

**STAFF REPORT
C76**

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10/19/17
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**CONSIDER ACCEPTANCE OF AN OFFER OF DEDICATION
OF LATERAL ACCESS EASEMENT**

PARTY WHO RECORDED OFFER OF DEDICATION:

David P. Margulies

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 deck dripline adjacent to 21950 Pacific Coast Highway (PCH), city of 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 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 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 California 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.

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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 (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 California 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 (Subject Property) and a proposed draft of the OTD for the Subject Property and recommends that the Commission authorize the Executive Officer to approve and accept the OTD if and when it is recorded with the Los Angeles County Recorder's office.

STAFF ANALYSIS AND RECOMMENDATION:

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 portion of a privately owned parcel. Public access easements are vital tools for ensuring California's coastline remains open and accessible to the public. The proposed OTD will include the entire width of the subject property from the Mean High Tide Line to the deck dripline.

Coastal Development Permit No. 14-071, which required the OTD at 21950 PCH as a condition, was approved on December 7, 2015, by the City of Malibu (Resolution No. 15-98). David P. Margulies recorded the irrevocable Offer to Dedicate Public Access Easement and Declaration of Restrictions on September 5, 2017, as Document No. 20171006972, Official Records of Los Angeles County. The OTD expires on September 5, 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 or her designee will execute and record a Certificate of Acceptance, accepting the easement on the subject property. Once accepted, the easement will create 50.32 lineal feet of public access along the beach adjacent to the property at 21950 PCH (Assessor's Parcel Number 4451-005-027).

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 best interests of the State.

OTHER PERTINENT INFORMATION:

1. Staff recommends acceptance of the OTD as it 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. Staff recommends the Commission find that acceptance of the OTD 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).

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

EXHIBITS:

- A. Location Map
- B-1. Legal Description
- B-2. Site Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that acceptance of the offer of dedication 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 acceptance of the offer of Dedication is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

AUTHORIZATION:

1. Approve and authorize the acceptance of the Irrevocable Offer to Dedicate Public Access Easement recorded on September 5, 2017, as Document No. 20171006972, Official Records of Los Angeles County; as a condition of Coastal Development Permit No.14-071 for Assessor's Parcel Number 4451-005-027.
2. Authorize the execution, acknowledgment, and recordation of the acceptance and consent to record by the Executive Officer or her designee on behalf of the Commission, in substantially the form of the copy of such document on file in the Sacramento office of the Commission.

