



Revision to ASR and/or Exhibits/Attachments

Date: August 3, 2006

To: Darlene J. Bloom, Clerk of the Board of Supervisors

CC: County Executive Office

From: Bryan Speegle, Director, RDMD

RE: Agenda Item(s) # 13 for the August 8, 2006 Board Meeting

ASR Control #(s): 06-001572

Subject: Offer of Dedication for Strand Beach

Explanation:

Revised Recommended Action(s)

Revise Recommended Action 3 to read:

3. Direct County Counsel and Resources and Development Management Department staff to return to the Board within 180 days with recommendations on acquisition of access rights between Lots "P" and "M".

Make modifications to the:

Subject

Background Information

Summary

The revision requested is in the last sentence of the paragraph titled Intervening Parcel. RDMD will report back to the Board within 180 days, instead of 30 days as indicated in the original ASR (see the highlighted text below).

Revise Background Information to read:

The Dana Point Headlands property is located on the southerly side of Pacific Coast Highway generally between Selva Road and Street of the Green Lantern. The County owns a parking lot and stairs down to Strand Beach, but most of the beach itself (above the mean high tide line) is owned by Headlands LLC. Strand Beach is adjacent to and southerly of the County's Salt Creek Beach County Park. Headlands LLC proposes to redevelop its lands between the County parking lot and Strand Beach with single-family homes and to develop its lands adjacent to the east with commercial and residential uses. As a part of the development plan approvals, on February 23, 2005, the Dana Point City Council adopted Resolution No. 05-02-23-08 approving Tentative Tract Map No. 16331, subject to certain conditions of approval. Condition No. 34 requires Headlands LLC to make an offer to dedicate as public open space to an appropriate public agency Lots "P" and "M" of Tract 16331 which include Strand Beach (see Exhibit "A" of the Offer of Dedication). Headlands LLC proposes to satisfy this condition by

irrevocably offering Lots "P" and "M" to the County. This Offer and the covenants, conditions and restrictions embodied in this Offer, will automatically terminate, unless accepted on or before ten (10) years from the date that this Offer is made. The term of this Offer may be extended pursuant to the provisions of Section 8 of the Offer.

Covenants: Proposed Covenants require the County to maintain and use the property only for public recreation purposes, including but not limited to surfing, swimming, volleyball, picnics, walking, hiking, jogging, fishing, kayaking, and other beach related activities, and customary maintenance activities, all in compliance with the Dana Point Local Coastal Program. The Covenants prohibit the County from constructing or maintaining any facility, improvement or alteration of the property including, but not limited to, on-site and off-site grading, exterior lighting, and landscape improvements without first providing Headlands LLC a forty-five (45) day period to review, comment upon and approve the exterior design, size, color, appearance, location and impact to the adjacent development area. The Covenants may only be amended by mutual written agreement of the County and Headlands LLC. The Covenants are binding in perpetuity on County, unless Headlands records a declaration terminating the Covenants.

Intervening Parcel: Lots "P" and "M" are divided by the corner of a small parcel of land owned by others (see Exhibit). Although the public and County staff can cross between Parcels "P" and "M" on public property below the mean high tide line, this access is not adequate for long-term access. The County should acquire access rights across the intervening parcel. Headlands LLC at County staff's request made an effort to contact the landowner to discuss acquisition, but the owner has not responded since an initial contact with Headlands LLC and County staff. RDMD concludes that further effort by Headlands LLC will not be fruitful with the intervening landowner. Therefore, RDMD recommends that the Board of Supervisors direct that County Counsel and RDMD analyze approaches to obtain access rights and report to the Board within **180 days**. RDMD will continue to attempt to contact the landowner.

Exceptions and Reservations: Headlands LLC offers the property to the County subject to the following exceptions:

- (i) A non-exclusive easement over a strip of land 40 feet wide on Lot "P" adjacent to the development area for temporary construction and maintenance of the adjacent development area.
- (ii) A non-exclusive easement over Lot "P" for storm water drainage.

