

STAFF REPORT

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06/28/19

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**CONSIDER ACCEPTANCE OF AN OFFER OF DEDICATION
OF LATERAL ACCESS EASEMENT**

PARTY THAT RECORDED OFFER OF DEDICATION:

Doerken 2003 Charitable Remainder Unitrust, a California Trust

PARTY TO ACCEPT EASEMENT:

California State Lands Commission

INTERESTED PARTY:

California Coastal Commission

LOCATION:

The easement is located between the ambulatory mean high tide line of the Pacific Ocean and the dripline of the structure adjacent to 21106 Pacific Coast Highway, Assessor Parcel Number 4450-010-023 (Subject Property), Malibu, Los Angeles County.

BACKGROUND:

Since the adoption of the Constitution of California of 1879, access to California's Public Trust waterways has been a mandated responsibility of State government. The vast majority of the hundreds of title settlement agreements the Commission has entered into since its inception in 1938 have included the provision of public access to the waterways involved.

In the 1960s, an organization with the acronym COAST (Citizens Organized to Acquire Access to State Tidelands) began a "Save the Coast" campaign that eventually resulted in the adoption of Proposition 20 by the State's voters in 1972. Since the Legislature's passage of the Coastal Act in 1976, more than 1,500 offers to dedicate (OTDs) public access easements, both vertical and lateral (i.e., to and along the coast), have been made involving California's 1,100-mile coastline.

These OTDs were formally made and recorded by property owners as a condition of approval of permits to develop within the Coastal Zone. They have a 21-year life from the date of recording and will expire if not formally accepted by a public agency within that time period.

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The OTDs were required to ensure protection of existing public rights of use and to mitigate and compensate for the impacts to public access caused by development. In many cases, the location of the boundary between the privately owned uplands and the publicly owned tidelands is unsettled. Furthermore, the public may have acquired rights of use through the doctrine of implied dedication and have rights of recreational use in any area subject to the public easement in navigable waters. Therefore, these OTDs may describe and include areas already having public rights of use or public ownership. Acceptance by the Commission of the OTDs does not change the nature of the existing rights, but removes any question of the public's right of use of the area described.

The California Coastal Commission has requested that the State Lands Commission review and, where appropriate, accept OTDs of lateral access easements involving sandy beach areas lying adjacent to tidelands managed by the Commission. Commission staff is involved in an ongoing process with the Coastal Commission to analyze the OTDs and determine which offers the Commission should accept.

The Commission has already authorized the acceptance of more than 280 OTDs along the coast of California since April 2, 1991, the majority of which are located in the Malibu area of Los Angeles County.

The Commission's liability for holding these lateral parcels is limited by section 831.2 of the Government Code, which provides that a public entity is not liable for injury caused by a natural condition of any unimproved public property. There should be no maintenance and little management required for these easements because of the lack of improvements on the parcels and because the easements simply provide the public with the right to access and use the beach.

OTDs generally involve sandy beach areas lying between the private structure built on the upper beach and the tidelands which are already State owned and under the Commission's jurisdiction. Therefore, these areas are not only appurtenant to the Commission's existing area of ownership and jurisdiction, but are, for all practical public use purposes, integral to it. Staff reviewed the offer of the property interest shown on the attached Exhibit B-1 and recommends approval.

STAFF ANALYSIS AND RECOMMENDATION:

Statutory Authority:

Public Resources Code sections 6005, 6106, 6216, 6219, and 6301.

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Public Trust and State's Best Interests Analysis:

The proposed action involves acceptance of an OTD to secure a public lateral access easement across a privately held parcel. Public access easements are vital tools for ensuring California's coastline remains open and accessible to the public. The proposed OTD will run the entire width of the Subject Property from the mean high tide line to the deck dripline. The Coastal Development Permit (No. 14-054) that required the OTD at 21106 Pacific Coast Highway as a condition was approved on July 18, 2016, by the City of Malibu (Resolution No. 16-28).

