

**CALENDAR ITEM
INFORMATIONAL
65**

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| A | 24 | 12/06/16 W 26830 J. Lucchesi C. Connor |
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**REPORT ON THE STATUS OF NEGOTIATIONS TO ACQUIRE
A PUBLIC ACCESS EASEMENT TO AND ALONG
MARTINS BEACH, SAN MATEO COUNTY,
PURSUANT TO PUBLIC RESOURCES CODE SECTION 6213.5**

PARTIES:

California State Lands Commission

Martins Beach 1 LLC and Martins Beach 2 LLC

BACKGROUND:

Martins Beach is located on the west side of Cabrillo Highway (State Route 1) at Martins Beach Road, approximately four miles south of the City of Half Moon Bay in unincorporated San Mateo County.

On September 30, 2014, Governor Brown signed Senate Bill 968 (Hill), which added section 6213.5 to the Public Resources Code, effective January 1, 2015. The law requires the Commission to “consult and enter into any necessary negotiations ... to acquire a right-of-way or easement ... for the creation of a public access route to and along the shoreline, including the sandy beach, at Martins Beach.” If the Commission is unable to reach an agreement to acquire the right-of-way or easement or the owners do not voluntarily provide public access by January 1, 2016, then the Commission may use its existing eminent domain authority to acquire the public right-of-way or easement. Additionally, the Commission must consult and enter into negotiations with local stakeholders, as described, to address the ongoing management and operation of any property acquired under the statute.

Martins Beach is a crescent-shaped beach with a sandy shoreline. It is bordered by 75-foot tall cliffs at the north and south ends and sloping bluffs in between. The beach is part of a 49.155-acre parcel situated between the Pacific Ocean and the west side of Cabrillo Highway. The parcel—Assessor’s Parcel Number [APN] 066-330-230—is owned by Martins Beach 1 LLC and Martins Beach 2

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LLC (collectively “Martins Beach LLC”). An adjoining Assessor’s parcel to the south—APN 066-330-240—is owned by Martins Beach 2 LLC, but Martins Beach does not extend onto this parcel.

The only access to the beach is from Martins Beach Road, a gated, two-lane road that winds down from Cabrillo Highway. The area where Martins Beach Road winds down to the beach has, over many decades, been developed with 46 single-family residences. Each residential structure, also referred to as a cabin, is owned separately from the 49.155-acre property. The cabin owners have ground leases from Martins Beach LLC.

Martins Beach has been a popular destination for fishing, picnicking, surfing, and other recreational uses for nearly a century. The prior property owners, the Deeney family, provided a general store and public restroom. They built the first cabin and allowed the construction of the others, subject to the previously-mentioned ground leases. While the prior owners allowed the public to use Martins Beach Road to access the beach, they charged a nominal fee for parking. The current ownership, Martins Beach LLC, purchased the property in 2008 and initially allowed public access. But in 2010, it closed the gate and erected signs warning against trespass, preventing public access to Martins Beach.

PENDING LITIGATION:

There are three cases involving the Martins Beach property that are pending. On September 30, 2016, Martins Beach 1 LLC and Martins Beach 2 LLC filed litigation against the members of the California State Lands Commission, members of the California Coastal Commission and the County of San Mateo and its director of the planning and building department in the U.S. District Court, Northern District of California; Case No. 16-5590. The suit requests declaratory relief that Public Resources Code section 6213.5 is unconstitutional and violates Article IV, Section 16 of the California Constitution and Article I, Section 10 of the U.S. Constitution. Additional allegations include violations of plaintiff’s equal protection rights and substantive and procedural due process rights, as well as claims of physical and regulatory taking of property rights without just compensation.

In *Friends of Martin’s Beach v. Martins Beach LLC*, Case No. CIV517634, the court considered whether the public has a right to traverse private property to access the beach. In October 2013, the trial court ruled that the property owner could close the road and prevent public access to Martins Beach and purported to quiet title to tide and submerged lands. The Commission and the California

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Coastal Commission filed a joint amicus brief. In April 2016, the Court of Appeal issued its decision affirming in part and reversing in part (*Friends of Martin's Beach v. Martin's Beach 1 LLC* (2016) 246 Cal. App. 4th 1312). The Court reversed as to any quieting of title to tidelands and submerged lands in favor of Martins Beach LLC. The Court also reversed and remanded the case for a trial on the issue of dedication claims. The Court of Appeal opinion was subsequently depublished.

In *Surfrider Foundation v. Martins Beach LLC*, Case No. CIV 520336, the Surfrider Foundation sued to challenge the property owners' lack of compliance with the California Coastal Act before closing the road to the beach. In December 2014, the court found that Martins Beach LLC's actions to change the public's access to the beach without a coastal development permit was a violation of the Coastal Act. This decision is currently on appeal. Additionally, in July 2014, the California Coastal Commission initiated a prescriptive rights survey to document possible historic rights of public access at Martins Beach.

PROPOSED PUBLIC ACCESS EASEMENT:

Commission staff has spent considerable time researching the property and investigating what type of easement would be most useful to the public, including conducting a mean high tide line survey, appraising the property, consulting with Senator Hill's Office, and participating in a public meeting facilitated by the Surfrider Foundation.

