

**CALENDAR ITEM
C46**

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S 27

04/05/16
W 24665
D. Simpkin

**CONSIDER AMENDMENT
OF LATERAL ACCESS EASEMENT**

PARTIES TO AMENDED PUBLIC ACCESS EASEMENT:

Carbonview Limited, LLC

California State Lands Commission

INTERESTED PARTY:

California Coastal Commission

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 State Lands Commission (Commission) has entered into since its inception in 1938 have included the provision of public access to the waterways involved.

In the 1960's, an organization with the acronym COAAST (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. These OTDs 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.

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

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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 (CCC) 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 CCC 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 between April 2, 1991, and April 23, 2015, 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 ANALYSIS AND RECOMMENDATION:

Statutory Authority:

Public Resources Code sections 6005, 6216, and 6301.

Public Trust and State's Best Interests Analysis:

The proposed action involves amending an existing public access easement along Carbon Beach in the City of Malibu. Public access easements are vital tools for ensuring California's coastline remains open and accessible to the public. On August 8, 2005, the Commission authorized an OTD public access easement located at 22224 Pacific Coast Highway (Assessor's Parcel Numbers [APNs] 4451-006-036 and 037) in the City of Malibu. The Certificate of

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Acceptance was recorded into the Official Records of the Los Angeles County Recorder's Office as Instrument Number 2006-25845.

On July 20, 2014, the CCC granted Coastal Development Permit (CDP) 5-84-791-A1, which included the recombination of two beachfront parcels (APNs 4451-006-036 and 037) adjacent to Carbon Beach in the City of Malibu. Pursuant to the conditions of the CDP, the property owner is required to modify the previously recorded lateral public access easement on the recombined lot. The existing lateral public access easement extends the entire width of the property from the Mean High Tide Line to the top of the seawall. The area 10 feet waterward of the seawall has been identified as a privacy buffer restricted to pass and repass only. In this instance, the amendment appears to be decreasing the size of the existing easement by removing the privacy buffer and reducing the width of the easement by approximately nineteen (19) feet. Standing alone, this action would reduce the total easement area by approximately 1,609 square feet. However, this amendment is part of a larger plan to increase public access in the area.

In exchange for the amendment of this easement, the property owner, Carbonview Limited, LLC, will grant a new easement on the adjacent parcel (APN 4451-006-018). The proposed OTD is subject to consideration under a separate agenda item, which will add an additional fifty-five (55) linear feet of public access. This will result in a net increase in square footage of public access. Additionally, the newly granted easement will address a gap in the existing lateral access along this portion of beach, resulting in 245 linear feet of contiguous public access at Carbon Beach and greater certainty for the public that the beach is in fact open to the public. In addition, the CDP requires the property owner to donate \$400,000 to the Mountains Recreation and Conservation Authority, a local government public entity, dedicated to the preservation and management of local open space and parkland, watershed lands, trails, and wildlife habitat. The \$400,000 will be used to construct a public vertical access way within the Coastal Zone of the City of Malibu. The CCC Executive Officer will consult Commission staff prior to the expenditure of any funds.

Increasing the overall square footage and continuity of public access and contributing toward additional vertical access in the area will serve to increase public access and increase the opportunity for members of the public to visit the beach for fishing, swimming, and other recreational and public trust uses. As such, Commission staff believes that the proposed action promotes the public trust and is in the best interests of the State.

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OTHER PERTINENT INFORMATION:

1. The proposed action 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.
2. The staff recommends that the Commission find that the subject amendment to the public access easement does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

EXHIBITS:

- A. Location and Site Map
- B. Property Information

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the subject amendment to the public access easement is not subject to the requirements of 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.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed easement amendment, as conditionally approved, is consistent with the common law public trust doctrine and is in the best interests of the State.

AUTHORIZATION:

1. Conditionally approve an amendment to the public access easement as described and shown on Exhibit B and detailed in Coastal Development Permit 5-84-791-A1, subject to proper recordation of an Irrevocable Offer to Dedicate Public Access Easement over Assessor's Parcel Number 4451-006-018 in substantially the form of the copy of such document on file in the Sacramento office of the Commission.