Title Insurance: Headlands LLC has provided to County (attached) a policy of title insurance for the Property issued as of the date of recordation of this Offer in the amount of \$5,000,000 insuring the County as provided in this Section 2 of the Offer.

CEQA Compliance: The recommended actions proposed are covered by Final EIR (SCH2001071015) certified by the City of Dana Point on January 24, 2002. Prior to approval of those recommended actions your Board must find that the Final EIR previously certified by the City of Dana Point is adequate as noted in Recommended Action No. 1.

Revised Exhibits/Attachments (attached)

Replace Exhibit A with the attached document.

Additional Information and/or Correspondence (attached)

Exhibit A

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN
TO:

County of Orange
RDMD Real Estate Services
301 North Flower, 6th Flower
Santa Ana, CA 92703

This is to certify that this document is exempt
from recording fees per Govt. Code Sec. 27383
and is exempt from Document Transfer Tax per
Rev. & Taxation Code Section 11922.

By: _____
RDMD REAL ESTATE SERVICES

SPACE ABOVE LINE FOR RECORDER'S USE ONLY

City of Dana Point
AP Nos: 672-651-42 and 672-651-39; 672-
591-01
Project Nos.: BE74Q-115, 116
Project: Salt Creek Beach Park

IRREVOCABLE OFFER OF DEDICATION

THIS IRREVOCABLE OFFER OF DEDICATION ("Offer"), made as of _____, 2006, by and between Headlands Reserve LLC, a Delaware limited liability company ("Offeror"), in favor of the County of Orange, a political subdivision of the State of California (the "County"), with reference to the following facts:

R E C I T A L S

A. Offeror is the owner of the title to that certain real property located within the City of Dana Point, California, commonly known as the Dana Point Headlands (the "Headlands").

B. On February 23, 2005, the City Council of the City of Dana Point, California, adopted Resolution No. 05-02-23-08, approving Tentative Tract Map No. 16331, subject to certain conditions of approval ("Conditions of Approval") and Resolution 05-02-23-07, approving Master Coastal Development Permit 04-23 and has issued or will issue

Exhibit A

corresponding ministerial permits and authorizations such as grading and improvement permits (collectively, the "Approvals").

C. Condition No. 34 of the Conditions of Approval requires Offeror to make an offer to dedicate as public open space to an appropriate public agency a portion of the Headlands described as Lots "P" and "M" of Tract 16331 (the "Map") more particularly set forth on Exhibit "A" attached hereto (the "Property"), and Offeror desires to satisfy such Condition of Approval by delivering this Offer, as more particularly set forth below.

Offer

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which is hereby acknowledged, Offeror hereby irrevocably offers to dedicate the Property to the County in fee on the following terms and conditions:

1. Term of Offer. This Offer and the covenants, conditions and restrictions embodied in this Offer, will automatically terminate, unless accepted on or before ten (10) years from the date first set forth above that this Offer is made. The term of this Offer may be extended pursuant to the provisions of Section 8 below.

2. Condition of Title.

a. Exceptions. Offeror hereby covenants and agrees that the Property is, and shall remain during the full term of this Offer free and clear of all liens, encumbrances, assessments, easements, leases (recorded and unrecorded), and taxes except:

(i) Any installment of general and special county and city taxes, if any, allocable to a period subsequent to the time title is vested in or physical possession is taken by County, whichever first occurs, and all taxes subsequent thereto (however, Offeror shall remain liable for payment of any taxes allocable to a period prior to the time title is vested in or actual possession is taken by County, whichever first occurs, pursuant to the provisions of Section 5084 and 5086, California Revenue and Taxation Code, as amended; and Offeror shall pay all taxes due and payable affecting said Property together with penalties and interest thereon, and delinquent or nondelinquent assessments or bonds and any interest thereon prior to recordation of this Offer).

(ii) The lien of supplemental taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California added by Chapter 498, Statutes of 1983, will be permitted to show in County's title insurance policy. However, Offeror shall remain liable for payment of such taxes as set forth in Section 2(a)(1) above.

(iii) Exception Nos. 4-10 to title contained in the Preliminary Report issued by First American Title Insurance Company, dated July 13, 2006, under its Order No. 2150192, a copy of which is attached as Exhibit "B" hereto.