Based on public input and staff's research, staff sought to negotiate the acquisition of a public access easement to the beach that would overlay Martins Beach Road from Cabrillo Highway down to the point where the road meets the beach. The easement area would also continue along Martins Beach Road parallel to the beach for a short distance to allow vehicles to drop people off and turn around. This portion of the easement contains approximately 0.87 acre. The proposed public access easement along the beach runs from the north property line to the southern end of the beach. It extends from the mean high tide line to the edge of Martins Beach Road and then along a low lying bluff to the southern end of the beach. This part of the easement contains approximately 5.31 acres. The proposed easement also includes a public parking area at an existing turn out off Martins Beach Road just above (to the east of) the cabins. This area is approximately 0.21 acre. The total area of the proposed public access easement is 6.39 acres.

Staff anticipated that the proposed easement would provide public access similar to that of a public park—open seven days a week—with daily dawn-to-dusk

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hours of operation. The proposed easement area would include trash receptacles and one or more portable toilets. It is envisioned that maintenance of the easement (opening and closing the gate, emptying the trash receptacles, and servicing the portable toilets, etc.,) would be handled by a local public agency through an agreement with the Commission.

STATUS OF NEGOTIATIONS:

On December 31, 2014, Commission staff sent a letter to the Martins Beach LLC's representative, requesting a meeting to begin discussions about acquiring a public access easement. Martins Beach LLC representatives voluntarily agreed to meet with Commission staff. Commission staff met in person with Martins Beach LLC representatives multiple times during 2015. Throughout 2016, Commission staff had intermittent contact with Martins Beach LLC representatives to discuss additional ideas for facilitating public access to the beach.

Based on staff's discussions with Martins Beach LLC representatives over the past two years, it is staff's conclusion that Martins Beach LLC is not interested in selling an easement to the State for public access. It is staff's understanding that Martins Beach LLC is open to negotiating an agreement that allows the public to access Martins Beach for a limited number of days per year based on the demand level in 2008 where there were more than 10 cars accessing the parking lot. Alternatively, it is staff's understanding that Martins Beach LLC is open to negotiating an agreement to sell the entirety of both properties to the State of California.

Martins Beach is amenable to negotiating the first option, basing the number of days it would agree to open the beach on their interpretation of the beach use and demand represented in a 2008 log maintained by them or their contractors. The 2008 log appears to be incomplete and staff is not confident that it accurately represents the actual public use of and demand for access to Martins Beach. Importantly, staff does not believe that an agreement to open the beach for a limited number of days per year based on demand in 2008 meets the intent of SB 968.

Similarly, staff does not believe that the second option—the State purchasing the entirety of both parcels—is consistent with the intent of SB 968. While purchasing the fee title to both parcels may be consistent with the Commission's authority as trustee of the Kapiloff Land Bank, staff is not confident that a negotiated acquisition is possible, given what staff has learned over the past two years of discussions with Martins Beach LLC and their position on the property's monetary value. While staff has appraised the proposed easement, Martins

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Beach LLC strongly disagrees with staff's opinion of value. Meanwhile, Martins Beach LLC has refused to provide documentation justifying its opinion that the value of the easement is approaching \$30 million dollars.

Presently, no additional discussions with the Martins Beach LLC representatives are scheduled. Subsequent to staff's good faith efforts over two years to negotiate with Martins Beach LLC, it is staff's opinion that it cannot reach a negotiated agreement with Martins Beach LLC to acquire a public access easement to and along Martins Beach.

CONSIDERATION OF EXERCISING EMINENT DOMAIN AUTHORITY:

California's ungranted tidelands and submerged are located waterward of the ordinary high water mark, as generally measured by locating the mean high tide line, and are owned in fee by the State of California. Public rights to access these sovereign lands, including those portions of beaches located waterward of the ordinary high water mark, is a founding principle of the common law Public Trust Doctrine. The importance of public access to the State's waterways is expressly enshrined in the California Constitution and various statutes, regulations and policy statements. Over the course of its 78 year history, the Commission has championed public access and exercised the Public Trust numerous times to ensure public access to sovereign lands.

The Commission is one of few state agencies that have their own independent right to acquire property by condemnation. The Commission is authorized to condemn a right-of-way or easement to provide public access to its public land if there is no available access pursuant to Public Resources Code section 6210.9. While the Commission may enter into agreements with willing property owners to acquire property interests utilizing the Commission's Kapiloff Land Bank Fund for acquisitions costs, the Kapiloff Land Bank Fund may not be used for acquisitions through condemnation. At this time, the Commission does not have any funds in its budget to fund an acquisition using its eminent domain authority.