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2. Authorize delegation of authority to the Executive Officer to execute, acknowledge, and record the easement amendment and the acceptance and consent to record on behalf of the California State Lands Commission, in substantially the form of the copy of such document on file in the Sacramento office of the Commission when the Executive Officer determines that the recordation required in Authorization Number 1 above has properly occurred.

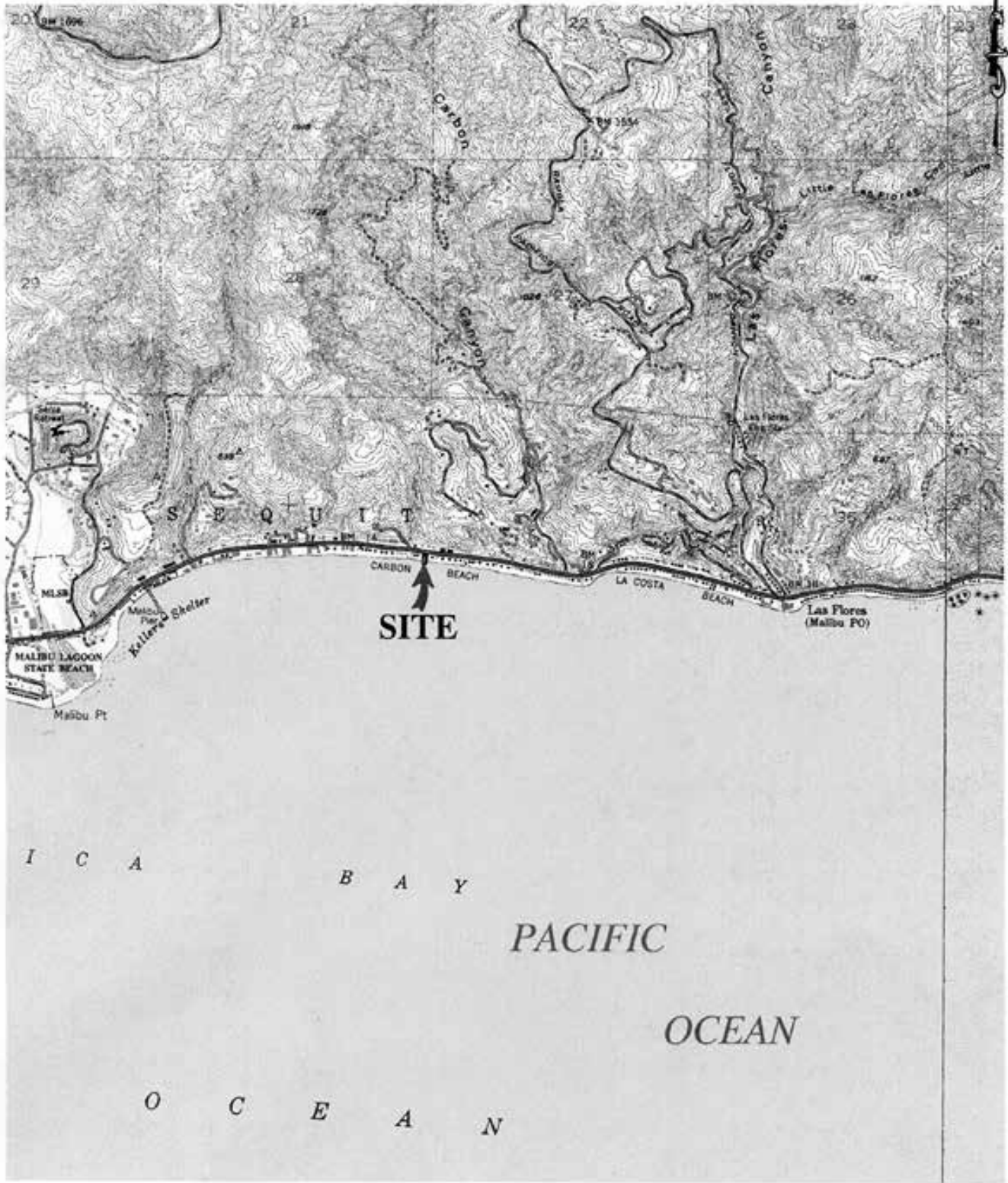


EXHIBIT A

TS 02/22/16

W 24665
 22224 PACIFIC COAST HIGHWAY,
 MALIBU, LOS ANGELES COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



LATERAL PUBLIC ACCESS EASEMENT
PER CALIFORNIA COASTAL COMMISSION
RESOLUTION CDP 5-84-791-A1 AND A2

OVER A PORTION OF LOT 1 OF THE RANCHO TOPANGA MALIBU SEQUIT, IN THE CITY OF MALIBU, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER RECORDER'S FILED MAP NO. 534, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE CENTER LINE OF ROOSEVELT HIGHWAY, 80 FEET WIDE, AS ESTABLISHED BY DECREE OF CONDEMNATION, SUPERIOR COURT CASE NO. 135650, COUNTY OF LOS ANGELES, A CERTIFIED COPY OF WHICH WAS RECORDED IN BOOK 9434 PAGE 338 OFFICIAL RECORDS OF SAID COUNTY, DISTANT THEREON SOUTH 83 DEGREES 49 MINUTES 30 SECONDS EAST 1081.27 FEET FROM THE WESTERLY TERMINUS OF THE CERTAIN COURSE IN SAID CENTER LINE, HAVING A BEARING OF SOUTH 83 DEGREES 49 MINUTES 30 SECONDS EAST AND A LENGTH OF 2154.49 FEET;

THENCE CONTINUING ALONG SAID CENTER LINE, SOUTH 83 DEGREES 49 MINUTES 30 SECONDS EAST, 45 FEET;

