

NATURE OF PROCEEDINGS:

DEFENDANT, CALIFORNIA COASTAL COMMISSION, ET AL'S NOTICE OF DEMURRER TO FIRST AMENDED PETITITION AND COMPLAINT:

Demurrer is argued.

Sustain demurrer to first amended petition and complaint.

Petitioner Geffen owns four parcels of real property in the Coastal Zone. On three separate occasions, in 1983, 1991, and 2000, he agreed to dedicate portions of his property to the Coastal Commission in exchange for permits from the Commission to improve portions of the property that he retained.

The California Coastal Act provides that, "any aggrieved person shall have the right to judicial review of any decision or action of the Commission by filing a petition for a writ of mandate in accordance with section 1094.5 of the Code of Civil Procedure, within 60 days after the decision or action has become final." GOVERNMENT CODE, Section 30801.

Geffen has admittedly failed to pursue the remedy provided by section 30801, and he tacitly admits that the time within which he may do so has elasped.

MINUTES ENTERED
12/06/02
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

ATE: 12/06/02

ONORABLE DAVID P. YAFFE JUDGE

ONORABLE JUDGE PRO TEM

NONE Deputy Sheriff

DEPT. 86

R. HART DEPUTY CLERK

M. LOMELI, COURTROOM ASST. ELECTRONIC RECORDING MONITOR

D. CASE, CSR #8739 Reporter

9:30 am BC277034

CITY OF MALIBU

VS

ACCESS FOR ALL

R/F 9/9/02 DENIED 10/4/02

Plaintiff Counsel: JENKINS & HOGIN BY: GREGG KOVACEVICH (X)

Defendant Counsel: HATCH & PARENT BY: STANLEY RODEN (X)

ATTORNEY GENERAL BY: DANIEL OLIVAS (X)

JEFFREY BERNSTEIN (X)

NATURE OF PROCEEDINGS:

The Coastal Commission made no attempt to use the property that Geffen dedicated to provide coastal access to the public until late in 2001 when it authorized defendant Access For All, a non-profit corporation, to manage the dedicated easements for the purpose of providing public access.

Geffen commenced the instant proceeding on July 3, 2002, to block the development and use of the dedicated portions of his property for the purpose of allowing public access through his property to the coast.

The Coastal Commission demurs to the first amended petition and complaint on the ground that it is time-barred by section 30801. Geffen responds by contending that he is attacking only the validity of actions taken by the defendants AFTER the offers of dedication were made.

Geffen is barred, by the time limits set forth in section 30801 and by his failure to exhaust administrative remedies, from making any contention that he could have made to the Commission at the time that it demanded the offers of dedication from him. He cannot use this proceeding to belatedly make arguments to the court that he could have made to the Commission, and he cannot use subsequent actions by the Commission resulting from his agreement to dedicate his property to accomplish indirectly what he could not do directly. BRAUDE v. CITY OF LOS ANGELES, 226 Ca.App.

MINUTES ENTERED
12/06/02
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE 12/06/02

HONORABLE DAVID P. YAFFE JUDGE | DEPT. 86

HONORABLE JUDGE PRO TEM | R. HART DEPUTY CLERK; M. LOMELI, COURTROOM ASST. ELECTRONIC RECORDING MONITOR

NONE Deputy Sheriff | D. CASE, CSR #8739 Reporter

9:30 am BC277034

CITY OF MALIBU

VS

ACCESS FOR ALL
R/F 9/9/02 DENIED 10/4/02

Plaintiff Counsel: JENKINS & HOGIN BY: GREGG KOVACEVICH (X)

Defendant Counsel: HATCH & PARENT BY: STANLEY RODEN (X)
ATTORNEY GENERAL BY: DANIEL OLIVAS (X)
JEFFREY BERNSTEIN (X)

NATURE OF PROCEEDINGS:

3d 83, 92(1990).

The first amended petition consumes forty-four pages and pleads seventeen so-called "causes of action," most of which incorporate by reference all of the allegations contained in the preceeding causes of action. By so doing, the pleader mixes contentions that are barred with contentions that may not be barred, and he effectively precludes the Commission from separately demurring to each so-called cause of action.

Allegations that the state did not have a coordinated statewide program for administering the dedicated property, that the offers to dedicate violated the California Environmental Quality Act, that the makeup of the California Coastal Commission violates the separation of powers, and that the Commission failed to justify the need for the 1983 offer to dedicate, are all contentions that could and should have been made to the Coastal Commission at the time that it exacted the offers to dedicate. Those allegations are time barred by section 30801. The itemization of such allegations by the court is not intended to be exhaustive, but merely illustrative.

Because those allegations are sprinkled throughout the first amended petition and complaint, and are incorporated in most or all of the causes of action subsequent to the one in which they first appear, the demurrer to the entire first amended petition must

MINUTES ENTERED
12/06/02
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

ATE: 12/06/02

ONORABLE DAVID P. YAFFE JUDGE

ONORABLE JUDGE PRO TEM

NONE Deputy Sheriff

DEPT. 86

R. HART DEPUTY CLERK

M. LOMELI, COURTROOM ASST. ELECTRONIC RECORDING MONITOR

D. CASE, CSR #8739 Reporter

9:30 am BC277034

CITY OF MALIBU

VS

ACCESS FOR ALL

R/F 9/9/02 DENIED 10/4/02

Plaintiff Counsel: JENKINS & HOGIN
BY: GREGG KOVACEVICH (X)
HATCH & PARENT

Defendant Counsel: BY: STANLEY RODEN (X)
ATTORNEY GENERAL
BY: DANIEL OLIVAS (X)

JEFFREY BERNSTEIN (X)

NATURE OF PROCEEDINGS:

be sustained.

Petitioners may have leave to amend the first amended petition, on or before January 21, 2003, solely for the purpose of eliminating all allegations that are barred by this ruling. The only allegations contained in the first amended petition that are not so barred, that the court can identify, are allegations that the Commission has abused its discretion by arbitrarily enforcing some of the offers to dedicate that it has obtained and by failing or refusing to enforce others.

Notice waived.

MINUTES ENTERED
12/06/02
COUNTY CLERK