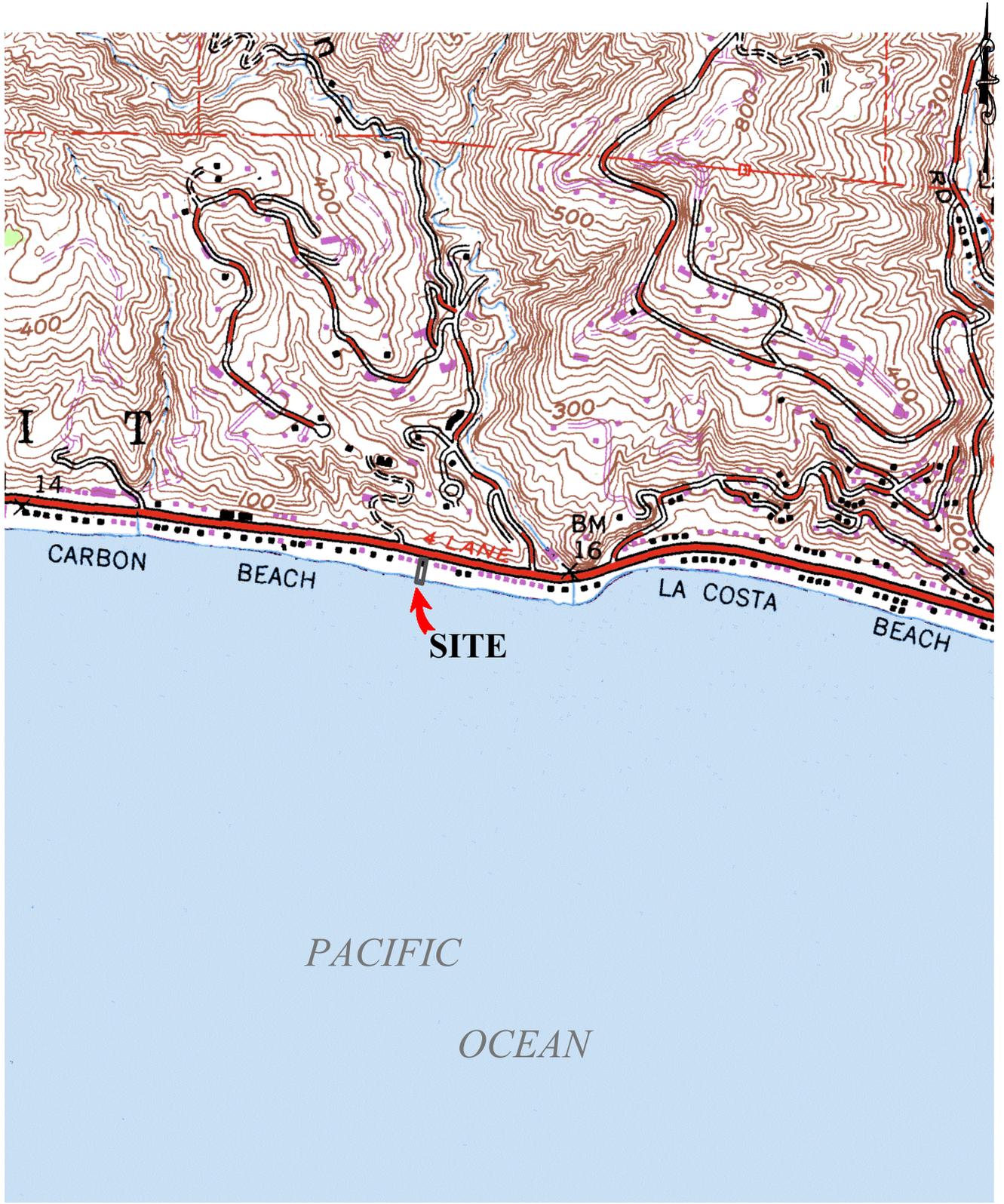


EXHIBIT A

TS 08/16/17

W 24665
21950 PACIFIC COAST HIGHWAY,
MALIBU, LOS ANGELES COUNTY

CALIFORNIA STATE
LANDS COMMISSION



EXHIBIT "C-1"
(LATERAL ACCESS EASEMENT)
21950 PACIFIC COAST HWY, MALIBU
A.P.N. 4451-005-027

GRANTOR PARCEL

Parcel 1:

A parcel of land being a portion of the Rancho Topanga Malibu Sequit, in the City of Malibu, County of Los Angeles, State of California, as confirmed to Matthew Keller by patent recorded in Book 1 Page 407 et seq. of patents, in the office of the County Recorder of said County particularly 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 Cadwalader, et al, to the State of California recorded in book 15228 page 342, Official Records of said County, said point of beginning being distant North 79° 08' 30" West 815.29 feet along said Southerly line from a point, bearing South 10° 51' 30" West 40 feet from engineer's centerline station 1027 plus 89.52 at the Easterly extremity of that certain centerline course described in said deed as South 79° 08' 30" East 1203.52 feet; thence North 79° 08' 30" West 50 feet along said Southerly line to a point; thence South 10° 51' 30" West 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 10° 51' 30" West from said point of beginning; thence North 10° 51' 30" East to said **Point of Beginning**.

"Excepting any portion of said land lying outside of the patent lines of the Rancho Topanga Malibu Sequit, as such lines existed at the time of the issuance of the patent, which was not formed by the deposit of alluvion from natural causes and by interceptible degrees"

LATERAL ACCESS EASEMENT

Said lateral access easement described as follows:

Beginning at a point on the Westerly line of Parcel 1, the seaward edge of a deck, distant South 10°51'30" West 86.30 feet from the most Northerly corner of said Parcel 1; thence along said deck edge South 79°07'35" East 50.00 feet to the Easterly line of said Parcel 1; thence along the Easterly line of said Parcel 1, South 10°51'30" West 66.42 feet; thence North 79°01'10" West 22.53 feet; thence North 87°47'09" West 27.79 feet to the Westerly line of said Parcel 1; thence along the Westerly line of said Parcel 1 North 10°51'30" East 70.56 feet to the **Point of Beginning**.

NOTE: The Southern boundary of the easement area at the Mean High Tide Line is ambulatory and is described for reference purposes only.

