

**STAFF REPORT
C107**

A Statewide

08/23/18

S Statewide

C. Connor

W 26830

**CONSIDER DELEGATING AUTHORITY TO THE EXECUTIVE OFFICER TO ACCEPT
DONATIONS AND MAKE DEPOSITS TO THE MARTINS BEACH SUBACCOUNT OF
THE KAPILOFF LAND BANK FUND**

PARTY:

California State Lands Commission

PROPOSED DELEGATION:

A trailer bill to the Governor's 2018-19 budget, SB 854 (Committee on Budget and Fiscal Review, Chapter 51, Statutes of 2018), established a subaccount in the Kapiloff Land Bank Fund for money received from public and private sources, including nonprofit sources, for the acquisition and creation of a public access route to and along the shoreline, including the sandy beach, at Martins Beach in San Mateo County. Chapter 51 authorizes the Commission to:

- Transfer money from the Kapiloff Land Bank Fund to the subaccount, in an amount not to exceed \$1,000,000, and expend that money after money from other public, private, and nonprofit sources has been used.
- Deposit into the subaccount and expend money received from the County of San Mateo for purposes related to the creation of the public access route.

Donations to the Kapiloff Land Bank Fund are usually agendaized and considered by the Commission at regularly-scheduled, publicly-noticed meetings. Due to the high volume of donations anticipated, the Executive Officer requests authority to accept donations and make deposits to the Martins Beach subaccount.

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. It is a crescent-shaped beach with a sandy shoreline 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 the highway. The parcel—Assessor's Parcel Number [APN] 066-330-230—is owned by Martins Beach 1 LLC and Martins

STAFF REPORT NO. **C107** (CONT'D)

Beach 2 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 winding down from Cabrillo Highway. The area along Martins Beach Road has, over many decades, been developed with 46 single-family residences. Each structure, also known 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 owner, the Deeney family, provided a general store and public restroom. They built the first cabin and allowed the construction of the others. 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 closed the gate in 2010 and erected signs warning against trespass, preventing public access to Martins Beach.

In September 2014, Governor Brown signed SB 968 (Hill), which added section 6213.5 to the Public Resources Code. 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. The Commission must also consult and negotiate with local stakeholders to address the ongoing management and operation of any property it acquires.

PROPOSED PUBLIC ACCESS EASEMENT:

California’s ungranted tide and submerged lands 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 waterward of the ordinary high water mark, is a foundational 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 80-year history, the Commission has championed public access and exercised the Public Trust numerous times to ensure public access to sovereign lands.

STAFF REPORT NO. C107 (CONT'D)

Staff has spent considerable time researching the Martins Beach 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 in July 2015 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 along Martins Beach Road from Cabrillo Highway to the point where the road meets the beach. The easement would continue along Martins Beach Road parallel to the beach for a short distance to allow vehicles to drop people off and turn around. That 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. That part of the easement contains approximately 5.31 acres. The proposed easement also includes a 0.21 acre public parking area at an existing turn out off Martins Beach Road just above (to the east of) the cabins. The area of the proposed public access easement is 6.39 acres.

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

Staff met in person with Martins Beach LLC representatives multiple times in 2015. Throughout 2016, staff had intermittent contact with Martins Beach LLC representatives to discuss additional ideas for facilitating public access to the beach. Staff has had no discussions with Martins Beach LLC representatives since then and no discussions are scheduled.

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-cv-05590-JSW). The suit requests

STAFF REPORT NO. C107 (CONT'D)

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. A motion to dismiss this case is under consideration by the U.S. District Court, Northern District of California.

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 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, subsequently depublished). The Court reversed as to 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. On remand, the case survived a motion for summary judgment in county Superior Court and went to trial in November 2017 on the dedication and public rights issues. The judge ruled from the bench against the Friends of Martins Beach, finding that no dedication, implied or express, existed. The Friends of Martins Beach have appealed this decision to the California Court of Appeals, but no ruling has been issued. The Court has explained that the State is not bound by this decision because it was not a party to this lawsuit.

In *Martins Beach 1, LLC et al. v. Surfrider Foundation* (Case No. A144268 and A145176) (previously *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 violated the Coastal Act. The owner appealed. In August 2017, the First Appellate District in the California Court of Appeal ruled that the beach closure constituted development under the Coastal Act and ordered that the gate remain open while the lower courts adjudicate the overarching issues. The gate, however, has only been opened sporadically. Martin's Beach 1, LLC appealed this ruling to the State Supreme Court, which declined to hear the case. On February 22, 2018, the property owner filed a petition for certiorari to the U.S. Supreme Court. The Court has not yet decided whether it will hear the case, but it is expected to decide by October 2018.