Public Resources Code section 6213.5 authorizes the Commission to use its existing eminent domain authority to acquire a public right-of-way or easement if the Commission is unable to reach an agreement to acquire a right-of-way or easement, or the owners do not voluntarily provide public access by January 1, 2016. A decision by the Commission whether to initiate a condemnation proceeding is tantamount to a decision whether to initiate litigation. Pursuant to Government Code section 11126, the Commission may meet in a session closed to the public to consider pending and possible litigation. Based on advice from the Attorney General's Office, the Commission will meet in closed session to

CALENDAR ITEM NO. 65 (CONT'D)

determine whether to use its eminent domain authority in this circumstance at this time. However, the Commission and staff understand and appreciate the significant public interest in securing public access to Martins Beach. The Commission therefore encourages and invites public testimony during consideration of this staff report to inform the discussion in closed session.

OTHER PERTINENT INFORMATION:

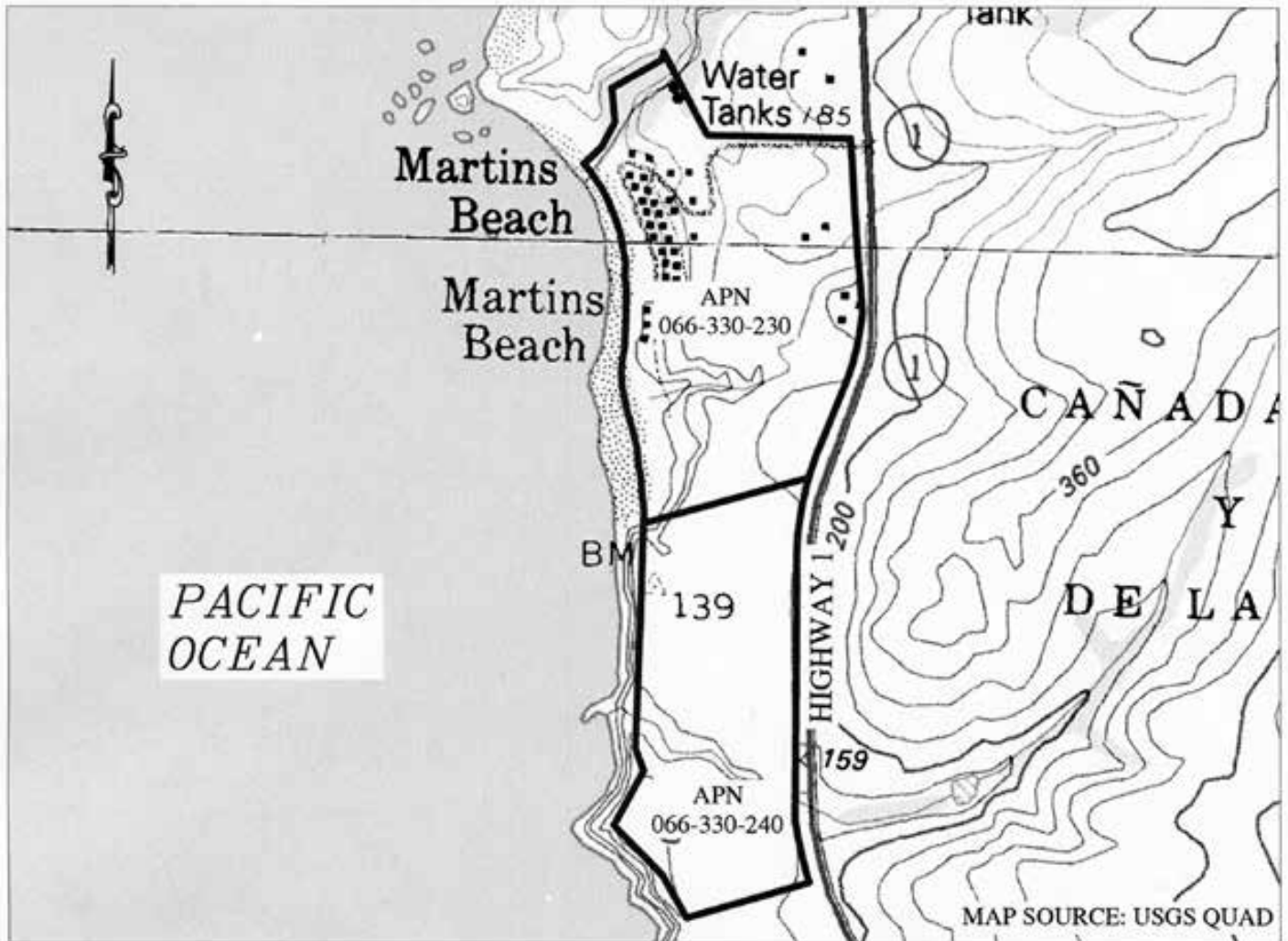
1. In December 2015, staff presented an informational update to the Commission on the status of negotiations to purchase a public access easement to and along Martins Beach. ([Calendar Item 124, December 18, 2015](#))
2. The staff report on the status of negotiations as described above is not subject to the requirements of the California Environmental Quality Act (CEQA) pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c) (3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

EXHIBITS:

- A. Site and Location Map
- B. Copies of Correspondence between Commission staff and Martins Beach LLC