THENCE SOUTH 6 DEGREES 10 MINUTES 30 SECONDS WEST TO THE MEAN HIGH TIDE OF THE PACIFIC OCEAN;

THENCE WESTERLY ALONG SAID MEAN HIGH TIDE LINE TO THE INTERSECTION OF A LINE WHICH BEARS SOUTH 6 DEGREES 10 MINUTES 30 SECONDS WEST FROM THE POINT OF BEGINNING; THENCE NORTH 6 DEGREES 10 MINUTES 30 SECONDS EAST TO THE POINT OF BEGINNING.

AND OVER A PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, AS CONFIRMED TO MATTHEW KELLER, IN THE CITY OF MALIBU, LOS ANGELES COUNTY, STATE OF CALIFORNIA, BY PATENT RECORDED IN BOOK 1 PAGE 407 ET SEQ., OF PATENTS, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT OF INTERSECTION OF THE SOUTHERLY LINE OF THE 80 FOOT STRIP OF LAND DESCRIBED IN THE DEED FROM T. R. CADWALADER, TRUSTEE, ET AL., TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 15228 PAGE 342, OFFICIAL RECORDS OF SAID COUNTY, WITH THE EASTERLY LINE OF THE LAND DESCRIBED IN THE DEED TO W. W. TOUCHSTONE AND WIFE, RECORDED MAY 8, 1935 IN BOOK 13445 PAGE 46, OFFICIAL RECORDS OF SAID COUNTY, SAID POINT OF BEGINNING BEING DISTANT SOUTH 83 DEGREES 49 MINUTES 30 SECONDS EAST 1125.71 FEET, MORE OR LESS, MEASURED ALONGSAID SOUTHERLY LINE FROM A POINT BEARING SOUTH 6 DEGREES 10 MINUTES 30 SECONDS WEST 40 FEET FROM ENGINEER'S CENTER LINE STATION 989 PLUS 65.17 AT THE WESTERLY EXTREMITY OF THAT CERTAIN COURSE IN THE CENTER LINE OF SAID 80 FOOT STRIP OF LAND, DESCRIBED IN SAID DEED RECORDED IN BOOK 15228, PAGE 342 OFFICIAL RECORDS, AS SOUTH 83 DEGREES 49 MINUTES 30 SECONDS EAST 2153.25 FEET;

