

# **Appendix 9**

## **Public Access Easement**



# Memorandum

TO: Permit Applicant, Coastal Development Permit No. \_\_\_\_\_

SUBJECT: Requirements for Compliance With Condition for Public Access Easement, Condition No. \_\_\_\_\_

Your project has been approved with a condition requiring dedication of a public access easement. This memo outlines the steps necessary to comply with the condition. Please read and follow the instructions carefully.

The steps are as follows:

1. Complete the attached Easement form and Subordination Agreement form, if applicable. Read the attached memo on subordination agreements in order to determine if you must submit a Subordination Agreement along with Easement.
2. Sign the Easement Form and Subordination Agreement, if applicable, and have the documents notarized.
3. Send the documents to the Planning Department. The Planning Department staff and County Counsel staff will review the documents to assure proper form and content. If not acceptable, the documents will be returned to you for correction.
4. Once staff determines the documents to be of acceptable form and content, the documents must be accepted by the Monterey County Board of Supervisors. This will typically be done as a routine "consent" item at a regularly-scheduled meeting of the Board. The Planning Department will arrange for the documents to be accepted by the Board and will notify you of the date and time the documents will be on the Board agenda.
5. After the documents have been accepted by the Board, and signed by the Board Chair, they will be returned to you by the Planning Department.
6. Record the documents at the Monterey County Recorder's Office at the County Courthouse. If a Subordination Agreement must be recorded in addition to the Easement, you must record it as a separate document.

7. After you have recorded the documents, submit to the Planning Department an updated preliminary title report showing the recorded documents in the chain of title and free of prior liens or encumbrances which could affect the interest being conveyed.
8. Planning Department and County Counsel staffs will review the title report to assure that the documents have been recorded and that the easement is free of all prior liens and encumbrances except tax liens. Once assured, the Planning Department shall consider the condition fulfilled.

**PLEASE NOTE**

The above instructions must be followed exactly. Failure to complete each item properly will necessitate return of the document for re-execution and delay issuance of your permits.

All signatures must be complete and properly notarized. Corporations, partnerships, government entities, and trusts require different forms of notary acknowledgement from the "personal" form provided here. The signature line must indicate the name of the corporation, etc., and the notary public must use the appropriate form of acknowledgement. If the notary public uses the wrong form, the document will be returned for a new notary acknowledgement.

INSTRUCTIONS FOR COMPLETING EASEMENT DEDICATION

Page 1

Introduction: Date and Owner. Enter the date that the document is being executed and the legal owner of the property. The legal owner is the record owner exactly as shown in the title report. In some cases, the owner of the property may not be the same person as the permit applicant because a lessee or optionee may apply for a permit. If a lessee or optionee has obtained approval of a project subject to an access condition which must be executed by an owner, the owner must execute the offer to dedicate. If the property is in escrow, escrow instructions are to be submitted with the executed offer.

Item I. Exhibit A. Attach a copy of the full legal description of the property, marked as "Exhibit A". The legal description can be obtained from a grant deed or title report for the property. A parcel number will not be accepted as a legal description.

Page 2

Item V. Coastal Development Permit Number. This number may be found in the County resolution approving your permit and listing the permit conditions.

Item V. Date of Permit Approval, Name of Decision-Making Body & Resolution Number. This information may be found in the County resolution approving your permit.

Item V. Exhibit V. Attach a copy of the resolution approving your permit, marked as "Exhibit B".

Item V. Permit Condition. Enter the complete text of Condition No. \_\_\_\_\_, as adopted by the County. The condition text is found in the resolution approving your permit and listing the permit conditions. (If more than one condition affecting access has been adopted, a separate document must be executed for each separate access condition.)

Page 3

Item IX. Coastal Development Permit Number. This number may be found in the County resolution approving your permit and listing the permit conditions.

Item IX. Easement Purposes. Enter the approved uses of the easement as stated in the permit condition. For example, the permit condition may have stated that the easement is for "public access and passive recreational use along the shoreline". If so, you would enter this here.

Item IX. Subject Property. Enter a narrative description of the location and width of the easement as set forth in the permit condition. The description of the easement should be as specific as possible.

Item IX. Exhibit C. Attach an official surveyor's map, parcel map, or plot plan, accompanied by a metes and bounds description, as prepared by a licensed surveyor. The map, marked as "Exhibit C", must show the exact location of the easement on the subject property, as surveyed by the surveyor.

Pages 5 & 6 Enter the date and execution by all owners. The owners must sign exactly as their names appear on the grant deed or title. Notary acknowledgement must be in the proper form for the form of ownership.

Recording Requested by and  
When Recorded, Mail To:  
Monterey County Planning Dept.  
P. O. Box 1208  
Salinas, CA 93906

Permit No. \_\_\_\_\_  
Applicant Name: \_\_\_\_\_  
Project Planner: \_\_\_\_\_

PUBLIC ACCESS EASEMENT DEED

THIS PUBLIC ACCESS EASEMENT DEED AND DECLARATION OF RESTRICTIONS (hereinafter "offer") is made this \_\_\_\_ day of \_\_\_\_\_, 19\_\_, by \_\_\_\_\_, (hereinafter referred to as "Grantor").