NO SCALE

SITE



MARTINS BEACH, NEAR HALF MOON BAY

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit A

MARTINS BEACH
 APNs 066-330-230 &
 066-330-240
 SAN MATEO COUNTY



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

**CALIFORNIA STATE
LANDS COMMISSION***Established in 1938***EXECUTIVE OFFICE**
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202**JENNIFER LUCCHESI, Executive Officer**
(916) 574-1800 Fax (916) 574-1810
California Relay Service TDD Phone 1-800-735-2929
Voice Phone 1-800-735-2922

December 31, 2014

Mr. Steve Baugher
Martins Beach 1 LLC and Martins Beach 2 LLC
1760 The Alameda, Suite 300
San Jose, CA 95126

RE: Chapter 922, Statutes of 2014 (SB 968, Senator Jerry Hill, D-San Mateo)

Dear Mr. Baugher,

On behalf of the California State Lands Commission, I am contacting you to begin discussions regarding the acquisition of a right-of-way or easement to provide public access to and along Martins Beach. Pursuant to SB 968 (copy enclosed), "*The commission shall consult, and enter into any necessary negotiations, with the owners of the property known as Martins Beach...to acquire a right-of-way or easement...for the creation of a public access route to and along the shoreline, including the sandy beach, at Martins Beach at the South Cabrillo Highway.*"

I look forward to hearing from you or the appropriate representatives of Martins Beach 1 LLC and Martins Beach 2 LLC. Please contact me at jennifer.lucchesi@slc.ca.gov or (916) 574-1800 to set up a time to discuss further.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer Lucchesi".

JENNIFER LUCCHESI
Executive Officer

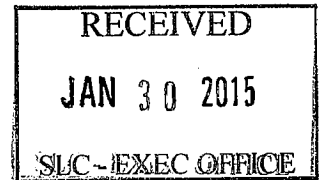
cc: Honorable Senator Jerry Hill

Enclosure

MARTINS BEACH 1 & 2, LLC's

1760 THE ALAMEDA, SUITE 300
SAN JOSE, CA 95126

January 22, 2015



Jennifer Lucchesi
Executive Officer, State Lands Commission
100 How Street, Suite 100-South
Sacramento, Ca 95825-8202

Dear Mrs. Lucchesi-

I am in receipt of your letter dated December 31, 2014. Please let me know a couple dates and times that work for you to meet in February. I would request that the meeting be held at 2128 Sand Hill Road in Menlo Park.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Baugher".

Steve Baugher
Martins Beach 1 & 2, LLC's

Cc: Dori Yob, Jeffrey Essner

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March 6, 2015

Mr. Steve Baugher
Martins Beach 1 LLC and Martins Beach 2 LLC
1760 The Alameda, Suite 300
San Jose, CA 95126

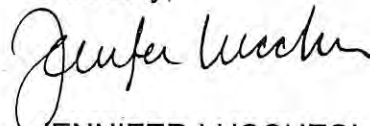
RE: Martins Beach, Chapter 922, Statutes of 2014

Dear Mr. Baugher,

Thank you and Mr. Khosla for meeting with me and my colleague, Colin Connor, on Thursday, February 26, 2015. I appreciate your agreement to continue discussions regarding the acquisition of a right-of-way or easement to provide public access to and along Martins Beach pursuant to Chapter 922, Statutes of 2014. Towards that end, enclosed is a copy of the survey of the mean high tide line at Martins Beach conducted by State Lands Commission licensed surveyors on January 27 – January 28, 2015. Additionally, as we discussed, Hap Anderson, State Lands Commission appraiser, will be contacting you to obtain information relating to Martins Beach.

I would like to schedule a follow up meeting in April to continue our discussions. Please contact me at (916) 574-1800 or at jennifer.lucchesi@slc.ca.gov to identify a mutually convenient date, time and location for our next meeting.

Sincerely,

JENNIFER LUCCHESI
Executive Officer

Enclosure

MARTINS BEACH 1 & 2, LLC's

1760 THE ALAMEDA, SUITE 300
SAN JOSE, CA 95126

April 7, 2015

Jennifer Lucchesi
Executive Officer, State Lands Commission
100 Howe Street, Suite 100-South
Sacramento, CA 95825-8202

Dear Mrs. Lucchesi-

I am in receipt of your letter dated March 6, 2015. Thank you for providing a copy of the survey that State Lands completed on the property. I have a few questions on the survey work I would like State Lands to address.

Jim Keopke's letter to me on January 9 describes that the "what" of the survey was a "Performance of Boundary, topographic, and planimetric surveys to indentify sovereign land of the State of California". When I received the survey, it came with a note that states "*this plat has not been approved by the State Lands Commission and does not constitute an official plat of such commission. Nor does it establish the boundary line or limitations of any state-owned lands depicted hereon. This plat constitutes a preliminary staff-use-only plat not intended for public use/consumption and is subject to change. The preliminary nature of this plat would not require submittal or recordation pursuant to B&C 8762*". The "what" in Jim's letter and this note appear to be contradicting one another? Can you please explain the position of State Lands Commission in connection with the two statements?

Also, noted on the survey is the December 2014 survey information submitted by Michael Pallamary to the State Lands Commission. Have State Lands taken an official position on that information? There seems to be very little difference between the two. Can you please explain State Lands Commission position on this?

