

Council Agenda Report

To: Mayor Barovsky and the Honorable Members of the City Council

Prepared by: Brandie Sanchez, Public Works Clerk *Brandie Sanchez*

Reviewed by: Yugal K. Lall, Public Works Director *Yugal K. Lall*

Approved by: Katie Lichtig, City Manager *Katie Lichtig*

Date prepared: September 2, 2004 Meeting date: September 27, 2004

Subject: Vacation of a Portion of a Public Street Easement on Broad Beach Road

RECOMMENDED ACTION: Conduct a public hearing for the vacation of the public street easement on Broad Beach Road located on the property at 30750 Pacific Coast Highway and adopt Resolution 04-51 (Attachment No. 1) ordering the vacation of a portion of public street easement on Broad Beach Road.

FISCAL IMPACT: This proposed vacation of the road easement will relieve the City of responsibility for maintenance of the easement on a portion of old Broad Beach Road. The cost for preparation of maps and legal descriptions will be borne by the petitioner.

DISCUSSION: Staff received a written request on behalf of the property owner at 30750 Pacific Coast Highway (PCH) to vacate a portion of the road easement for Broad Beach Road (Attachment No. 2). The portion of Broad Beach Road easement proposed for vacation is located on the northeast portion of the property at 30750 PCH. Staff reviewed the request and requested additional information to investigate and determine the status of the road easement. The documentation submitted indicates that the portion of Broad Beach Road to be vacated is part of the old Broad Beach Road alignment at its intersection with Pacific Coast Highway (east end) and there does not appear to be any need for the road easement for present or future use (Attachment No. 3). Portions of the old road have previously been vacated including a portion of the easement directly adjacent to the Malibu West Swimming Club in 1975 by the County of Los Angeles. The portion of the road easement being proposed for vacation lies adjacent to PCH and the Malibu West Swimming Club property at 30756 PCH. The vacation of the road will not affect public utility easements.

Vacation proceedings must be conducted in accordance with Division 9, Part 3, Chapter 3 of the Streets and Highway Code. Attached is a letter from the City Attorney's office dated May 17, 1995 regarding procedures for vacating public roads (Attachment No. 4). A Resolution of Intent must be adopted (Resolution No. 04-34). A public hearing has to be conducted and noticing must be done two weeks prior to the hearing. At the hearing, City Council will hear from all parties for or against the vacation. If the City Council finds that the public street easement is not needed for present or future public use, then the City Council will adopt a resolution of vacate the public street easement. The City Clerk will then certify and record the resolution. Upon such recordation, the vacation is complete.

To vacate a public street the Council must be able to make the necessary findings that the street is not needed for present or future public use and that there is public benefit derived from the vacation. Relief from the burden of maintenance of a roadway has been determined to be of sufficient public benefit. Because this portion of Broad Beach Road is no longer in use and does not serve as access to any other property other than the petitioner's property, a finding can be made that there is no existing benefit to the general public from retaining this road easement and there are no future plan for public use of this easement.

Not the case for Indian Head Ranch, as the roads are privately maintained.

The Public Works Commission, on August 25, 2004, recommended that the portion of public street easement be vacated. The notice (Attachment No. 5) for this easement vacation was published in Surfside News and three notices were posted at the site pursuant to the California Streets and Highways Code Section 8322-8323.

ALTERNATIVE: City Council may determine that it is not in the public's interest to vacate the street and deny the petitioner's request.

ATTACHMENTS:

- NO. 1 – Resolution No. 04-51
- NO. 2 – Petitioner's letter requesting vacation dated October 8, 2003
- NO. 3 – Reference Map
- NO. 4 – City Attorney letter dated May 17, 1995
- NO. 5 – Public Notice

RESOLUTION NO. 04-51

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU
ORDERING THE VACATION OF A PORTION OF PUBLIC STREET
EASEMENT ON BROAD BEACH ROAD

The City Council of the City of Malibu does hereby find, order and resolve as follows:

SECTION 1. The City Council of the City of Malibu hereby finds and determines that pursuant to the provisions of Division 9, Part 3, Chapter 3 of the California Streets and Highways Code of the State of California, known as "Street Vacation Act 1941", it adopted Resolution 04-34 declaring its intention to vacate all easements for future street purposes on Broad Beach Road located on property at 30750 Pacific Coast Highway as described in this resolution; and that a duly noticed public hearing was conducted.

SECTION 2. After considering the evidence submitted and all objections received, the City Council finds that this easement for future street purposes on Broad Beach located on property at 30750 Pacific Coast Highway is unnecessary for present or prospective public street purposes or non-motorized transportation facilities, and shall be, and is hereby vacated.

