

TO: BOARD OF EDUCATION

ACTION/CONSENT

02/06/14

FROM: SANDRA LYON / JANECE L. MAEZ

RE: APPROVAL OF A VOLUNTARY INVESTIGATION AGREEMENT BETWEEN THE DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC) AND SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT (SMMUSD)

RECOMMENDATION NO. A.10

It is recommended that the Board of Education the attached Voluntary Investigation Agreement between the Department of Toxic Substances Control (DTSC) and Santa Monica-Malibu Unified School District (SMMUSD).

COMMENT: As the District moves forward with further environmental investigation at Malibu High School, its work will be under the oversight of two primary lead agencies - the Environmental Protection Agency and California's Department of Toxic Substances Control. The EPA will primarily concern itself with indoor air quality and building materials, such as caulking. The DTSC will have oversight for the broader environmental investigation of other potential areas of contamination on the campus, as well control over any cleanup that may potentially be required. To expedite its involvement with property investigations, and to avoid the need for further regulatory action, the DTSC developed the Voluntary Investigation Program. While participants in the program are required to reimburse the DTSC for the staff time and expense to assist with the property investigation, DTSC's Voluntary Investigation Program provides a more efficient, streamlined, and cost-effective approach to site investigation and cleanup. The attached Voluntary Investigation Agreement is required to enter into the program and is accompanied by an estimate of oversight costs. The agreement is a standard agreement utilized for most projects (including other school investigation projects) and has been reviewed and approved by district counsel. The fees have similarly been evaluated and are typical of oversight charges.

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Public Comments:

- *Jennifer deNicola encouraged the district to ensure DTSC and Environ communicate with the community to hear the concerns.*

Mr. de la Torre asked if the Financial Oversight Committee (FOC) had reviewed the costs of the environmental studies. Ms. Maez reported that, to date, the district has spent around \$500,000 for testing, reports, etc. While the FOC has not been involved in reviewing the individual contracts, they have, however, asked about the total cost and how that might impact the budget. She clarified that DTSC will be overseeing the cleaning and testing plans that Environ develops. The contract amount can be seen as a not-to-exceed amount. Mr. de la Torre asked that the board see the contract with Environ prior to it coming forward for approval.

MOTION MADE BY: Ms. Lieberman

SECONDED BY: Mr. de la Torre

STUDENT ADVISORY VOTE: N/A

AYES: Ms. Leon-Vazquez, Mr. Mechur, Mr. Allen, Mr. Patel, Ms. Lieberman, Mr. de la Torre, Dr. Escarce

NOES: None (0)

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Malibu High School and
Cabrillo Elementary School

Proponent:

Santa Monica Malibu Unified School District
1651 Sixteenth Street
Santa Monica, California 90404

Docket No. _____

Voluntary Investigation Agreement

Health and Safety Code
Section 25355.5(a)(1)(C)

The California Department of Toxic Substances Control (DTSC) and Santa Monica Malibu Unified School District (Proponent) enter into this Voluntary Investigation Agreement (Agreement) and agree as follows:

1. Site. This Agreement applies to the property located at 30215 and 30237 Morning View Dr., Malibu, in Los Angeles County, California 90265 (Site), identified by Los Angeles Assessor's Parcel Number 4469-017-900, and any off-site area to which hazardous substances have or may have migrated from the Site. The Site is approximately 39.52 acres in size and is bordered by N COR OF LOT 14 TR NO 15858 TH SE ON NE LINE OF SD LOT TO NW LINE OF CLOVER HEIGHTS AVE TH SW AND FOLLOWING SD AVE TO NE, a combination of commercial and residential uses bordering the property. A Site diagram and a Site location map are attached as Exhibits A and B.

2. Jurisdiction. This Agreement is entered into by DTSC and Proponent pursuant to Health and Safety Code section 25355.5(a)(1)(C) which authorizes DTSC to enter into an enforceable agreement to oversee the investigation and/or remediation of a release or threatened release of any hazardous substance at or from the Site.

3. Purpose. The purpose of this Agreement is for Proponent to investigate and/or remediate a release or threatened release of any hazardous substance at or from the Site under the oversight of DTSC. The purpose of this Agreement is also for DTSC to obtain reimbursement from Proponent for DTSC's oversight costs incurred pursuant to this Agreement.