Matthew Keller
8/18/17

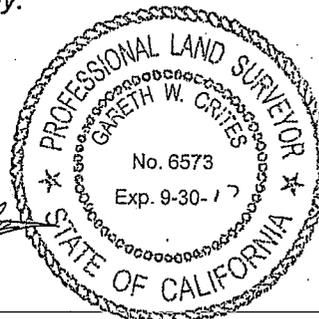
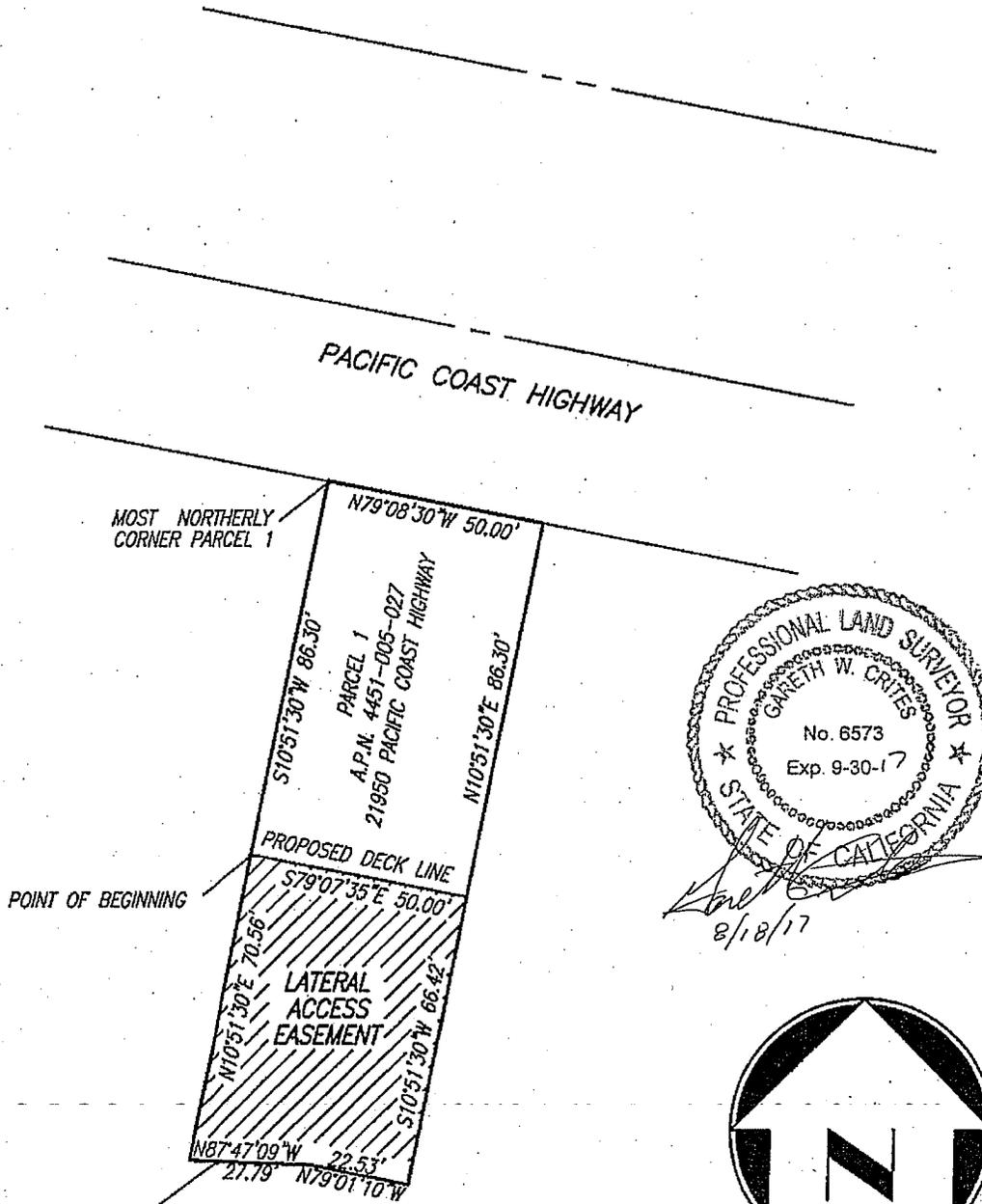


EXHIBIT C-2

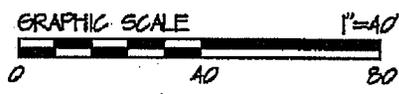
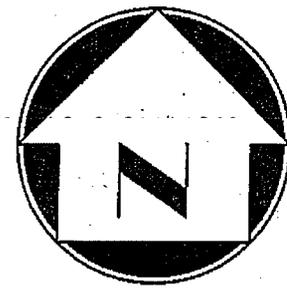
CITY OF MALIBU

21950 PACIFIC COAST HWY



PROFESSIONAL LAND SURVEYOR
 GARETH W. CRIFES
 No. 6573
 Exp. 9-30-17
 STATE OF CALIFORNIA

Gareth W. Crifes
 8/18/17



NOTE: THE SOUTHERN BOUNDARY OF THE EASEMENT AREA AT THE MEAN HIGH TIDE LINE IS AMBULATORY AND IS DEPICTED FOR REFERENCE PURPOSES ONLY

PREPARED BY
 PEAK SURVEYS, INC.
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