SECTION 3. The granting of such public street easement vacation on Broad Beach Road located on property at 30750 Pacific Coast Highway will not be contrary to or in conflict with the general purposes, goals, objectives and policies of the General Plan.

SECTION 4. The City Council hereby orders the vacation of the following described future public street easement on Broad Beach Road located on 30750 Pacific Coast Highway.

That portion of land indicated as Future Public Street on all recorded Tract and Parcel Maps for 30750 Pacific Coast Highway Doc# 98-690495 with frontage on Pacific Coast Highway, in the City of Malibu.

ATTACHMENT NO. 1

**Resolution No. 04-51
Page 2 of 2**

SECTION 5. The City Clerk shall certify to the passage and adoption of this resolution and shall cause an attested certified copy thereof, under the seal of the City of Malibu to be recorded in the office of the County Recorder of Los Angeles County, California.

PASSED, APPROVED, and ADOPTED on 27th day of September, 2004.

SHARON BAROVSKY, Mayor

ATTEST:

**LISA POPE, City Clerk
(seal)**

APPROVED AS TO FORM:

Christi Hogin
CHRISTI HOGIN, City Attorney

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Law Office of
MURRAY D. FISCHER
A PROFESSIONAL CORPORATION
MURRAY D. FISCHER
OF COUNSEL
WALTER WEISS

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EMAIL ADDRESS MDFRELAU@EARTHLINK.NET

PLEASE REFER TO FILE NO.

1187.001

October 8, 2003

Hon. Mayor Kearsley & Members of the City Council
City of Malibu
23815 Stewart Ranch Road
Malibu, CA 90265-4861

Hon. Mayor & Members of the City Council:

Please be advised that this law firm represents Mr. & Mrs. Michael L. Schwab, the owners of the property commonly known as 30750 Pacific Coast Highway, City of Malibu.

When Mr. Schwab acquired said property, his title policy showed his property was encumbered by an easement for purposes of a public road and highway. This easement was recorded on February 28, 1945 in Book 21735, Page 135 Official Records. In reviewing this easement, we became aware of the fact that said easement was also provided for over the adjacent property to the north which is currently owned by the Malibu Swim Club. In reviewing their title documents, it became known to us that on July 25, 1975, the easement was abandoned by the Board of Supervisors of the County of Los Angeles, State of California. The Board of Supervisors made a finding that that portion to be abandoned i.e. the easement for public road and highway on the Malibu Swim Club was no longer needed for its present or prospective public use and therefore a portion of the Broad Beach Road was ordered abandoned reserving and accepting therefrom easements and rights as set forth in Section 959.1 and 960 of the Streets and Highway Code of the State of California.

The same conditions that existed as to the Malibu Swim Club exist as to the Schwab property. Therefore, the Schwabs are making the same request of your Municipality as we have been informed that the roadway and easement have been transferred to the City of Malibu as part of their incorporation when they became a city.

In order to verify the fact that the easement was no longer needed over Mr. Schwab's property, this office along with Mr. Schwab met with Claudio Sanchez, P.E. Associate Civil Engineer of the City of Malibu in order to review and investigate the area in question. It is my understanding after meeting with Mr. Sanchez and discussing the matter with him that he will furnish a separate recommendation to you acknowledging that this easement is of no value and no longer is needed as the easement area Broad Beach Road has already been abandoned based upon the fact that the Pacific Coast Highway now joins Broad Beach Road at a different location. Further, the City of Malibu has already allowed Mr. Schwab to use the easement area for placement of his equipment to service his home.

Law Offices of MURRAY D. FISCHER

Hon. Mayor & City Council Members
City of Malibu
October 8, 2003
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Should you have any question pertaining to this request or should you need additional information to be supplied to you, please do not hesitate to contact this office.

Further, upon your completion of review, I would appreciate this matter being set for a public hearing.

Thank you very much for your anticipated cooperation in this matter.