4. Ownership. The Site is owned by Santa Monica-Malibu Unified School District.

5. Substances Found at the Site. Based on the information available to DTSC and Proponent, the Site is or may be contaminated with hazardous substances, including polychlorinated biphenyls (PCBs) pesticides, heavy metals and volatile organic compounds.

6. Scope of Work and DTSC Oversight. DTSC shall review and provide Proponent with written comments on all Proponent's deliverables as described in Exhibit C (Scope of Work) and other documents applicable to the scope of the project. DTSC shall provide oversight of field activities, including sampling and remedial activities, as appropriate. Proponent agrees to perform all the work required by this Agreement. Proponent shall perform the work in accordance with applicable local, state and federal statutes, regulations, ordinances, rules and guidance documents, in particular, Health and Safety Code section 25300 et seq., as amended.

7. Additional Activities. DTSC and Proponent may amend this Agreement to include additional activities in accordance with Paragraph 17 of this Agreement. If DTSC expects to incur additional oversight costs for these additional activities, it will provide an estimate of the additional oversight costs to Proponent.

8. Endangerment During Implementation.

8.1. Proponent shall notify DTSC's Project Manager immediately upon learning of any condition that may pose an immediate threat to public health or safety or the environment. Within seven days of the onset of such a condition, Proponent shall furnish a report to DTSC, signed by Proponent's Project Manager, setting forth the conditions and events that occurred and the measures taken in response thereto.

8.2. In the event DTSC determines that any activity (whether or not pursued in compliance with this Agreement) may pose an imminent or substantial endangerment to the health or safety of people on the Site or in the surrounding area or to the environment, DTSC may order Proponent to conduct additional activities in accordance with Paragraph 7 of this Agreement or to stop further implementation of this Agreement for such period of time as may be needed to abate the endangerment. DTSC may request that Proponent implement interim measures to address any immediate threat or imminent or substantial endangerment.

9. Access. Proponent shall provide, and/or obtain access to the Site and take all reasonable efforts to obtain access to offsite areas to which access is necessary to implement the Agreement. Such access shall be provided to DTSC's employees, contractors, and consultants at all reasonable times. Nothing in this paragraph is intended or shall be construed to limit in any way the right of entry or inspection that DTSC or any other agency may otherwise have by operation of law.

10. Sampling, Data and Document Availability. When requested by DTSC, Proponent shall make available for DTSC's inspection, and shall provide copies of, all data and information concerning contamination at or from the Site, including technical records and contractual documents, sampling and monitoring information and photographs and maps, whether or not such data and information was developed pursuant to this Agreement. For all final reports, Proponent shall submit one hard (paper) copy and one electronic copy with all applicable signatures and certification stamps as a text-readable Portable Document Formatted (pdf) file Adobe Acrobat or Microsoft Word formatted file.

11. Record Preservation. Proponent shall retain, during the implementation of this Agreement and for a minimum of six years after its termination, all data, reports, and other documents that relate to the performance of this Agreement. If DTSC requests that some or all of these documents be preserved for a longer period of time, Proponent shall either comply with the request, deliver the documents to DTSC, or permit DTSC to copy the documents at Proponent's expense prior to destruction.

12. Notification of Field Activities. Proponent shall inform DTSC at least seven days in advance of all field activities pursuant to this Agreement and shall allow DTSC and its authorized representatives to take duplicates of any samples collected by Proponent pursuant to this Agreement.

13. Project Managers. Within 14 days of the effective date of this Agreement, DTSC and Proponent shall each designate a Project Manager and shall notify each other in writing of the Project Manager selected. Each Project Manager shall be responsible for overseeing the

implementation of this Agreement and for designating a person to act in his/her absence. All communications between DTSC and Proponent, and all notices, documents and correspondence concerning the activities performed pursuant to this Agreement shall be directed through the Project Managers. Each party may change its Project Manager with at least seven days prior written notice.

14. Proponent's Consultant and Contractor. All work performed pursuant to this Agreement shall be under the direction and supervision of a professional engineer or professional geologist, licensed in California, with expertise in hazardous substance site cleanup. Proponent's Project Manager, contractor or consultant shall have the technical expertise sufficient to fulfill his or her responsibilities. Within 14 days of the effective date of this Agreement, Proponent shall notify DTSC's Project Manager in writing of the name, title, and qualifications of the professional engineer or professional geologist and of any contractors or consultants and their personnel to be used in carrying out the work under this Agreement in conformance with applicable state law, including but not limited to, Business and Professions Code sections 6735 and 7835.

