

CALIFORNIA COASTAL COMMISSION

Coastal Public Access Program
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SOME FACTS ABOUT PUBLIC PRESCRIPTIVE RIGHTS

What is a public prescriptive right?

- Prescriptive Rights refer to public rights that are acquired over private lands through use. Along the California coast the general public has historically used numerous coastal areas. Trails to the beach, informal parking areas, beaches, and blufftops have provided recreational opportunities for hiking, picnicking, fishing, swimming, surfing, diving, viewing and nature study. The public may have the right to use the property by permission of the owner or the public may acquire the right through use of the property without permission.
- A right of access acquired through *use* is, essentially, an easement over real property that comes into being without the explicit consent of the owner. The acquisition of such an easement is referred to as an "implied dedication", the right acquired is also referred to as a "public prescriptive easement". This term recognizes that the use must continue for the length of the "prescriptive period" before a public easement comes into being. In California the prescriptive period is five (5) years.

The Commission's interest in prescriptive rights.

- Under the California Coastal Act, Coastal Public Access Program, Public Resources Code Sections 30530-34, the Commission is required to prepare and implement a program in coordination with other federal, state, and local agencies, including the State Attorney General's Office, to maximize public access. The program includes a prescriptive rights element whereby the Coastal Commission researches and inventories the historic public use of areas with the potential for significant public access benefits. Where research indicates that the public use is substantial enough to create potential prescriptive rights, the Attorney General's Office has the authority to proceed with the legal action necessary to protect those use areas.
- On sites with coastal development permit proposals, where investigation shows that public use is substantial enough to create potential prescriptive rights, the Coastal Commission is required to protect those areas of use prior to approving a development project that would interfere with those rights. The California Coastal Act, Public Resources Code Section 30211, states:

Development shall not interfere with the public's right of access to the sea where acquired through use, or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Investigating Potential Prescriptive Rights.

- The Commission in conjunction with the State Attorney General's Office can investigate areas of potential prescriptive rights. The goal of a prescriptive rights investigation is to gather enough information about the subject property to accurately detail the property's history and use status. The initiation of a prescriptive rights investigation is not a judgement that a "prescriptive right" exists or probably exists. The outcome of the investigation will determine whether there is a sound factual basis for making a claim of prescriptive rights.

SOME FACTS ABOUT PUBLIC PRESCRIPTIVE RIGHTS (cont'd.)

Basic Criteria for Determining Prescriptive Rights to Use a Property.

- Basic criteria to determining a public prescriptive right include that the land has been used:
 - For the prescriptive period of five years as if it were public land - the use must be substantial rather than minimal - and continual, though it need not be continuous.
 - Without asking or receiving permission from the owner;
 - With the actual or presumed knowledge of the owner;
 - Without significant objection or bona fide attempts by the fee owner to prevent or halt such use.

Preventing Creation of Public Prescriptive Rights.

- With regard to coastal properties (defined generally as being within 1000 yards of the sea, bay or estuary or between the mean high tide line and the nearest public road, whichever distance is less) presently being used by the public, since March 4, 1972, the landowners have had the power to prevent future creation of public rights by implied dedication. The landowner may do this by posting signs containing the language set forth in Civil Code Section 1008, "Right to pass by permission, and subject to control, of owner: Section 1008, Civil Code", and renewing the same, if they are removed, at least once a year; or by annually publishing such language in a newspaper of general circulation in the county in which the land is located. As another method to prevent creation of public rights by implied dedication, the landowner may record in the office of the recorder of the county in which the land is situated a notice of consent to public use as provided in Civil Code Section 813. Landowners should refer directly to the statutes for details.
- Public prescriptive rights existing prior to the effective date of the statute are not affected by this legislation.

The Public's Role in Preserving Prescriptive Rights.

- A prescriptive rights investigation includes documentary searches, on-site inspections and questionnaires and interviews. The most important source of evidence is from persons familiar with the past and current uses of the property. The loss of historical access and recreational sites funnels a growing population into fewer and fewer areas and can reduce the range of uses as well. Prescriptive trails or sites may provide access to bluff tops, wide sandy beaches, remote coastal areas, rocky fishing sites, scuba entry points, intimate pocket beaches and more providing for a wide variety of coastal experiences. Participating in prescriptive rights investigations will help identify where these rights exist and protect them in perpetuity.

Completing the questionnaire is a way for you to assist in the preparation of a prescriptive rights study.

Questions regarding prescriptive rights and the Coastal Commission can be directed to Linda Locklin, 831-427-4875 or llocklin@coastal.ca.gov.