Very truly yours,

LAW OFFICES OF MURRAY D. FISCHER
A Professional Corporation

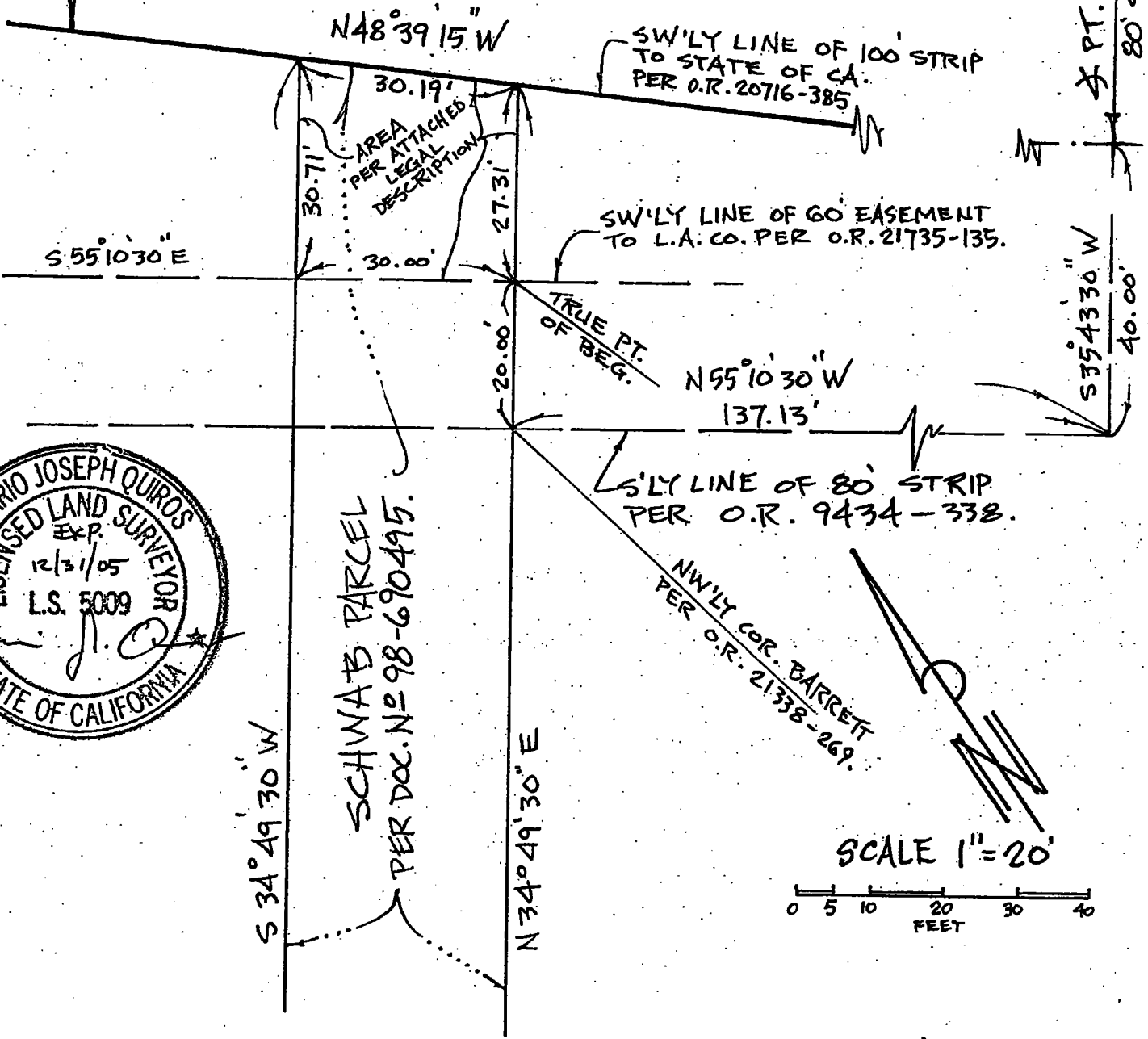
MURRAY D. FISCHER

MDF/cmd

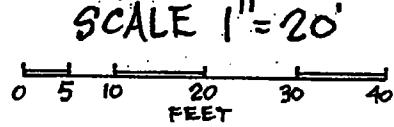
cc: Michael & Cheryl Schwab

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PACIFIC COAST HWY.



SCHWAB PARCEL
PER DOC. NO. 98-690495.



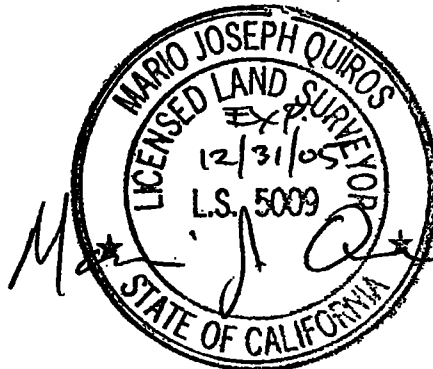
PT. & STA. 420 + 24.72
80' STRIP PER O.R. 9434-338

