

**CALENDAR ITEM  
C75**

A 50

06/28/16

S 27

W 26863  
D. Simpkin

**GENERAL LEASE – PROTECTIVE STRUCTURE AND RESIDENTIAL USE**

**LESSEE:**

Michael Ferrone, Successor Trustee of the Ferrone Trust Dated September 29, 1988

**AREA, LAND TYPE, AND LOCATION:**

Sovereign land in the Pacific Ocean, adjacent to 19830 Pacific Coast Highway, city of Malibu, Los Angeles County.

**AUTHORIZED USE:**

Use and maintenance of a portion of an existing residence and deck, and the construction, use and maintenance of a concrete bag wall.

**LEASE TERM:**

10 years, beginning June 28, 2016.

**CONSIDERATION:**

\$7,740 per year, with an annual Consumer Price Index adjustment.

**SPECIFIC LEASE PROVISIONS:**

Liability insurance in an amount no less than \$1,000,000 per occurrence.

**STAFF ANALYSIS AND RECOMMENDATION:**

**Authority:**

Public Resources Code sections 6005, 6216, and 6301; California Code of Regulations, Title 2, section 2000, subdivision (b).

**Public Trust and State's Best Interests Analysis:**

As part of the Applicant's application for a Coastal Development Permit with the City of Malibu to construct a new on-site wastewater treatment system (septic system) and leach field (located landward of the Commission's jurisdiction), the Applicant was required to obtain a jurisdictional review and determination from the Commission. Staff's review determined that approximately 344 square feet of the existing

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residence and deck and approximately 189 square feet of the proposed concrete bag wall are located within the Commission's leasing jurisdiction. The proposed concrete bag wall is located beneath the residence and provides the residence and septic system protection from wave action. Although residential uses are not generally associated with public trust uses under the common law Public Trust Doctrine, in the past the Commission has issued leases on a limited case-by-case basis for portions of existing residential structures when the structure's encroachment on sovereign lands does not significantly interfere with public trust needs and values.

Adverse effects related to protective structures include increased beach erosion, interference with natural sand supply, loss of public beach, and potential impacts on flora and fauna. The proposed concrete bag wall may pose some limited impacts to beach sand distribution to a very small section of beach; however, such minor effects must be weighed against the potential damage to public lands if the septic system and leach field were breached.

The privately owned uplands along this stretch of the Malibu coastline have been developed into private residences. The majority of the residences along the Malibu coastline predate the Subdivision Map Act (Gov. Code, § 66410 et seq.) and other laws intended to protect and promote public access. Accordingly, the houses are close together and do not provide any meaningful public access. The nearest public access point is located approximately 0.2 mile to the west between 19958 and 20000 Pacific Coast Highway. Although the subject facilities represent a private use of public property, the relatively small portion of the existing private use encroaching onto State-owned lands would not, at this time and for a limited term of 10 years, substantially interfere with the public's trust needs and values, primarily access to the adjacent beach and coastline.

Based upon the particular facts at this location, staff recommends the Commission find that the proposed lease would not result in a substantial interference with the public trust needs and values at this time and in this location. In addition, the proposed lease will provide for rent, insurance and indemnity, all in favor of protecting the State's interests. Conversely, the resources, costs, time, and uncertainty associated with seeking removal of these relatively small encroachments are significant. For these

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reasons, staff recommends finding that issuing a lease is in the best interests of the State at this time.

**OTHER PERTINENT INFORMATION:**

1. Applicant owns the upland adjoining the lease premises.
2. Staff recommends the issuance of the proposed lease, as it is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
3. Existing Residence and Deck: The staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).
4. Construction of a Concrete Bag Wall: The staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 4, Minor Alteration to Land; California Code of Regulations, Title 2, section 2905, subdivision (d)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, Title 14, section 15300 and California Code of Regulations, Title 2, section 2905.

5. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

**EXHIBITS:**

- A. Land Description
- B. Site and Location Map

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**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

Existing Residence and Deck: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

Construction of a Concrete Bag Wall: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15061 as a categorically exempt project, Class 4, Minor Alteration to Land; California Code of Regulations, Title 2, section 2905, subdivision (d)(2).