Exhibit A

(iv) The exceptions, reservations and covenants provided in Section 3 below.

(v) Any title exception not required to be cleared from the title to said Property by County's Director, Resources and Development Management Department, or designee ("Director").

b. No Unrecorded Matters. In addition, Offeror hereby represents, to its best knowledge, that there are no unrecorded encumbrances (including but not limited to liens, leases, easements or licenses) affecting all or any portion of the Property. However, this representation does not cover claims that State of California may have involving tidelands areas under State control. For purposes of this representation, Offeror's "best knowledge" shall mean the actual knowledge of Kevin Darnall after a reasonable review of Offeror's files concerning the Property and inquiry of Offeror's management employees with responsibility for the Property.

c. Title Insurance. Offeror shall provide to County a policy of title insurance for the Property issued as of the date of recordation of this Offer in the amount of \$5,000,000 insuring the County as provided in this Section 2 with a special endorsement insuring the validity and priority of this Offer.

3. Exceptions, Reservations and Covenants.

a. Exceptions and Reservations. The Property shall be accepted by the County subject to the following exceptions and reservations in favor of Offeror, together with the right to grant and transfer all or a portion of the same:

(i) A non-exclusive easement on, over, under and/or across the northeasterly forty (40) feet of Lot "P" of the Map for the construction, construction staging, installation, inspection, maintenance, repair, and replacement of those certain improvements to Lot "N" of the Map and the Property contemplated under or required by the Approvals, including but not limited to: (1) the revetment structure and storm drain located on Lot "N" of the Map, and (2) two public access ramps, including necessary appurtenances, extending into the Property. This easement shall be appurtenant to Lots 59, "N" and "Q" of the Map. This easement shall be subject to the requirement that the easement holder first apply for and obtain from the County its standard encroachment permit with reasonable and customary terms and conditions for the use of such easement ("Permit") in accordance with the County's standard Permit fees and procedures, and then comply with the conditions and requirements of the Permit in exercising the easement rights. Upon the easement holder's application for a Permit, the County shall process the application and issue the Permit promptly, but in no event later than sixty (60) days following the date of application. In the event of an emergency necessitating access to the Property and not allowing sufficient time to obtain a Permit, the easement holder may access the Property to address the emergency circumstances, but shall additionally notify County thereof as soon as reasonable under

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the circumstances but in any event within three (3) business days. In the event of such emergency access, the easement holder shall indemnify and hold harmless County for liability incurred by the County as a result of such access.

(ii) A non-exclusive easement on, over, under or across the Property for the purpose of surface and subsurface water drainage from remaining portion of the Headlands. All drainage improvements required by the Approvals to be constructed on the remaining portions of the Headlands shall be constructed in accordance with the Approvals. Final acceptance by the City of such drainage improvements shall conclusively establish that such drainage improvements were constructed in accordance with the Approvals.

b. Covenants Running With The Land. Upon the acceptance of this Offer, and the resulting conveyance of fee title to the Property from Offeror to County, the Property shall be subject to the covenants set forth in this Section 3(b) (collectively the “Covenants”). The Covenants are hereby declared and agreed to benefit Lots 59 and “N” of the Map (the “Benefited Property”). The Covenants shall run with and burden the Property, and bind the owner of the Property. It is intended that the dominant tenement shall be the Benefited Property and the servient tenement shall be the Property. The Covenants shall also constitute equitable servitudes upon the Property, as servient tenement, for the benefit of the Benefited Property. The Covenants will be enforceable only by Offeror or its Successor Owner, as such term is defined hereafter, of the Benefited Property.

The Covenants are:

(i) Covenant 1: Use of Property. County shall maintain and use the Property only for public recreation purposes, including but not limited to surfing, swimming, volleyball, picnics, walking, hiking, jogging, fishing, kayaking, and other beach related activities, and customary maintenance activities, all in compliance with the Dana Point Local Coastal Program (the “Permitted Uses”).