THENCE SOUTH 83 DEGREES 49 MINUTES 30 SECONDS EAST ALONG SAID SOUTHERLY LINE 10 FEET;

THENCE SOUTH 6 DEGREES 10 MINUTES 30 SECONDS WEST TO THE LINE OF ORDINARY HIGH TIDE OF THE PACIFIC OCEAN;

THENCE WESTERLY ALONG SAID TIDE LINE TO THE EASTERLY LINE, OR ITS SOUTHERLY EXTENSION OF THE LAND DESCRIBED IN SAID DEED TO W. W. TOUCHSTONE AND WIFE, RECORDED IN BOOK 13445 PAGE 46, OFFICIAL RECORDS;

THENCE NORTH 6 DEGREES 10 MINUTES 30 SECONDS EAST ALONG SAID EASTERLY LINE, OR ITS SOUTHERLY EXTENSION TO THE POINT OF BEGINNING.

AND ALSO OVER A PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, AS CONFIRMED TO MATTHEW KELLER, IN THE CITY OF MALIBU, LOS ANGELES COUNTY, STATE OF CALIFORNIA, BY PATENT RECORDED IN BOOK 1 PAGE 407 ET SEQ., OF PATENTS, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF THE 80 FOOT STRIP OF LAND DESCRIBED IN THE DEED FROM T. R. CADAWALADER, ET AL., TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 15228 PAGE 342 OFFICIAL RECORDS OF SAID COUNTY, SAID POINT OF BEGINNING BEING IN SAID SOUTHERLY LINE, DISTANT SOUTH 6 DEGREES 10 MINUTES 30 SECONDS WEST 40 FEET AND NORTH 83 DEGREES 49 MINUTES 30 SECONDS EAST 987.54 FEET FROM ENGINEER'S CENTERLINE STATION 1011 PLUS 18.42 AT THE EASTERLY EXTREMITY OF THAT CERTAIN COURSE DESCRIBED IN SAID DEED AS SOUTH 83 DEGREES 48 MINUTES 30 SECONDS EAST 2153.25 FEET;

THENCE ALONG SAID SOUTHERLY LINE, NORTH 83 DEGREES 49 MINUTES 30 SECONDS WEST 30 FEET, MORE OR LESS, TO A POINT IN THE EASTERLY LINE OF THE PARCEL LAND DESCRIBED IN A DEED TO FIELDING C. COATES AND WIFE, RECORDED IN BOOK 18521 PAGE 54 OFFICIAL RECORDS OF SAID COUNTY;

THENCE SOUTH 6 DEGREES 10 MINUTES 30 SECONDS WEST ALONG SAID EASTERLY LINE TO THE ORDINARY HIGH TIDE LINE OF THE PACIFIC OCEAN;

THENCE EASTERLY ALONG SAID TIDE LINE TO THE INTERSECTION OF SAID TIDE LINE AND THAT LINE WHICH BEARS SOUTH 6 DEGREES 10 MINUTES 30 SECONDS WEST FROM SAID POINT OF BEGINNING; THENCE NORTH 6 DEGREES 10 MINUTES 30 SECONDS EAST TO SAID POINT OF BEGINNING.

LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE;