Lastly, please issue a letter to Martins Beach stating that none of the rock revetment is located in the area of State Lands?

In regards to another meeting, please let me know some times and dates that work for you in late April and who else will be attending. I would request the meeting be held at the 2128 Sand Hill location in Menlo Park.

Sincerely,



Steve Baugher
Martins Beach 1 & 2, LLC's

Cc: Dori Yob, Jeffrey Essner, Michael Pallamary

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May 8, 2015

DORI L. YOB
dyob@hopkinscarley.com
408-286-9800
Fax 408-938-6265

Colin Connor
State Lands Commission
100 Howe Street, Suite 100-South
Sacramento, CA 95825-8202

Re: Martins Beach – Response to Request for Information

Dear Mr. Connor:

As you know, my law firm represents Martins Beach 1, LLC and Martins Beach 2, LLC (“Martins”), owners of the property located at 22325 Cabrillo Highway (the “Property”). I was asked to respond to your email dated March 23, 2015 requesting certain documents and information related to the Property.

At the outset, it is important that we are on the same page about the context of your request for information, and our respective approaches to appraisal and valuation of the Property. The context of your valuation (and request) is a potential condemnation of the subject Property by the State of California pursuant to its condemnation power. As you know, on April 30, 2015, Judge Buchwald entered Judgment in the *Friends of Martins Beach* case quieting title to the Property in favor Martins. The Court found Martins is the fee owner of the Property, including the off-shore submerged tidelands. The Court also expressly found that there is “no right of public access or easement for the public to use or access the Property for any purpose whatsoever.” A copy of Judge Buchwald’s Judgment is attached. Accordingly, consistent with the Court’s Judgment, any valuation should be based on the premise that Martins is the fee simple owner of the Property, including the shoreline and off-shore submerged tidelands, and that there is no right of public access to any portion of the Property.

Further, any appraisal should be conducted according to the methodologies and definitions associated with condemnation appraisals. As you know, a condemnation action is an action “in rem”—it is a taking of the “thing”—the property itself, and is not the taking of the various rights and interests that may exist in the property. Accordingly, for purposes of valuation, the Williamson Act Contract is considered null and void. (*See* Cal.Gov.Code §51295.) Further, for purposes of condemnation appraisal, all leases on property, including those related to the residences, should not be considered as encumbrances. (*Costa Mesa Union School Dist. of Orange County v. Security First Nat. Bank* (1967) 254 Cal.App.2d 4.) In a condemnation action, one award of just compensation for the entire value of the estate taken is made and the distribution of the award between the owners of separate interests or estates is a matter between the fee owner and the lessee(s).

Accordingly, the premise of valuation is the subject Property and improvements in fee simple interest, at market value (without the encumbrances of the Williamson Act Contract or any leasehold interests). Against that backdrop, we respond to each of your requests, below:

1. Confirmation of the overall sale price. The actual breakdown of the sale price for each of the two parcels (APN 066-330-230 and 240) and the value allocated to the improvements and/or the land leases or any other property.

The purchase price paid for the property was approximately \$32,500,000. The property was marketed as a whole—there was no separate appraised sales price for APN 066-330-230 and APN 066-330-240. Subsequent to the purchase, the tax assessor requested a breakdown of value by parcel. In response to that request, values were arbitrarily assigned to each parcel. For tax purposes, the value arbitrarily assigned to APN 066-330-230 was \$26,500,000 and the value arbitrarily assigned to APN 066-330-240 was \$6,000,000.

As for the leases on the individual cabin units on the Property, there was no specific allocation of value done in connection with the purchase. At the time of the purchase, the leases on at least ½ of the units were expired, and those units were therefore unencumbered. The owner considers the current rents on the individual units only an interim rental value that is far below market value.

2. How was the purchase price set (appraisal or just by the listing broker)?

The property was marketed by a listing broker. The sales price fluctuated over time. It was originally listed at approximately \$65 million. The State of California was performing due diligence to purchase the Property at a purchase price of \$60 Million. After the economy crashed in approximately 2007, the budget allocated for the purchase was lost and the State of California could not proceed with the purchase of the Property. The Property went back on the market and the price was reduced to approximately \$48.5 million. The Property ultimately sold for approximately \$32.5 million.

3. Was the property listed for sale on the market? If so, for how long? Was the asking price reduced because the property had been on the market for long?

See above.

4. Copy of the Agricultural Preserve Contract and associated map.

As explained above, the Williamson Act Contract is irrelevant for purposes of a valuation in the context of condemnation. Nonetheless, a copy is attached.

5. Copies of the leases for the 40 + residences located on APN 066-330-230. If not available, then the following information relevant to the land leases:

Colin Connor
May 8, 2015
Page 3

- **Rental amount of the land lease agreements;**
- **The actual (typical) term of the land leases;**
- **If the land leases are renewable or not;**
- **If the improvements revert to the owner of 066-330-230;**
- **The actual (or typical) individual land areas leased;**
- **The basis for the lease amount and periodic rent reviews. (i.e. periodic appraisal, annual escalator clause or ?); and**
- **Who pays for what expenses associated with the leases.**

As explained above, any leasehold interests should not be considered for purposes of a condemnation appraisal. Attached are two versions of the lease – one is the lease that existed at the time of the purchase, and the other is the current interim lease. The answers to your questions are set forth in the attached sample leases. The rent on all the cabins is the same.