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that while continued use of the existing residence and deck are not generally consistent with the common law Public Trust Doctrine, these improvements and the construction of a concrete bag wall will not substantially interfere with the public trust needs and values at this location for the limited term of the lease, and that issuing the proposed lease is in the best interests of the State.

**SIGNIFICANT LANDS INVENTORY FINDING:**

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

**AUTHORIZATION:**

Authorize a General Lease – Protective Structure and Residential Use to Michael Ferrone, Successor Trustee of the Ferrone Trust Dated September 29, 1988; beginning June 28, 2016, for a term of 10 years, for the use and maintenance of a portion of an existing residence and deck, and the construction, use and maintenance of a concrete bag wall as described in Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof; annual rent in the amount of \$7,740, with an annual Consumer Price Index adjustment; liability insurance coverage in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**W 26863**

**LAND DESCRIPTION**

A parcel of tide and submerged land situate in the Pacific Ocean, City of Malibu, County of Los Angeles, State of California, lying adjacent to Lot 45 as shown on that certain Tract Map 24026, filed November 27, 1957 in Book 625 of Maps at pages 73 to 75, Los Angeles County Records, and being more particularly described as follows:

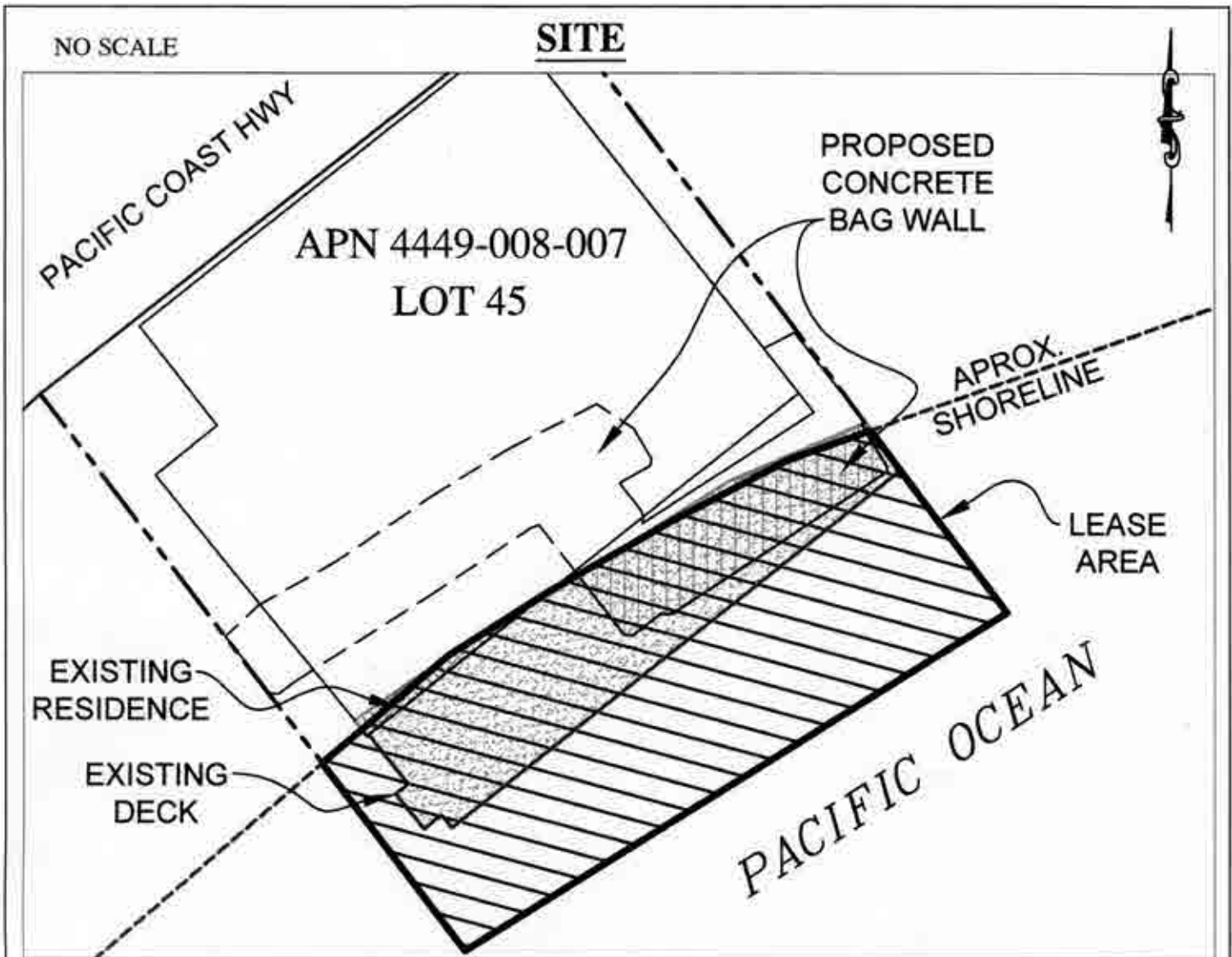
BEGINNING at the most northerly corner of said Lot 45; thence southeasterly along the northeasterly line and the southeasterly prolongation thereof, 69.6 feet; thence leaving said prolongation in a southwesterly direction, perpendicular to said prolongation, to a point on the southeasterly prolongation of the southwesterly line of said lot; thence northwesterly along said southeasterly prolongation and the southwesterly line of said lot, 63.2 feet to the westerly corner of said lot; thence in a northeasterly direction along the northwesterly line of said lot to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portions lying landward of the Ordinary High Water Mark of the Pacific Ocean.