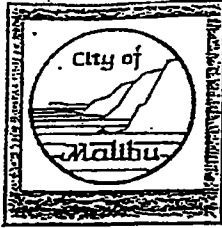
EXHIBIT

THAT PORTION OF THE 60' WIDE EASEMENT, OVER A PARCEL OF LAND IN THE CITY OF MALIBU, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, SAID PARCEL BEING FULLY DESCRIBED IN THAT GRANT DEED TO MICHAEL L. AND CHERYL L. SCHWAB, HUSBAND AND WIFE, RECORDED APRIL 24, 1998 AS DOCUMENT NO. 98-690495 OF OFFICIAL RECORDS OF SAID COUNTY, SAID EASEMENT BEING FULLY DESCRIBED IN THE DEED FROM MARBLEHEAD LAND COMPANY TO THE COUNTY OF LOS ANGELES, RECORDED FEBRUARY 28, 1945 AS DOCUMENT NO. 2033, IN BOOK 21735, PAGE 135 OF SAID OFFICIAL RECORDS; SAID EASEMENT PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF THE 80' WIDE STRIP OF LAND CONDEMNED BY DECREE OF CONDEMNATION ENTERED IN LOS ANGELES COUNTY SUPERIOR COURT CASE NO. 135650, A CERTIFIED COPY OF SAID ORDER BEING RECORDED IN BOOK 9434, PAGE 338 OF SAID OFFICIAL RECORDS, SAID POINT OF BEGINNING BEING SOUTH 35°43'30" WEST 40 FEET AND NORTH 55°10'30" WEST 137.13 FEET FROM ENGINEER'S CENTERLINE STATION 420+24.72 AT THE EASTERLY EXTREMITY OF THAT CERTAIN CENTERLINE COURSE DESCRIBED AS SOUTH 55°10'30" EAST 1082.84 FEET IN SAID SUPERIOR COURT CASE, SAID POINT OF BEGINNING BEING ALSO THE NORTHWESTERLY CORNER OF THE PARCEL OF LAND DESCRIBED IN DEED TO GEORGE E. BARRETT, RECORDED IN BOOK 21338 PAGE 269, OF SAID OFFICIAL RECORDS, AND BEING ALSO A POINT ALONG THE SOUTHEASTERLY LINE OF SAID SCHWAB PARCEL; THENCE ALONG SAID SOUTHEASTERLY LINE, NORTH 34°49'30" EAST 20.00 FEET TO THE SOUTHWESTERLY LINE OF SAID 60' WIDE EASEMENT AND THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING ALONG THE SOUTHEASTERLY LINE OF SAID SCHWAB PARCEL, NORTH 34°49'30" EAST 27.31 FEET TO THE SOUTHWESTERLY LINE OF PACIFIC COAST HIGHWAY, 100 FEET WIDE AS DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA RECORDED IN BOOK 20716 PAGE 385 OF SAID OFFICIAL RECORDS; THENCE ALONG SAID LAST MENTIONED SOUTHWESTERLY LINE, NORTH 48°39'15" WEST 30.19 FEET TO THE MOST NORTHERLY CORNER OF SAID SCHWAB PARCEL; THENCE ALONG THE NORTHWESTERLY LINE OF SAID SCHWAB PARCEL, SOUTH 34°49'30" WEST 30.71 FEET TO THE SOUTHWESTERLY LINE OF SAID 60' WIDE EASEMENT; THENCE ALONG SAID LAST MENTIONED SOUTHWESTERLY LINE, SOUTH 55°10'30" EAST 30.00 FEET TO THE TRUE POINT OF BEGINNING.

PREPARED RSY :
APRIL 19, 2004





City of Malibu

23555 Civic Center Way, Malibu, California 90265
(310) 456-CITY Fax (310) 456-3356
City Attorney's Office

TO: Rick Morgan
FROM: Gregg Kovacevich
DATE: May 17, 1995
RE: Vacation/Abandonment of Public Roads

You have asked how and under what circumstances a city may vacate a public street. The Public Streets, Highways, and Service Easements Vacation Law (Sts. & Hy. Code §§ 8300-8363) governs the procedure for the vacation of public streets. (Unless otherwise noted, all references contained herein are to the Streets and Highways Code). Under the Code, "vacation" means the complete or partial abandonment or termination of the public right to use a street, highway, or public service easement.

1. Initiation. The vacation procedure may be initiated by the City Council adopting a resolution of intent to vacate, which may be upon its own initiative or upon a petition or request of an interested person.