(ii) Covenant 2: Abandonment or Sale. County shall neither abandon the use of the Property as a public beach, nor sell or otherwise transfer the Property, except as set forth below herein. County may: (1) transfer an interest in any portion of the Property in connection with a utility installation required in support of the Permitted Uses; and (2) transfer any portion or all of the Property to another public agency or maintenance district which shall operate and maintain such portion or all of the Property in accordance with the Permitted Uses.

(iii) Covenant 3: Maintenance and Repairs. County shall keep and maintain the Property and improvements thereon, in a manner comparable to similar facilities owned and operated by the County.

(iv) Covenant 4: Construction of Improvements. County shall not construct, place, assemble, or maintain on the Property any facility or improvement or alter in any manner the improvements to be located on the Property (including, but not limited to, on-site and off-site grading, exterior lighting, and landscape improvements)

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without first providing Offeror a forty five (45) day period to review, comment upon and approve the exterior design, size, color, appearance, location and impact to the Benefited Property of the proposed improvement(s). Any such approval shall not be unreasonably withheld.

c. Matters Related to Covenants:

(i) Amendment. The Covenants may only be amended by mutual written agreement of Offeror and the County. Any amendment must be recorded in the Recorder's Office, County of Orange, California.

(ii) Term. The Covenants shall be binding absolutely and perpetually on County, unless Offeror records a declaration terminating the Covenants.

(iii) Successor Owner. The term "Successor Owner" as used in this Section 3 shall mean and refer to a Homeowners' Association, acting through its Board of Directors, which has acquired the Benefited Property ("HOA"). The individual members of the HOA shall not have any enforcement rights hereunder.

(iv) Default and Remedies. In the event of any breach, violation, or failure to comply with any of the Covenants which has not been cured within thirty (30) days after written notice from Offeror or the Successor Owner to do so (or if any such breach, violation, or failure cannot be fully cured within such thirty (30) day period, then upon failure of County to commence such cure within such period and thereafter to diligently complete such cure), then Offeror or the Successor Owner shall be entitled, in addition to any other remedy to which it may be entitled in law or in equity (other than monetary damages), to specifically enforce the performance of the Covenants or any other form of equitable or legal relief.

(v) Waiver. Neither a waiver by Offeror of a breach of any of the Covenants nor a delay or failure to enforce any of the Covenants shall (1) be construed to be a waiver of any earlier or later breach of the same or any other provision of the Covenants, or (2) be implied from any inaction or omission by Offeror to take any action on account of such breach or failure. No express waiver shall affect a breach or failure other than as specified in said waiver. The consent to or approval by Offeror of any act by County requiring Offeror's consent or approval shall not be deemed to waiver or render unnecessary Offeror's consent or approval to or of any subsequent similar act by County. Offeror shall not be liable for any damage, loss, or prejudice suffered or claimed by County or any licensee or other occupant of the Property or of the Benefited Property on account of the enforcement of or failure to enforce any of these Covenants.

4. Notices. All written notices pursuant to this Offer shall be addressed as set forth below or as County or Offeror may hereafter designate by written notice to the other and shall be sent through the United States certified mail or made by personal delivery.

Exhibit A

If to County:

County of Orange
Resources and Development Management Department
300 North Flower, 8th Floor
Santa Ana, CA 92703
Attn: Director

and

County of Orange
RDMD Harbors, Beaches and Parks
300 North Flower, 4th Floor
Santa Ana, CA 92703
Attn: Director, Harbors, Beaches and Parks

If to Offeror:

Headlands Reserve LLC
24849 Del Prado
Dana Point, CA 92629
Attn: Mr. Kevin Darnall

All notices provided for herein shall be deemed to have been duly given if and when personally served or 48 hours after being sent by United States certified mail, return receipt requested, postage prepaid.

5. Maintenance and Use Prior to Acceptance. Offeror shall be responsible for maintaining the Property until the Offer is accepted by the County or the Offer is terminated as provided above. Offeror and its invitees are permitted to use the Property for any uses which do not preclude the development or improvement of the Property for the Permitted Use until this Offer is accepted by the County or terminated as provided herein.