15. DTSC Review and Approval. All work performed pursuant to this Agreement is subject to DTSC's review and approval. If DTSC determines that any report, plan, schedule or other document submitted for approval pursuant to this Agreement fails to comply with this Agreement or fails to protect public health or safety or the environment, DTSC may (a) return comments to Proponent with recommended changes and a date by which the Proponent must submit to DTSC a revised document incorporating or addressing the recommended changes; or (b) modify the document in consultation with Proponent and approve the document as modified. All DTSC approvals and decisions made regarding submittals and notifications will be communicated to Proponent in writing by DTSC's Branch Chief or his/her designee. No informal advice, guidance, suggestions or comments by DTSC regarding reports, plans, specifications, schedules or any other writings by the Proponent shall be construed to relieve Proponent of the obligation to obtain such written approvals.

16. Payment.

16.1. Proponent agrees to pay 1) all costs incurred by DTSC in association with preparation of this Agreement, and for oversight activities, including review of documents, conducted prior to the effective date of this Agreement, and (2) all costs incurred by DTSC in providing oversight pursuant to this Agreement, including review of the documents described in Exhibit C and associated documents, and oversight of field activities. Costs incurred include interest on unpaid amounts that are billed and outstanding more than 60 days from the date of the invoice. An estimate of DTSC's oversight costs is attached as Exhibit D. It is understood by the parties that Exhibit D is an estimate and cannot be relied upon as the final cost figure. DTSC may provide an updated or revised cost estimate as the work progresses. DTSC will bill Proponent quarterly. Proponent agrees to make payment within 60 days of receipt of DTSC's billing. Such billings will reflect any amounts that have been advanced to DTSC by Proponent.

16.2. In anticipation of oversight activities to be conducted, Proponent shall make an advance payment of \$20,832 to DTSC within 10 days of the effective date of this Agreement. It is expressly understood and agreed that DTSC's receipt of the entire advance payment as provided in this paragraph is a condition precedent to DTSC's obligation to provide oversight, review of or comment on documents. If the advance payment exceeds DTSC's final costs, DTSC will refund the difference within 120 days after the performance of this Agreement is completed or after this Agreement is terminated pursuant to Paragraph 18 of this Agreement.

16.3. All payments made by Proponent pursuant to this Agreement shall be by check payable to the "Department of Toxic Substances Control", and bearing on its face the project code for the Site (Site # TBD) and the docket number of this Agreement. Upon request by Proponent, DTSC may accept payments made by credit cards. Payments by check shall be sent to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st Floor
P.O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent concurrently to DTSC's Project Manager.

16.4. DTSC shall retain all cost records associated with the work performed under this Agreement as may be required by state law. DTSC will make all documents that support DTSC's cost determination available for inspection upon request in accordance with the Public Records Act, Government Code section 6250 et seq.

17. Amendments. This Agreement may be amended in writing by mutual agreement of DTSC and Proponent. Such amendment shall be effective the third business day following the day the last party signing the amendment sends its notification of signing to the other party. The parties may agree to a different effective date.

18. Termination for Convenience.

18.1. Except as otherwise provided in this paragraph, each party to this Agreement reserves the right to unilaterally terminate this Agreement for any reason. Termination may be accomplished by giving a 30-day advance written notice of the election to terminate this Agreement to the other party. In the event that this Agreement is terminated under Paragraph 18.1, Proponent shall be responsible for DTSC costs through the effective date of termination.

18.2. If operation and maintenance activities are required for the final remedy, Proponent may not terminate the Agreement under Paragraph 18.1 upon DTSC's approval of an Operation and Maintenance Plan as proposed by Proponent, unless an Operation and Maintenance Agreement is entered into between DTSC and Proponent or between DTSC and a party responsible for the required operation and maintenance activities.

19. Incorporation of Exhibits, Plans and Reports. All exhibits are incorporated into this Agreement by reference. All plans, schedules and reports that require DTSC's approval and are submitted by Proponent pursuant to this Agreement are incorporated in this Agreement upon DTSC's approval.

20. Reservation of Rights. DTSC reserves all of its statutory and regulatory powers, authorities, rights, and remedies under applicable laws to protect public health or the environment, including the right to recover its costs incurred therefor. Proponent reserves all of its statutory and regulatory rights, defenses and remedies available to Proponent under applicable laws.