The Irrevocable Offer to Dedicate Public Lateral Access Easement and Declaration of Restrictions was recorded by Peter W. Doerken, Trustee of the Doerken 2003 Charitable Remainder Unitrust, a California Trust on June 21, 2017, as Document No. 20170690927, Official Records of Los Angeles County. The OTD expires on May 12, 2038.

Staff has reviewed the recorded OTD and believes it is appropriate for Commission acceptance. Upon approval by the Commission, the Commission's Executive Officer will execute and record a Certificate of Acceptance, accepting the easement on the Subject Property. Once accepted, the easement will create an additional 50 linear feet of public access along the beach adjacent to the Subject Property.

The addition of this easement will address a gap in the existing lateral access along this portion of the beach, creating greater certainty for the public that the beach is open to the public. As such, staff believes that the proposed action is consistent with and promotes Public Trust needs and values at this location, at this time, and is in the State's best interests.

OTHER PERTINENT INFORMATION:

1. Acceptance of the OTD is a discretionary action by the Commission. Each time the Commission accepts an OTD, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law.
2. Acceptance of the OTD promotes Strategy 1.3 of the Commission's Strategic Plan to promote, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
3. The acceptance of an offer of dedication 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 in the environment.

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

EXHIBITS:

- A. Location Map
- B-1. Land Description
- B-2. Sketch to Accompany Land Description

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST FINDING:

Find that the acceptance of this OTD is consistent with and promotes Public Trust needs and values at this location and is in the State's best interests.

AUTHORIZATION:

1. Approve the acceptance of the Irrevocable Offer to Dedicate Public Lateral Access Easement recorded on June 21, 2017, as Document No. 20170690927, Official Records of Los Angeles County.
2. Authorize the Executive Officer or designee to execute and record a Certificate of Acceptance on behalf of the California State Lands Commission.



EXHIBIT A

TS 05/13/19

W 24665
 21106 PACIFIC COAST HIGHWAY,
 MALIBU, LOS ANGELES COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



EXHIBIT C-1

LATERAL ACCESS EASEMENT
OVER APN: 4450-010-023

BEING A PORTION OF THE FOLLOWING DESCRIBED PARCEL:

THOSE PORTIONS OF LOTS 70, 69 AND 71 OF TRACT 12634 IN THE CITY OF MALIBU, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 260 PAGES 25 TO 27, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING IN THE NORTHERLY LINE OF SAID LOT 69, 45.51 FEET SOUTHWESTERLY FROM THE NORTHEAST CORNER OF SAID LOT 69, THE RADIAL AT SAID POINT BEARS SOUTH 13°42'13" EAST; THENCE SOUTH 7° 37' 35" EAST, 88.93 FEET TO THE SOUTHERLY LINE OF SAID LOT 70, THE RADIAL AT SAID POINT BEARS SOUTH 18°27'11" EAST; THENCE SOUTHWESTERLY ALONG SAID SOUTHERLY LINE 37.19 FEET TO THE MOST SOUTHERLY CORNER OF SAID LOT 70; THENCE NORTH 16°45'19" WEST, 67.83 FEET; THENCE NORTH 23°05'25" WEST, 24 FEET TO A POINT IN THE NORTHWESTERLY LINE OF SAID LOT 71, DISTANT THEREON SOUTHWESTERLY 2.65 FEET FROM THE MOST NORTHERLY CORNER THEREOF, THE RADIAL AT SAID POINT BEARS SOUTH 16°54'48" EAST; THENCE NORTHEASTERLY ALONG THE NORTHWESTERLY LINE OF SAID LOTS, 53.78 FEET TO THE POINT OF BEGINNING.

EXCEPTING ANY PORTION OF SAID LOTS WHICH AT ANY TIME WAS TIDE LAND, WHICH WAS NOT FORMED BE THE DEPOSIT OF ALLUVION FROM NATURAL CAUSES BY IMPERCEPTIBLE DEGREES.