STAFF REPORT NO. **C107** (CONT'D)

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6213.5, 6216, 6301, 8602, 8610, 8612.5, 8615, 8616, 8617, 8625

Donations to the Kapiloff Land Bank Fund are usually associated with complex title settlement and land exchange agreements, mitigation for impacts to the environment or Public Trust, or Natural Resource Damage Assessments. Donations may also be accepted for other purposes. Donations are agendaized and considered by the Commission at regularly-scheduled, publicly-noticed meetings. Because the donations generally involve complicated matters, staff reports are prepared to inform the Commissioners and the public about the circumstances surrounding the donation, the amount and how the donation will be used.

Staff anticipates receiving numerous donations of varying amounts for the Martins Beach subaccount from public, private, and nonprofit sources. It would be cumbersome, time consuming and inefficient to prepare detailed staff reports and for the Commission to consider each donation to the Martins Beach subaccount individually at future meetings. Accordingly, the Executive Officer requests authority to accept donations and make deposits to the Martins Beach subaccount in the Kapiloff Land Bank Fund. The delegation of authority to the Executive Officer is an administrative action, unlikely to have an impact on public trust resources. The proposed delegation is in the state's best interests because it will streamline the process of collecting donations.

OTHER PERTINENT INFORMATION:

1. Staff presented informational updates on the status of negotiations to purchase a public access easement to and along Martins Beach at the Commission's December 2015 ([Calendar Item 124, December 18, 2015](#)) and December 2016 ([Calendar Item 65, December 16, 2016](#)) public meetings.
2. Pursuant to SB 854, the money deposited into the Martins Beach subaccount may be used for acquisition of property through condemnation.
3. This action is consistent with Strategy 1.3 of the Commission's Strategic Plan to protect, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.

STAFF REPORT NO. **C107** (CONT'D)

4. Approving the proposed delegation of authority is not a project as defined by the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes to the environment. In addition, Kapiloff Land Bank transactions are statutorily exempt from CEQA.

Authority: Public Resources Code sections 8631, 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

EXHIBITS:

- A. Senate Bill 854 - Codified as Public Resources Code section 8610(b)
- B. Martins Beach Donation Instruction Document

RECOMMENDED ACTION:

It is recommended that the Commission:

STATE'S BEST INTERESTS:

Find that the proposed delegation is in the best interests of the State.

AUTHORIZATION:

Authorize the Executive Officer or her designee to accept donations and make deposits to the Martins Beach subaccount in the Kapiloff Land Bank Fund and to take all necessary or appropriate action on behalf of the Commission, including the execution, acknowledgment, and acceptance of all related documents that may be needed to accomplish this authorization.

EXHIBIT A

Public Resources Code 8610

(a) There is in the State Treasury the Land Bank Fund, which fund is hereby created. All moneys in the fund are appropriated to the commission for expenditure, without regard to fiscal years, for the purposes of Section 8625. When performing the powers and duties set forth in this division, the commission shall be known as the Land Bank Trustee.

(b) (1) The Martins Beach Subaccount is hereby created in the fund. Moneys received from public or private sources, including nonprofit sources, to be used 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 pursuant to Section 6213.5 shall be deposited into the subaccount and be continuously appropriated to and expended by the commission to acquire that right-of-way or easement, either in accordance with the procedures set forth in Title 7 (commencing with Section 1230.010) of Part 3 of the Code of Civil Procedure, or through a negotiated agreement, and for costs associated with that acquisition, including, but not limited to, environmental studies, analyses, and assessments, and associated improvements and maintenance costs, in accordance with the following priority:

(A) Moneys received from public or private sources, including nonprofit sources, that are deposited into the subaccount shall first be expended by the commission for the creation of that public access route, and any associated improvements and maintenance costs.

(B) The commission may also transfer moneys from the fund to the subaccount, not to exceed a maximum of one million dollars (\$1,000,000), and expend those moneys for the creation of that public access route and associated improvements and maintenance costs, after moneys received pursuant to subparagraph (A) have been used.

(2) The commission may deposit into the subaccount and expend moneys received from the County of San Mateo pursuant to an appropriation by the county for the purposes of this subdivision.

(3) The commission may, pursuant to Section 6213.5, acquire the right-of-way or easement necessary for the creation of the public access route, as prescribed in paragraph (1). Nothing in this paragraph prevents the commission from acquiring the right-of-way or easement through a negotiated agreement.

(4) General Fund contributions to the subaccount shall be segregated and separately accounted for.

(Amended by Stats. 2018, Ch. 51, Sec. 31. (SB 854) Effective June 27, 2018.)

EXHIBIT B

Martins Beach Donation Information Sheet

WHAT: The State Lands Commission is accepting donations for the creation of a public access route to Martins Beach.

WHERE: Martins Beach is a picturesque pocket beach in San Mateo County, south of Half Moon Bay, located along the South Cabrillo Highway.

HOW: Donations may be made by cash, check or credit card (Visa, Mastercard, or Discover). If donating by check, please include your name and address, and reference **“Martins Beach Access”** to ensure deposit into the Martins Beach Subaccount. You can use the Donation Form on the reverse of this sheet to donate by check, or call us at 916-562-0026 to donate by credit card or wire transfer.



Frequently Asked Questions

What is the Martins Beach Subaccount?