21. Non-Admission of Liability. By entering into this Agreement, Proponent does not admit to any finding of fact or conclusion of law set forth in this Agreement or any fault or liability under applicable laws.

22. Proponent Liabilities. Nothing in this Agreement shall constitute or be considered a covenant not to sue, release or satisfaction from liability by DTSC for any condition or claim arising as a result of Proponent's past, current, or future operations or ownership of the Site.

23. Government Liabilities. The State of California or DTSC shall not be liable for any injuries or damages to persons or property resulting from acts or omissions by Proponent or by related parties in carrying out activities pursuant to this Agreement, nor shall the State of California or DTSC be held as a party to any contract entered into by Proponent or its agents in carrying out the activities pursuant to this Agreement.

24. Third Party Actions. In the event that Proponent is a party to any suit or claim for damages or contribution relating to the Site to which DTSC is not a party, Proponent shall notify DTSC in writing within 10 days after service of the complaint in the third-party action. Proponent shall pay all costs incurred by DTSC relating to such third-party actions, including but not limited to responding to subpoenas.

25. California Law. This Agreement shall be governed, performed and interpreted under the laws of the State of California.

26. Severability. If any portion of this Agreement is ultimately determined not to be enforceable, that portion will be severed from the Agreement and the severability shall not affect the enforceability of the remaining provisions of the Agreement.

27. Parties Bound. This Agreement applies to and is binding, jointly and severally, upon Proponent and its agents, receivers, trustees, successors and assignees, and upon DTSC and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement. Proponent shall ensure that its contractors, subcontractors and agents receive a copy of this Agreement and comply with this Agreement.

28. Effective Date. The effective date of this Agreement is the date of signature by DTSC's authorized representative after this Agreement is first signed by Proponent's authorized representative. Except as otherwise specified, "days" means calendar days.

29. Representative Authority. Each undersigned representative of the party to this Agreement certifies that she or he is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind the party to this Agreement.

30. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

Thomas M. Cota
Branch Chief
Schools Evaluation and Brownfield Outreach
Department of Toxic Substances Control

Date: _____

Janece L. Maez
Associate Superintendent, Business and Fiscal Services/Chief Financial Officer
Representing Santa Monica-Malibu Unified School District

Date: _____

EXHIBITS

A - SITE LOCATION MAP

B - SITE DIAGRAM

C - SCOPE OF WORK

D - COST ESTIMATE

EXHIBIT C SCOPE OF WORK

The following Tasks will be completed as part of this Agreement:

For example, if you are conducting:

- 1) A Preliminary Endangerment Assessment, you would use tasks 1, 3, 14.1, 14.2, 14.3, 18 and 19.
- 2) A Removal Action, you would use tasks 1, possibly 4 (if additional site investigation is necessary), 5, 6, 7, 8, 10, 12, 13, 14.1 through 14.7, [possibly 15, 16, 17 if O&M and land use restrictions are required], 18 and 19.
- 3) A Remedial Action Plan, you would use tasks 1, possibly 4 (if additional site investigation is necessary), 5, 6, 7, 8, 9, 11, 12, 13, 14.1 through 14.7, [possibly 15, 16, 17 if O&M and land use restrictions are required], 18 and 19.

If you are reviewing a specific document, you could use task 20.

TASK 1.

General Project Support. DTSC will provide technical support to the project, including, but not limited to coordinating and attending meetings with both internal and external stakeholders, addressing community group/public concerns, participating in community informational sessions, coordination with other regulatory agencies that may be involved, issuing fact sheets and notices, and ensuring that project information is available on-line and is accessible to the public.

TASK 2.

Submittal of Existing Data, Prior Site Remediation Reports and Scoping Meeting
The Proponent will submit to DTSC all background information, sample analysis results, environmental assessment reports, remediation reports and any other information pertinent to the hazardous substance management and/or release, characterization and cleanup of the Site. The information submitted by the Proponent shall be reviewed for conformance with DTSC standards for quality assurance/quality control, site investigations, and site remediation. DTSC will review the information to identify areas and media of concern, and to determine the additional work, if any, required to complete the investigation/remediation of the Site. Following DTSC's initial review, a scoping meeting will be held to discuss whether further site characterization is necessary, and, if so, how the characterization will be conducted for the Site and how they will be implemented.

TASK 3.