6. Tenant Farmer Lease (if there is one).

As explained above, any leasehold interests should not be considered for purposes of a condemnation appraisal.

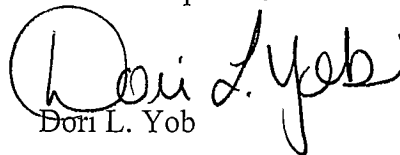
7. Permission to speak with the tenant farmer.

Attached please find copies of the sworn trial testimony of both Jim Deeney and Rich Deeney.

If you have any questions, or wish to discuss this further, please let me know.

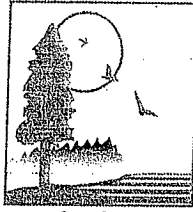
Sincerely,

HOPKINS & CARLEY
A Law Corporation


Dori L. Yob

DLY

Enclosures

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Voice Phone 1-800-735-2922

June 15, 2015

File Ref.: W 26830

Mr. Steve Baugher
Martins Beach 1 LLC and Martins Beach 2 LLC
1760 The Alameda, Suite 300
San Jose, CA 95126

RE: Martins Beach, Chapter 922, Statutes of 2014

Dear Mr. Baugher,

This letter is intended as a follow up to (1) your letter to Jennifer Lucchesi dated April 7, 2015; (2) the letter to me from Dori L. Yob, of Hopkins & Carley Law Corporation dated May 8, 2015; and 3) our meeting with you and Mr. Khosla on May 12, 2015. First of all, thank you and Mr. Khosla again for meeting with Ms. Lucchesi and me. We both felt the meeting was productive and look forward to further discussions.

As we discussed in the meeting, the State Lands Commission is committed to good faith negotiations for the acquisition of public access to and along the sandy beach at Martins Beach per the enacted legislation (Chapter 922, Statutes of 2014). To reiterate what was said at the meeting, the State Lands Commission (Commission) is not at this time pursuing the acquisition of public access through condemnation. Pursuant to the legislation, the exercise of eminent domain may only be pursued after January 1, 2016, in the event that negotiations to acquire the public access are unsuccessful. Any negotiated acquisition or action would need to be authorized by the Commission at a properly noticed public meeting.

As you are aware Commission staff is in the process of preparing an appraisal to be used in the negotiations. The letter and packet of materials from Dori Yob, sent in response to my March 23, 2015, email, provided some material relevant to the appraisal, but withheld other requested information on the ground that it was not necessary for a condemnation appraisal. Because there is no condemnation proceeding at this time, we are again requesting the omitted materials in aid of a negotiated transaction, including:

1. A current rent roll for all of the leased residential sites.
2. Copies of the leases for all the leased residential sites.

3. Expiration dates for the leased residential sites.
4. The land area of the leased residential sites.
5. Any information on the physical characteristics of the residences, including age (if known), square footage, and the number of bathrooms and bedrooms.
6. A copy of the tenant farmer lease.

In your April 7th letter you asked a number of questions relating to the survey work Commission staff recently conducted at Martins Beach and the map that was developed to reflect the survey. A map or plat produced by the Commission's Boundary Unit is generally labeled as draft and/or preliminary unless it has been approved by the State Lands Commission. In this case, the map was prepared by the Commission's staff for discussion purposes. It has not been approved by the Commission and so is still "Preliminary" and subject to change.

In coastal areas, the landward location and extent of the State's sovereign fee ownership is generally defined by reference to the ordinary high water mark (Civil Code §670), as measured by the mean high tide line (*Borax Consolidated v. City of Los Angeles* (1935) 210 U.S. 10); these boundaries remain ambulatory, except where there has been fill or artificial accretion. More specifically, in areas unaffected by fill or artificial accretion, the ordinary high water mark and the mean high tide line will generally be the same. The draft map sent to you on March 6th depicts the surveyed Mean High Tide Line (MHTL) at Martins Beach. The MHTL survey, as depicted on the subject map, is a snapshot in time of the location of the MHTL as of the date of the survey. Mr. Pallamary's survey information was included in staff's map to identify the location of that MHTL survey as it compared to staff's surveyed MHTL. The State Lands Commission has not taken a formal position on either staff's March MHTL survey or on Mr. Pallamary's MHTL survey.

Based on the information known to Commission staff at this time, it appears that the existing rock revetment is located landward of staff's March 2015 MHTL survey. Commission staff, however, expects the MHTL to continue to fluctuate at this location based on natural processes. If in the future the MHTL migrates landward, the rock revetment may encroach onto State-owned sovereign land. This letter is not intended, nor shall it be construed as, a waiver or limitation of any right, title, or interest of the State in any lands under the jurisdiction of the California State Lands Commission, either now or in the future.