6. Offer Irrevocable. This Offer is irrevocable and shall be binding upon Offeror, its successors and assigns during the term hereof.

7. Acceptance of Offer.

a. Acceptance of Offer for Lot "P." This Offer may be accepted as to Lot "P" of the Map during the term hereof through Resolution of the Board of Supervisors of County. Upon receipt of written notice from Offeror to Director that all improvements to be constructed by Offeror on Lot "P" of the Map have been completed, County shall accept this Offer as to such Lot "P" as provided herein, within 180 days. If Offeror's construction of such improvements is not completed within the initial ten (10) year term of this Offer, the

Exhibit A

term shall automatically be extended for up to another ten (10) years, subject to the 180 day acceptance requirement in the preceding sentence.

b. Acceptance of Offer for Lot "M." This Offer may be accepted as to Lot "M" of the Map during the term hereof through Resolution of the Board of Supervisors of County. Upon receipt of written notice from Offeror to Director, as set forth in Section 7(a) above, that all improvements to be constructed by Offeror on Lot "P" of the Map have been completed, County shall accept this Offer as to Lot "M" as provided herein, within 180 days. Both parties hereto agree to use their best efforts to obtain access for the County to Lot "M" of the Map, if the County determines that it does not already possess access, prior to the completion of such improvements. As set forth above in Section 7(a), if Offeror's construction of the improvements is not completed within the initial ten (10) year term of this Offer, the term shall automatically be extended for up to another ten (10) years, subject to the 180 day acceptance requirement in this paragraph.

8. License to Enter Property. Offeror hereby grants to County, for the use of the County, its employees, agents and invitees on County business, a license to enter the Property for inspection of impacts to the Property from Offeror's construction activities on Lots "N," "Q" or "R" of the Map, and for purposes related to planning, engineering and surveying of the Property prior to the County's acceptance of this Offer. The County shall give not less than twenty-four (24) hours' notice of such entry to Offeror or, if Owner is no longer the owner of the Property, the Successor Owner. County shall indemnify and hold harmless Offeror or, if Owner is no longer the owner of the Property, the Successor Owner, for any liability incurred by Owner or the Successor Owner, as the case may be, arising from the County's exercise of this license.

9. Effect of Acceptance. Acceptance by County of this Offer shall constitute County's agreement to be bound by the terms, conditions, restrictions, exclusions and reservations included in this Offer.

11. Attachments. This Offer includes the following, which are attached hereto and made a part hereof:

Exhibit A: Legal Description of the Property

Exhibit B: Copy of Preliminary Report

[Signatures on Following Page]

Exhibit A

Certificate of Acceptance Recordation of Offer

This is to certify that the Irrevocable Offer of Dedication pledged by document dated _____, 2006, from Headlands Reserve LLC, a Delaware limited liability company, to the County of Orange, a body corporate and politic, is hereby accepted for purposes of recordation only by the undersigned officer or agent on behalf of the Board of Supervisors of the County of Orange, pursuant to the authority conferred by a Resolution of the said Board of Supervisors adopted _____, _____, and the grantee consents to recordation thereof by its duly authorized officer or agent. This acceptance is *not* construed in any way as an acceptance of the Offer embodied in the subject document.

Date: _____, 2006

County of Orange

ATTEST:

SIGNED AND CERTIFIED THAT A COPY
OF THIS DOCUMENT HAS BEEN
DELIVERED TO THE CHAIRMAN OF
THE BOARD.

By: _____
Chairman, Board of Supervisors

Darlene J. Bloom
Clerk of the Board of Supervisors
Orange County, California

Approved as to form
County Counsel

By: Thomas A. Miller

Exhibit "A"
Exhibit A

Legal Description of the Property

That certain real property in the City of Dana Point, California, more particularly described as follows:

Lots "P" and "M" of Tract 16331, as shown on a Map filed in Book 875, Pages 22 to 32, inclusive, of Miscellaneous Maps, in the Official Records of the County Recorder of Orange County, California. AP Nos: 672-651-42, 672-651-39, and 672-591-01

“Exhibit “B”
Exhibit A

Copy of Preliminary Report