SAID PORTION OF THE ABOVE DESCRIBED LAND IS BOUNDED ON THE NORTH BY THE FOLLOWING DESCRIBED LINE:

BEGINNING IN THE NORTHERLY LINE OF SAID LOT 69, 45.51 FEET SOUTHWESTERLY FROM THE NORTHEAST CORNER OF SAID LOT 69, THE RADIAL AT SAID POINT BEARS SOUTH 13° 42' 13" EAST; THENCE SOUTH 7° 37' 35" EAST, 28.44 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIBED LINE; THENCE SOUTH 65°55'33" WEST, 46.98 FEET TO A POINT ON THE WEST LINE OF THE ABOVE DESCRIBED PARCEL; SAID POINT BEING SOUTH 23°05'25" EAST, 24.00 FEET AND SOUTH 16°45'19" EAST, 11.57 FEET FROM THE NORTHWEST CORNER OF THE ABOVE DESCRIBED PARCEL AND THE END OF THIS DESCRIBED LINE.

AND BOUNDED ON THE SOUTH BY THE AMBULATORY MEAN HIGH TIDE LINE OF THE PACIFIC OCEAN.

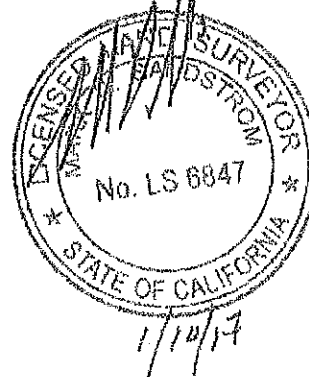
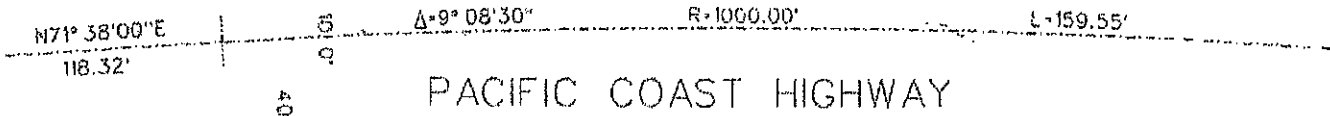
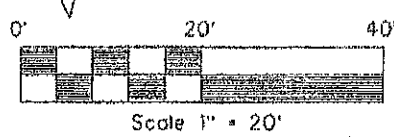
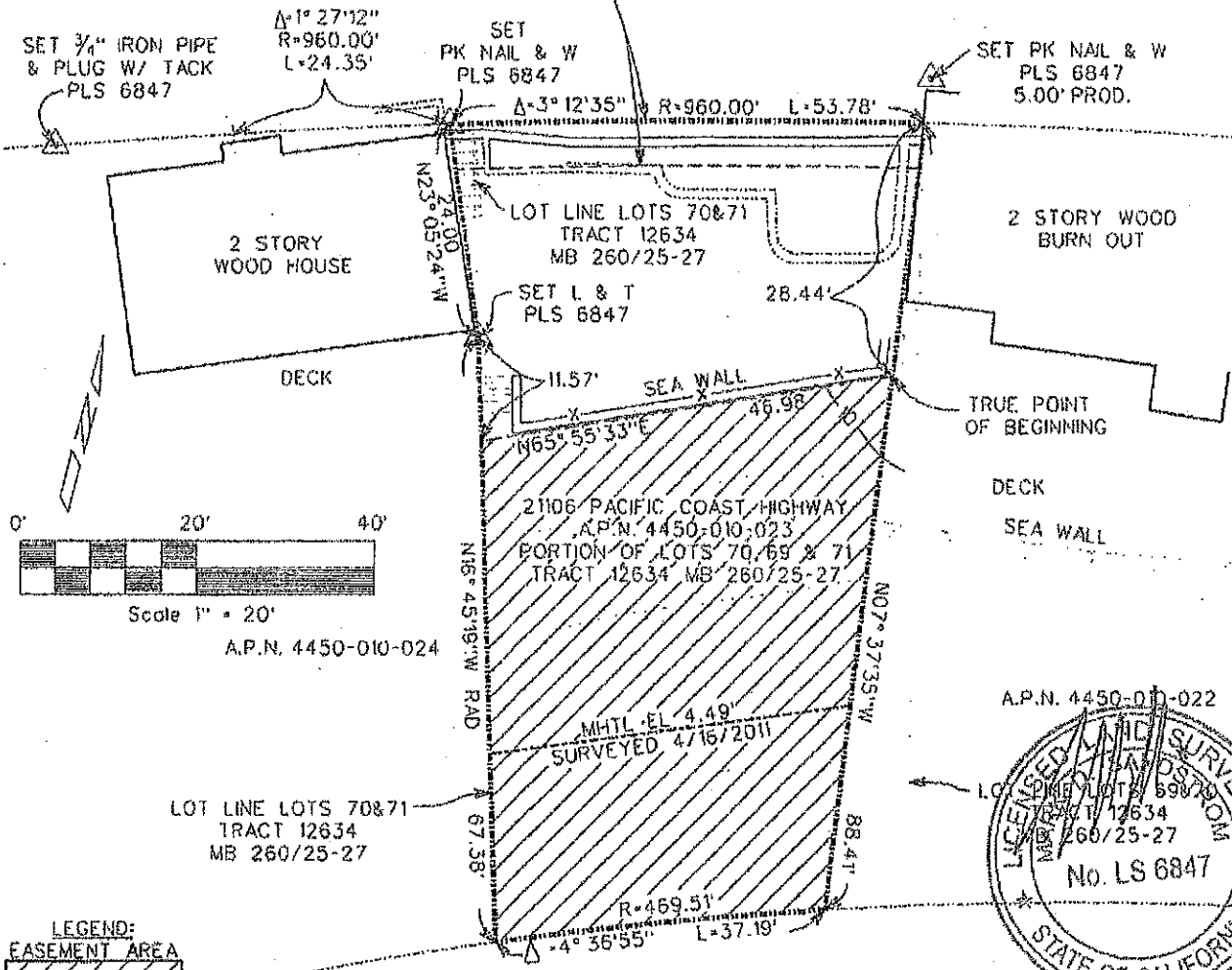