Preliminary Environmental Assessment (PEA). Proponent shall conduct a PEA to determine whether a release or threatened release of hazardous substances exists at the Site which poses a threat to human health or the environment. The PEA shall be

conducted in accordance with the DTSC guidance manual for evaluating hazardous substance release sites, titled: "Preliminary Endangerment Assessment Guidance Manual," State of California, Environmental Protection Agency, Department of Toxic Substances Control (Second Printing June 1999). Documents which may be required as part of the PEA are:

- (a) PEA Workplan. This workplan shall include a sampling plan designed to determine the type and general extent of contamination at the Site; a health and safety plan addressing health and safety issues and safe work practices; and a quality assurance/quality control plan to produce data of known quality.
- (b) PEA Report. This report will document whether a release has occurred or threatened release exists, the threat the Site poses to human health and the environment, and whether further action is necessary.

TASK 4.

Public Participation.

4.1 The Proponent shall conduct appropriate public participation activities given the nature of the community surrounding the Site and the level of community interest. The Proponent shall work cooperatively with DTSC to ensure that the affected and interested public and community are involved in DTSC's decision-making process. Any such public participation activities shall be conducted in accordance with Health and Safety Code sections 25358.7, the DTSC Public Participation Policy and Procedures Manual, and with DTSC's review and approval.

4.2 A scoping meeting may be held to determine the appropriate activities that will be conducted to address public participation.

4.3 The Proponent shall prepare a community profile to examine the level of the community's knowledge of the Site; the types of community concerns; the proximity of the Site to homes and/or schools, day care facilities, churches, etc.; the current and proposed use of the Site; media interest; and involvement of community groups and elected officials. The community profile also includes a mailing list for the Site.

4.4 The Proponent shall develop and submit fact sheets to DTSC for review and approval when specifically requested by DTSC. The Proponent shall be responsible for printing and distribution of fact sheets upon DTSC approval using the approved community mailing list.

TASK 5.

Health and Safety Plan. The Proponent will submit a Site Health and Safety Plan in accordance with California Code of Regulations, Title 8, section 5192. This plan should include, at a minimum the following elements:

- (a) Site Background/History/Workplan;
- (b) Key Personnel and Responsibilities
- (c) Job Hazard Analysis/Summary;
- (d) Employee Training;
- (e) Personal Protection;
- (f) Medical Surveillance;
- (g) Air Surveillance;

- (h) Site Control;
- (i) Decontamination;
- (j) Contingency Planning;
- (k) Confined Space Operations;
- (l) Spill Containment;
- (m) Sanitation;
- (n) Illumination; and
- (o) Other applicable requirements based on the work to be performed.

DTSC's *Interim Draft Site Specific Health and Safety Plan Guidance Document for Site Assessment/Investigation, Site Mitigation Projects, Hazardous Waste Site Work Closure, Post Closure, and Operation and Maintenance Activities* (DTSC, December 2000) can be used as a reference tool, The Health and Safety Plan should cover all measures, including contingency plans, which will be taken during field activities to protect the health and safety of the workers at the Site and the general public from exposure to hazardous waste, substances or materials. The Health and Safety Plan should describe the specific personnel, procedures and equipment to be utilized.

All contractors and all subcontractors shall be given a copy of the Health and Safety Plan prior to entering the Site. Any supplemental health and safety plans prepared by any subcontractor shall also be prepared in accordance with the regulations and guidance identified above. The prime contractor responsible for this subcontractor will be responsible for ensuring that all subcontractor supplemental health and safety plans follow these regulations and guidelines.

COST ESTIMATE WORKSHEET

Date: December 16, 2013
 Project Name: Malibu High School
 Site Code: TBD

Title	Project Manager	Supervisor		Toxicology	Geology	Industrial Hygienist	Public Participation	Legal	Clerical
Classification	Senior Environmental Scientist	Supervising Hazardous Engineer I	Environmental Program Manager I	Staff Toxicologist	Engineering Geologist	Assoc IH	PPS	Staff Counsel	Office Technician (Typing)
TASK:									
Agreement Prep./Negotiation			4						
Project Management			24						
Review and comment on existing data and Preliminary Endangerment Assessment (PEA) equivalent documents and provide general project oversight	12			8	12				
Supplemental Site Characterization									
- Workplan	12			12	12	4			
- Implementation	16				16				
- Report	12			6	12				
Mailing list, Public notice, Meetings	12		12	12	8		40		
Total No. Hours/Class	64	0	40	38	60	4	40	0	0
Hourly Rate/Class	\$141	\$192	\$163	\$166	\$181	\$141	\$115	\$203	\$61
Cost/Class	\$9,024	\$0	\$6,520	\$6,308	\$10,860	\$564	\$4,600	\$0	\$0
Contingency (10%)	\$3,788								
Grand Total Cost	\$41,664								
Advance Payment	\$20,832								