As you are likely aware, the Attorney General has filed an Amicus Brief on behalf of the State Lands Commission and the Coastal Commission hoping to clarify several areas of the law with the Court of Appeals. This action was taken because the State was not a party in the superior court case and a ruling by the Court of Appeal could have much broader effect on properties beyond the Martin's Beach property.

Steve Baugher
June 15, 2015
Page 3

We look forward to continuing the discussion in the hope that some mutually beneficial resolution can be found. Please feel free to contact me at any time at (916) 574-1241 or by email at colin.connor@slc.ca.gov.

Sincerely,


Colin Connor

Enclosure

cc: Jennifer Lucchesi

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August 12, 2015

DORI L. YOB
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Via U.S. Mail and Facsimile (916) 574-1810

Colin Connor
State Lands Commission
100 Howe Street, Suite 100-South
Sacramento, CA 95825-8202

Re: Martins Beach – Response to Request for Information dated June 15, 2015

Dear Mr. Connor:

I am writing in response to your letter to Steve Baugher dated June 15, 2015 to the extent it requests documents and information related to Martins Beach. A response to each of your requests is below:

1. A current rent roll for all of the leased residential sites.

The income for the property in 2014 and 2015 is as follows:

Income in 2014:

Fire - \$5,577.52
Garbage - \$10,098.62
Leases - \$411,308.70
Water usage - \$87,367.09

Income in 2015 (to present):

Fire - \$5,520.88
Garbage - \$10,047.27
Rental Income - \$210,847.87
Water usage - \$62,309.25

2. Copies of the leases for all the leased residential sites.

There are two leases attached. The first lease is the original lease which is a lease for a 1 year term, with the option to renew the lease for up to twenty-nine successive one year periods following the expiration of the initial term, ending in 2012. The cabins on the original lease are 5, 6, 23, 28, 31, 33, 36, 38, 43, 45, and 46.

The second lease is the updated lease. Some of the cabins on the updated lease are for a fixed time period (with no yearly renewals), and others allow a yearly renewal. All of the updated leases end in 2019 and become month-to-month thereafter, with an agreement that the

lease term may not go beyond 2021. The cabins on the two versions of the updated lease are as follows:

Yearly renewal required: 3, 7, 8, 9, 10, 14, 15, and 21.

Fixed: 22, 24, 26, 27, 29, 30, 32, 34, 35, 37, 39, 40, 41, 42, 47, 48, 49, 50, 51, 52, and 53.

Cabins 1, 2, and 4 are on the updated lease expiring in 2040, with two five year renewal options.

Cabin 13 is on a month-to-month lease, never to exceed 2021.

The two houses located along the highway are on a month-to-month lease.

3. Expiration dates for the leased residential sites.

See response to question 2, above.

4. The land area of the leased residential sites.

See response to question 5, below.

5. Any information on the physical characteristics of the residences, including age (if known), square footage, and the number of bathrooms and bedrooms.

A listing of the cabins along with the square footage of the living area in each cabin is attached. We do not know if this information is accurate, but it is all we have in response to this question.

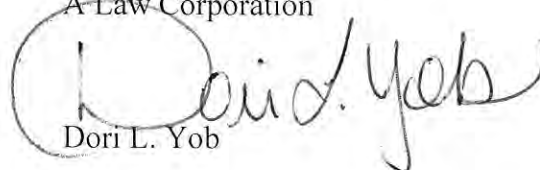
6. A copy of the tenant farmer lease.

The farm lease is year-to-year and the rent is based on 25% of the crops value for the year grown.

If you have any questions, or wish to discuss this further, please let me know.

Sincerely,

HOPKINS & CARLEY
A Law Corporation


Dori L. Yob

Enclosures

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February 3, 2016

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Via U.S. Mail and Facsimile (916) 574-1810

Jennifer Lucchesi
 Executive Officer, State Lands Commission
 100 Howe Street, Suite 100-South
 Sacramento, CA 95825-8202

Re: Martins Beach

Dear Ms. Lucchesi:

Hopkins & Carley represents Martins Beach 1, LLC and Martins Beach 2, LLC, owners of the property located at 22325 Cabrillo Highway in Half Moon Bay, known as Martins Beach. We are writing on behalf of our client to set forth some of the factors the State Lands Commission should consider in connection with Public Resources Code Section 6213.5.

The specific issue Section 6213.5 addresses—public access to Martins Beach—is already actively being heavily litigated in California Courts. Section 6213.5 will invite further litigation at substantial additional expense.

The cost to acquire the property is significant and should be weighed against the benefits. There is no vital link to navigable waters at issue. There is not a significant demand for access to the property. Testimony in the litigation filed by the *Surfrider Foundation* established that the previous owner sold the property because demand for access to the beach had been declining for over a decade and the property was not generating enough revenue to cover basic operating costs. After purchasing the property, my client continued to allow permissive access for two summer seasons, however, during that period there were often no visitors to the beach. In fact in 2008 and 2009 there were on average 15 days per year when there were more than 10 cars per day at the beach. Lack of demand is likely why the State considered, but ultimately declined to purchase the property for public access when it was on the market, even at 2008's lower real estate prices. The current level of publicity surrounding the dispute related to the property has elevated the focus on the property, and time will tell whether demand will return to low levels when the media attention dies down.