I. WHEREAS, Grantor is the legal owner of a fee interest of certain real properties located in the County of Monterey, State of California, and described in the attached Exhibit A (hereinafter referred to as the "Property"); and

II. WHEREAS, all of the Property is located within the coastal zone as defined in Section 30103 of the California Public Resources Code (which code is hereinafter referred to as the "Public Resources Code"); and

III. WHEREAS, the California Coastal Act of 1976, (hereinafter referred to as the "Act") creates the California Coastal Commission, (hereinafter referred to as the "Commission") and requires that any coastal development permit approved by the Commission or local government as defined in Public Resources Code Section 30109 must be consistent with the policies of the Act set forth in Chapter 3 of Division 20 of the Public Resources Code; and

IV. WHEREAS, Pursuant to the Act, Grantor applied to Monterey County for a permit to undertake development as defined in the Act within the coastal zone of Monterey County (hereinafter the

"Permit"); and

V. WHEREAS, a coastal development permit (Permit No. \_\_\_\_\_) was granted on \_\_\_\_\_, 19\_\_, by the \_\_\_\_\_ in accordance with the provisions of the Findings contained in \_\_\_\_\_ Resolution No. \_\_\_\_\_, and attached hereto as "Exhibit B," and hereby incorporated by reference, subject to the following condition:

VI. WHEREAS, the subject property is a parcel located between the first public road and the shoreline, and/or traversed by a trail used for public recreation and access; and

VII. WHEREAS, under the policies of Sections 30210 through 30212 and Section 30223 of the California Coastal Act of 1976, public access to the shoreline and along the coast and public access in upland areas to be maximized; and in all new development projects public access must be provided according to the California Coastal Act and Local Coastal Program; and

VIII. WHEREAS, Monterey County found that but for the imposition of the above condition, the proposed development could not be found consistent with the public access policies of Section 30210 through 30212 and Section 30223 of the California Coastal Act of 1976 and that therefore in the absence of such a condition, a permit could not have been granted;

Act of 1976 and that therefore in the absence of such a condition, a permit could not have been granted;

NOW, THEREFORE, in consideration of the granting of Permit No. \_\_\_\_\_ to Grantor by Monterey County, the owner(s) hereby grants and conveys unto the People of Monterey County an easement in perpetuity for the purposes of \_\_\_\_\_

located on the subject property \_\_\_\_\_

and as specifically set forth by attached Exhibit C hereby incorporated by reference. Dedicated accessway shall not be required to be opened to public use until a public agency or private non-profit association acceptable to the County Board of Supervisors agrees to accept responsibility for maintenance and liability of the accessway.

1. BENEFIT AND BURDEN. This easement shall run with and burden the Property and all obligations, terms, conditions, and restrictions hereby imposed shall be deemed to be covenants and restrictions running with the land and shall be effective limitations on the use of the Property from the date of recordation of this document and shall bind the Grantor and all successors and assigns. This easement shall benefit the State of California.

2. DECLARATION OF RESTRICTIONS. This easement shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the Property.

3. ADDITIONAL TERMS, CONDITIONS, AND LIMITATIONS. Prior to the opening of the accessway, the Grantee, in consultation with the Grantor, may record additional reasonable terms, conditions, and limitations on the use of the subject property in order to assure that this easement for public access is effectuated.

4. CONSTRUCTION OF VALIDITY. If any provision of these restrictions is held to be invalid or for any reason becomes unenforceable, no other provision shall be thereby affected or impaired.

5. SUCCESSORS AND ASSIGNS. The terms, covenants, conditions, exceptions, obligations, and reservations contained in this easement shall be binding upon and inure to the benefit of the successors and assigns of both the Grantor and the Grantee, whether voluntary or involuntary.

6. HOLD HARMLESS. The property owner agrees as a condition of this offer to dedicate or easement required pursuant to approval of the coastal development permit that it will, pursuant to Government Code Section 66474.9, defend, indemnify, and hold harmless the County of Monterey or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees to attack, set aside, void or annul this offer to dedicate or easement, which action is

brought within the time period provided for in Government Code Section 66499.37. The County shall promptly notify the property owner of any such claim, action or proceeding and the County shall cooperate fully in the defense thereof. If the County fails to promptly notify the property owner of any such claim, action or proceeding or fails to cooperate fully in the defense thereof, the property owner shall not thereafter be responsible to defend, indemnify or hold the County harmless

7. ABANDONMENT. The Grantee may not abandon this easement, but must instead offer it to other public agencies or private non-profit associations acceptable to the Board of Supervisors.

Executed on this \_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_,  
\_\_\_\_\_ California.

Signed \_\_\_\_\_  
Owner

\_\_\_\_\_  
Type or Print

Signed \_\_\_\_\_

\_\_\_\_\_  
Type or Print

NOTE TO NOTARY PUBLIC: If you are notarizing the signatures of persons signing on behalf of a corporation, partnership, trust, etc. please use the correct notary jurat (acknowledgement) as explained in your Notary Public Law Book.

State of California. )

County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_,  
before me \_\_\_\_\_, a Notary Public, personally  
appeared \_\_\_\_\_,  
personally known to me (or proved to me on the basis of  
satisfactory evidence) to be the person(s) whose name is  
subscribed to this instrument, and acknowledged that he/she/they  
execute it.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
SAID STATE AND COUNTY

This is to certify that the Easement Deed set forth above  
is hereby acknowledged by the Board Chair on behalf of the  
Monterey County Board of Supervisors pursuant to the action of  
the \_\_\_\_\_ when it granted Coastal  
Development Permit No. \_\_\_\_\_ on \_\_\_\_\_,  
and the Monterey County Board of Supervisors consents to  
recordation thereof by its duly authorized officer.

Date: \_\_\_\_\_

\_\_\_\_\_  
Chair, Monterey County Board of Supervisors

Attested By:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ernest K. Morishita  
Clerk of the Board of Supervisors  
County of Monterey  
State of California

Document Content/Form Acceptable:

---

County Counsel

---

Planning Department