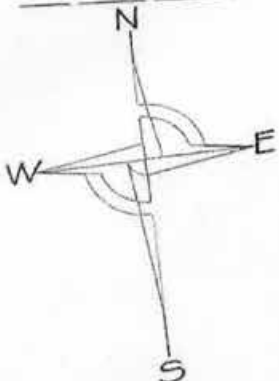
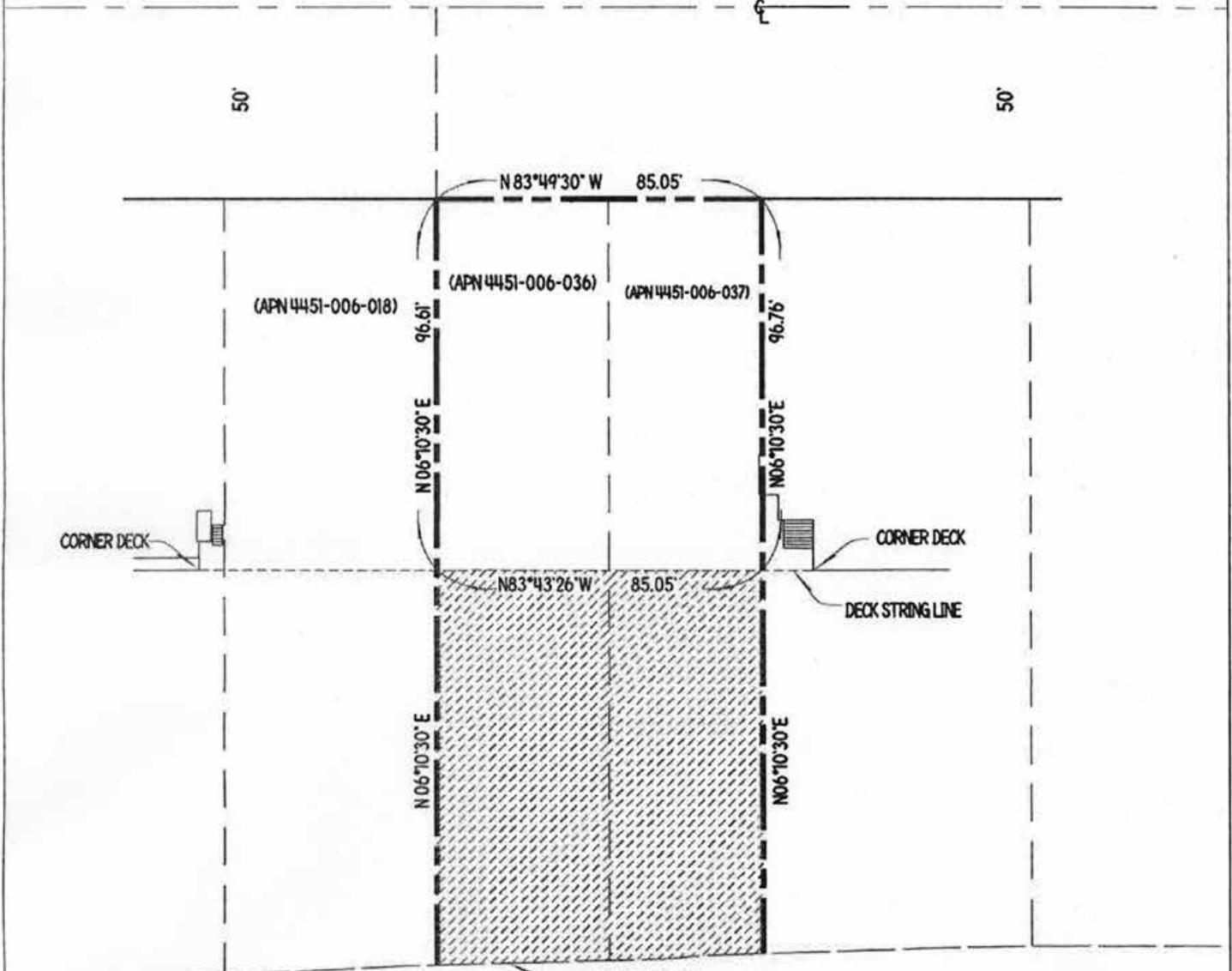
BEGINNING AT A POINT IN WESTERLY LINE OF THE ABOVE DESCRIBED PROPERTY BEING SOUTH 06 DEGREES 10 MINUTES 30 SECONDS WEST 96.61 FEET FROM THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY LINE OF PACIFIC COAST HIGHWAY WITH SAID WESTERLY LINE;

THENCE SOUTH 84 DEGREES 43 MINUTES 26 SECONDS EAST 85.05 FEET TO THE EASTERLY LINE OF SAID PROPERTY.



EXHIBIT C

PACIFIC COAST HIGHWAY



DATE 02-29-16
SCALE: 1" = 40'

PACIFIC OCEAN



LATERAL PUBLIC ACCESS EASEMENT PER
CALIFORNIA COASTAL COMMISSION
RESOLUTION CDP 5-84-791- A1 AND A2



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