EXHIBIT "C-2"
LATERAL ACCESS EASEMENT

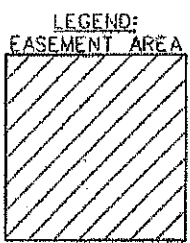
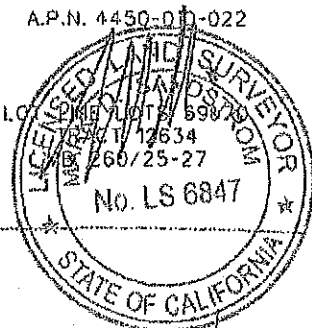


PACIFIC COAST HIGHWAY

5' EASEMENT FOR UTILITIES, PUBLIC AND/OR PRIVATE RECORDED JULY 30, 1952 AS INST. NO. 2013, PER ITEM NO. 6.



A.P.N. 4450-010-024



NOTES: THE SOUTHERLY BOUNDARY OF THE EASEMENT AREA AT THE "MEAN HIGH TIDE LINE" IS AMBULATORY AND IS DEPICTED FOR REFERENCE PURPOSES ONLY.

THIS SURVEY WAS PERFORMED ON 4/16/2011. THE MEAN HIGH TIDE LINE SHOWN ON THIS SURVEY WAS MEASURED USING THE SANTA MONICA 1983-2001 TIDAL EPOCH, USING 4.49 FEET NAVD 1988.

REVISIONS:	SURVEYED FOR:	SURVEYED BY:	SCALE:	CALC'D BY:
	DOERKEN PROPERTIES C/O PETER DOERKEN 1448 15TH ST. STE 100 SANTA MONICA, CA 90404	<i>[Signature]</i>	1" = 20'	SI
SURVEYED BY:			JOB NO:	CHK'D BY:
RS JF			DKN-113	DS
DRAWN BY:			SURVEY DATE:	EASE BY:
DS			4/16/11	DS
			SHEET:	EASEMENTS CHK'D BY:
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