While the public benefits are low, the cost of acquisition to the State and ongoing maintenance is significant. Martins Beach is unique property with title tracing to Treaty rights that eliminated public trust rights held by the State. The property has appreciated significantly in value since its purchase and the price for unique private properties have also escalated substantially throughout the California coast. The right of access and easement the State is considering acquiring through section 6213.5 is approaching \$30 million in today's market. In

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the Analysis prepared by the Assembly Committee on Appropriations, staff admits that there will be a General Fund cost in the range of tens of millions of dollars to acquire the property. The acquiring entity will be required to pay severance damages, in addition to the cost of acquisition. Further, there will be ongoing General Fund costs for the operation and maintenance of the acquired property. The owners received an estimate of over \$500,000 to provide bathrooms and to install a modern septic system to pump sewage into a leach field. The cost of liability insurance exceeds \$30,000 per year, and that the cost to pay employees would be approximately \$100,000 to \$120,000 per year. There would also be annual cost for maintenance and repair of the road, the beach and smaller items. The initial cost to re-open the beach access business would therefore be in excess of \$650,000 and the annual costs would exceed \$130,000. For the two years after purchasing the property, Martins continued to run the business of providing access to the public and the total annual revenue was somewhere between \$7,000 and \$12,000, with a significant annual loss. At the time, Martins was charging \$10 per car.

In light of the low demand, high costs, lack of threats to resources and no vital link to navigable waters, the key question is this the best and highest use of state funds among the many issues facing the State? If the State wishes to use this money to acquire additional recreational access rights to beaches, is Martin's Beach best choice given there was little demand when the beach was open and the cost of the property and access rights will be in tens of millions of dollars and ongoing costs? The Coastal Commission, after extensive public hearings to implement the 1972 Coastal Zone Conservation Initiative, *did not* include Martins Beach in its list of high priority public recreational access recommendations. Less expensive and more desirable access points are likely available elsewhere and the facilities offered at Martin's Beach are also locally available elsewhere. Smelt fishing, which is the recreational activity that was historically popular, has also essentially disappeared.

Further, there are legal issues with Section 6213.5. Section 6213.5 purports to authorize the State Lands Commission to acquire a right-of-way or easement, pursuant to the authority of Public Resources Code section 6210.9; however under the ruling in *Friends of Martins Beach*, section 6210.9 has no application to the property. Section 6210.9 provides:

If the commission has public land, including school land, tide or submerged lands, and lands subject to the public trust for commerce, navigation, and fisheries, to which there is no access available, it may, in the name of the state, acquire by purchase, lease, gift, exchange, or, if all negotiations fail, by condemnation, a right-of-way or easement across privately owned land or other land that it deems necessary to provide access to such public land.

In the *Friends of Martins Beach* case, the Court expressly ruled that there are no "lands subject to the public trust" on the property. A copy of the recorded judgment from that case is enclosed.

Section 6213.5 is also improper as it predetermines that condemnation is proper without satisfying necessary constitutional requirements, including a resolution of necessity. (CCP §1245.250) The property owner is entitled to notice or the right to be heard on matters relating

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to the findings in the resolution of necessity, and the resolution must be adopted by a vote of 2/3 of all members of the governing board of the public entity exercising the power of eminent domain. On its face, Section 6213.5 circumvents these mandatory condemnation requirements.

There are a variety of other issues related to Martins Beach that have not been addressed. For example, due to erosion and the Coastal Commission's refusal to allow the maintenance that was previously routinely performed, there are no longer parking spaces available. Where would the visitors park? The only existing parking area is needed and used by residents and necessary for trash collection. How much actual use will the beach get by the public for this extraordinary expense? There is a multi-million dollar backlog of unfunded operations and maintenance at public parks and beaches. The Coastal Commission's recommended high priority public access and recreation acquisitions remain unfulfilled. In light of those and other priorities, we urge you to consider whether the cost of an easement on this road and eroding beach best serves the state's coastal access needs.

Finally, all this expense can be avoided if the Coastal Commission, County, and State cooperate with Martins Beach instead of trying to use coercion to obtain its property. The property owners have offered multiple times over the last few years to continue to allow access on days when historical demand exceeded 10 cars per day. This offer was made on the condition that the Coastal Commission and County are cooperative and will allow maintenance and other simple requests that are not inconsistent with the purpose of the Coastal Act and afforded to most property owners on the coast, and to Martins Beach, historically. The property owners have also offered to sell the property to the State at fair market value. Alternatively, the property owners have offered to find cooperative solutions to the limited demand for access that exists, and to increase education, research, and programs related to restoration/preservation of species. This can be achieved with very minimal expenses to either party instead of lengthy litigation and acquisition costs while achieving the goal of providing access on days when historical demand was highest.

If you have any questions, or wish to discuss this further, please let me know.

Sincerely,

HOPKINS & CARLEY
A Law Corporation


Dori L. Yob

DYB/mlb