2. Resolution of intent. The Council's resolution of intention must include all of the following: (a) A declaration of intent to vacate; (b) A statement that the vacation proceeding is conducted under Division 9, Part 3, Chapter 3 of the Streets and Highways Code; (c) A description of the general location and extent of the street to be vacated and a reference to a map or plan, which shows the portion or area to be vacated, on file with the city; (d) The date, hour and place for hearing all persons interested in the proposed vacation.

3. Notice of hearing. Notice of the hearing must be published for at least two successive weeks prior to the hearing in a local newspaper. The date of the hearing shall be not less than 15 days from the adoption of the resolution of intention. In addition, at least two weeks before the hearing, notices must be posted along the line of the street to be vacated. The notices shall not be posted more than 300 feet apart and shall number not less than three. These notices must include the name and a description of the street to be vacated, and shall also state the day, hour, place and purpose of the hearing. (Sections 8322-8323).

Memo to Rick Morgan
 May 17, 1995
 Page 2

Not the case for Indian Head Ranch, as the roads are privately maintained.

4. Required findings. The City Council is required to make certain findings before a public road can be vacated. The City Council must find based on all the evidence submitted, that the road in question is unnecessary for present or prospective public use. (Section 8324(b)). The City Council must also find that the abandonment is in the public interest. (See Citizens Against Gated Enclaves v. Whitley Hts. Civic Assn., 23 Cal.App.4th 812, 820 (1994); Heist v. County of Colusa, 163 Cal.App.3d 841, 848-849 (1984)).

A street may not be vacated for exclusive private use. However, if an abutting property owner is benefitted by the closing of a street, such benefit may be a mere incident if the controlling purpose was for the benefit of the general public. It has been held that the advantage coming to the public from vacating a street must arise from the vacation itself, and not from the future use to which the vacated property is put. (Constantine v. City of Sunnyvale, 91 Cal.App. 2d 278, 282 (1949)). In other words, the public must be benefitted by the actual act of vacating the street, and not by any subsequent use of the street. Relief from the burden of maintenance of a roadway has been found a sufficient public benefit. (Heist, supra, 163 Cal.App.3d at 849).

Pursuant to sections 8340 and 8341, the City may reserve and except from the vacation an easement for such purposes as maintaining or constructing sanitary sewers, storms drains or other appurtenant structures in, on, over, or across the street to be vacated. The reservations and exceptions of easements are to be recited in the Council's resolution of vacation.

With respect to the Via Venezia site, I would first make sure that no public easements exist within the cul-de-sac that provide access to any other place (e.g. walking trails, etc.). Not only must the road be found unnecessary for vehicular traffic, it must be unnecessary for access to other public areas as well. In addition, all of the subject property owners should be informed that together they will be forever responsible for the cost of maintenance of the street if it is abandoned by the City. (I visited the site and it appears to me that there is a total of seven lots in the cul-de-sac. Two of these lots have homes and one is presently under construction. The remaining four lots are vacant.) Even though the code only requires the petition of one interested property owner to start the process, the Council is unlikely to vacate the road if even one of the abutting property owners dissents. Therefore, an initial petition from all of the abutting property owners would be advisable if in fact they are all in agreement.

I have attached a copy of the relevant sections of the Streets and Highways Code. These sections set forth the procedure for vacation of streets and reservations of easements in more precise detail.

**NOTICE OF PUBLIC HEARING
CITY OF MALIBU
CITY COUNCIL**

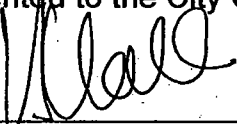
The Malibu City Council will hold a public hearing on **MONDAY, September 27, 2004, at 6:30 p.m. in the Council Chambers at Malibu City Hall**, located at 23815 Stuart Ranch Road, Malibu, CA, for the project identified below.

Vacation of a portion of public street easement on Broad Beach Road located on property at 30750 Pacific Coast Highway.

Pursuant to California Streets and Highways Code Section 8323, a public hearing will be conducted.

IF YOU CHALLENGE THE CITY COUNCIL'S ACTION IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES RAISED AT THE PUBLIC HEARING DESCRIBED IN THIS NOTICE, OR OTHERWISE HELD BY THE CITY, OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE CITY, EITHER AT OR PRIOR TO THE PUBLIC HEARING.

If there are any questions regarding this notice, please contact Brandie Sanchez, Public Works Clerk at (310) 456-2489, ext. 352. Copies of all related documents can be reviewed by any interested person at City Hall during regular business hours. Oral and written comments may be presented to the City Council on, or before, the date of the meeting.



YUGAL K. LALL, Public Works Director

Publish Date: September 15, 2004
September 22, 2004