Notes:

- Revised
- 8-13-59
- 7-24-62
- 2-19-63
- 7-19-63
- 10-1-64
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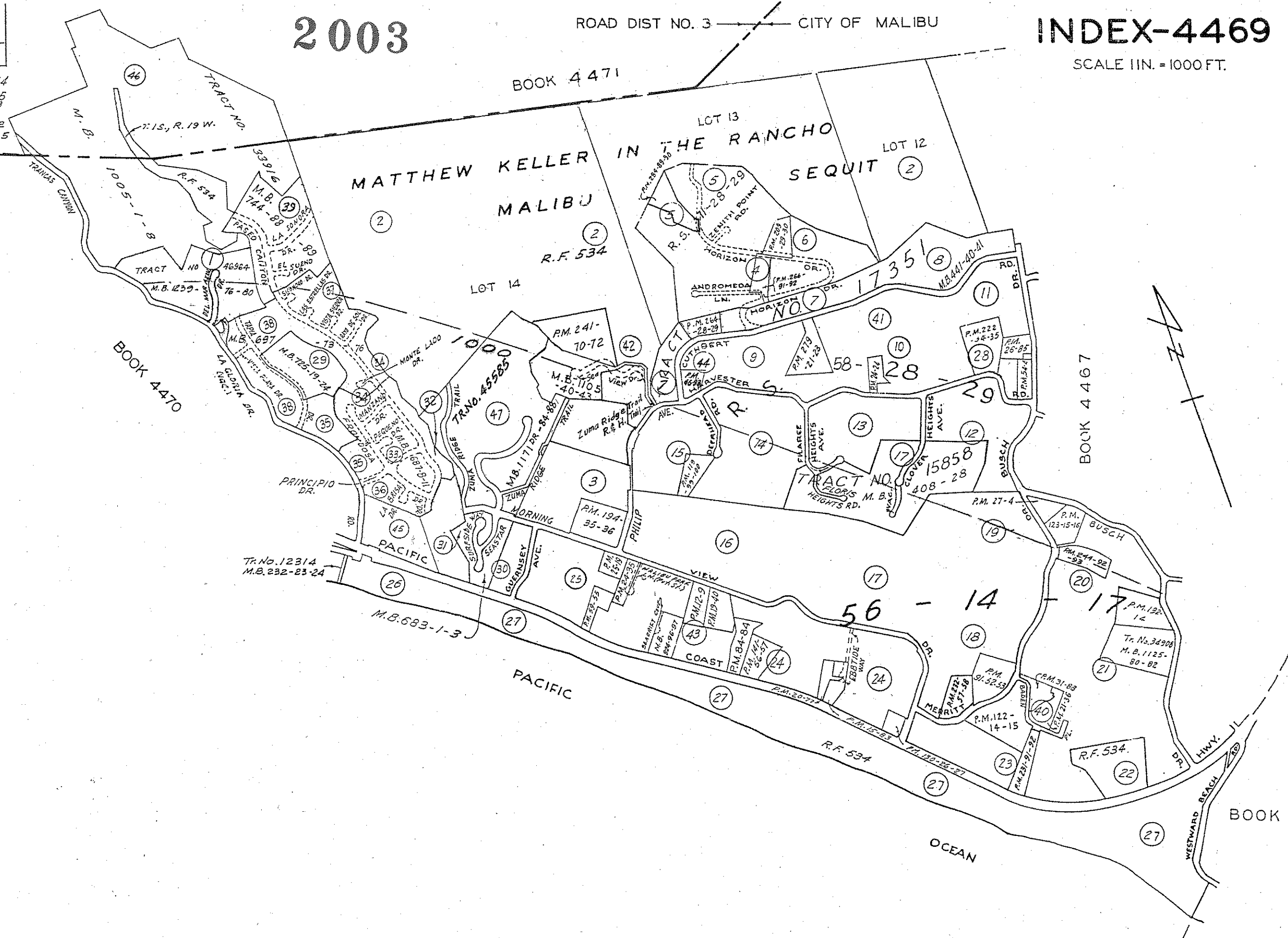
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