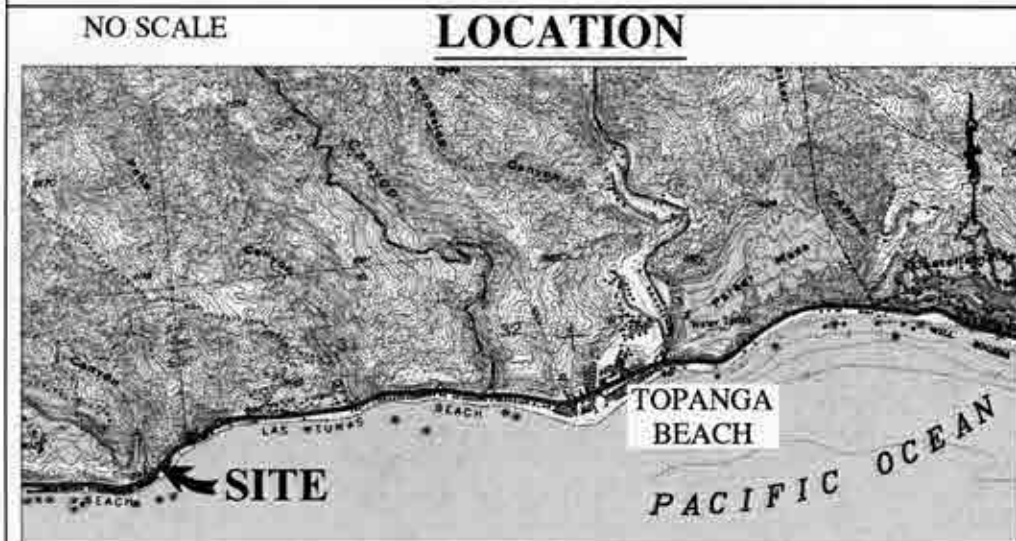
**END OF DESCRIPTION**

Prepared 01/25/2016 by the California State Lands Commission Boundary Unit.





19830 PACIFIC COAST HWY., MALIBU, CA.



MAP SOURCE: USGS QUAD

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.

**Exhibit B**

W 26863  
MICHAEL FERRONE TRUST  
APN 4449-008-007  
GENERAL LEASE -  
PROTECTIVE STRUCTURE &  
RESIDENTIAL USE  
LOS ANGELES COUNTY



RGB 01/03/16