This account was created by the legislature to fund the creation of a public access route to Martins Beach ([Pub. Resources Code § 8610, subd. \(b\)\(1\)](#)). The subaccount resides within the [Kapiloff Land Bank Fund](#) and is an interest-bearing account (Fund 0943).

Who can donate funds to the Subaccount?

Anyone! Private and public sources, including members of the public and nonprofit groups, can contribute.

How will donations be spent?

Funds will be spent on acquisition and creation of the public access route and related costs, such as environmental studies, analyses, and assessments, and associated improvements and maintenance.

Can I write this off on my taxes?

Donations to the Martins Beach Subaccount are tax deductible as a donation to the State for a public purpose. (See IRS Publication 526 and Internal Revenue Code § 170 (c)(1).) Consult a tax attorney or professional to verify whether you can claim a deduction.

Will my donation be confidential?

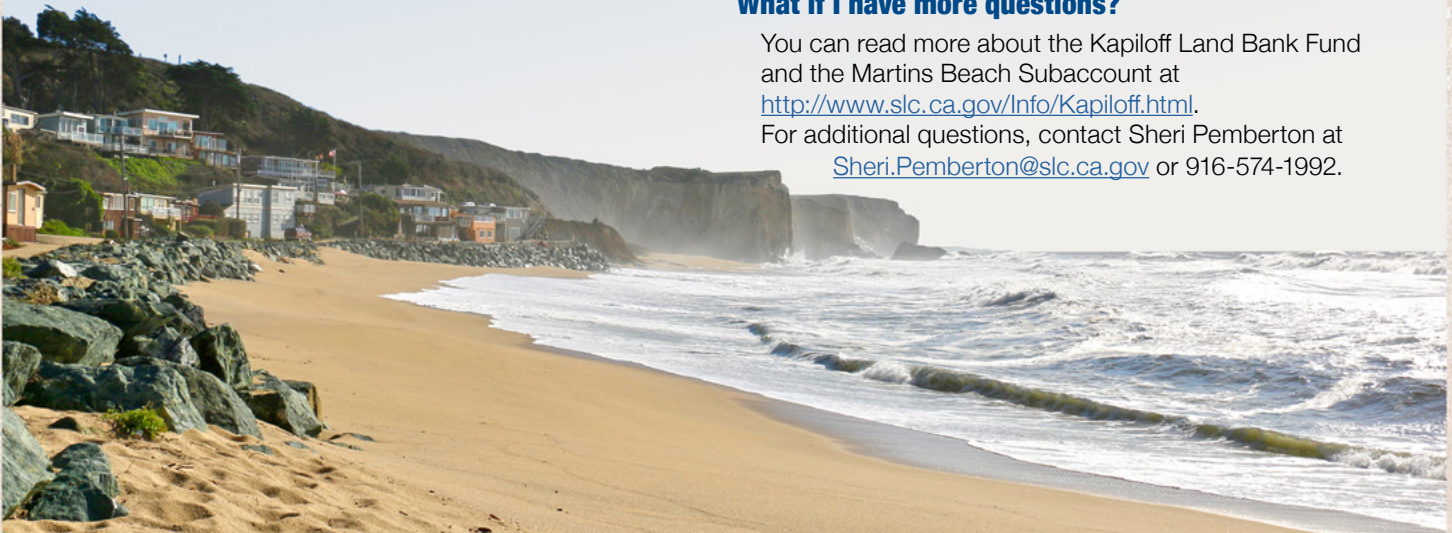
We will keep your personal information confidential to the extent permitted by law. Your name and donation amount may be disclosable under the Public Records Act.

What happens if not all the money donated is used?

Donations will be used in the order received. Securing a public access route is likely to be a multi-year effort. If at some point the State Lands Commission must permanently suspend this effort for now-unforeseen reasons, donations unused at that point would be returned to the donor(s).

What if I have more questions?

You can read more about the Kapiloff Land Bank Fund and the Martins Beach Subaccount at <http://www.slc.ca.gov/Info/Kapiloff.html>. For additional questions, contact Sheri Pemberton at Sheri.Pemberton@slc.ca.gov or 916-574-1992.



DONATION FORM

Yes, I would like to donate to the Martins Beach Subaccount for a public access route to Martins Beach.

NAME _____

ADDRESS _____ APT. OR SUITE _____

CITY _____ STATE _____ ZIP CODE _____

PHONE (optional) _____ EMAIL (optional) _____

Please keep my donation confidential to the extent permitted by law.

CHECK ENCLOSED Check number _____ Amount _____

*(Please make check out to **State Lands Commission** and write **Martins Beach Access** on the memo/reference line.)*

California State Lands Commission
100 Howe Avenue, Suite 100 – South
Sacramento, California 95825
Attn.: Martins Beach Access

DONATION BY CREDIT CARD OR WIRE TRANSFER: please call the State Lands Commission Cash Desk at 916-562-0026. We accept Visa, Mastercard, and Discover.

