

**MINUTE ITEM**

This Calendar Item No. 39  
was approved as Minute Item  
No. 39 by the State Lands  
Commission by a vote of 3  
to 0 of its 7/15/91  
meeting.

**CALENDAR ITEM**

A 44  
S 22

**39**

07/15/91  
G05-08 PRC 7546  
BLA 264  
A. Scott  
Fossum

**BOUNDARY LINE AGREEMENT AND PERMIT FOR IMPROVEMENTS  
SANTA MONICA STATE BEACH, CITY OF SANTA MONICA**

**LESSEE:**

Elliott J. Horowitz  
506 Palisades Beach Road  
Santa Monica, California 90402

**IDENTIFICATION OF PROPERTIES AFFECTED BY THIS AGREEMENT**

This proposed boundary line agreement involves the common boundary between property along Santa Monica State Beach located waterward of the 1921 Mean High Tide Line (MHTL) and an upland parcel situated at 406 Palisades Beach Road. The cross-hatched area on Exhibit "B" shows the extent of existing encroachments onto the "Subject Property". Such encroachments will be covered by the proposed "Permit for Improvements".

**BACKGROUND**

In March 1981, the State Lands Commission, pursuant to Minute Item 37, authorized settlement of litigation through boundary line agreements and leases of existing encroachments to 24 property owners along Santa Monica State Beach. No lawsuit was ever filed involving the subject area because at the time of the initial investigation in 1970, the encroachment was considered minor. Some time after that date and prior to the present upland owner's purchase of the property, an area of 25 feet waterward of the 1921 mean high tide line was enclosed by a fence.

The subject property is a portion of the Santa Monica State Beach which is currently being administered by the Department of Parks and Recreation, and operated by the City of Santa Monica (City) under an operating agreement.

In 1921, the City of Santa Monica, acting under its authority as trustee of the State tide and submerged lands, pursuant to

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(ADDED pgs. 126 - 126.7)

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CALENDAR ITEM NO. 39 (CONT'D)

Chapter 78, Statutes of 1917, surveyed the then existing mean high tide line within the city limits and adopted and recorded City Ordinance No. 188 (Commissioner's Series) purportedly fixing the boundary line along the entire length of this part of Santa Monica State Beach. The City proceeded to enter into a boundary line agreement with the then owner of a majority of the upland. Said agreement was affirmed by the California Supreme Court in the case of Muchenberger v. City of Santa Monica, 206 Cal. 635 (1929).

The purpose of the proposed boundary agreement is to fix a boundary line along the 1921 mean high tide line at the subject upland parcel because no prior boundary line agreement exists.

Since 1921, the tidelands waterward of the 1921 MHTL have become filled as the result of the construction of man-made structures, and the beach currently extends an average of 400 feet, more or less, waterward of the 1921 MHTL.

The owner of the upland parcel contends he is entitled to all or a portion of the filled tidelands, claiming that the fill is at least partially naturally caused. He also contends that the City and State should be estopped from requiring removal of the encroachments due to acquiescence in their existence for a substantial number of years.

PROPOSED SETTLEMENT

The essence of the proposed settlement is as follows:

1. EXECUTION OF A BOUNDARY LINE AGREEMENT which establishes as a boundary the 1921 MHTL as retraced in 1978 as shown on the Record of Survey, filed in Book 90, Page 39 et seq., of Record of Surveys, Los Angeles County. The boundary will not change due to accretion or erosion, whether artificially or naturally caused.
2. The State Lands Commission and the Department of Parks and Recreation, will quitclaim all right, title, and interest in the upland parcel landward of the 1921 MHTL as retraced in 1978.
3. The upland party will quitclaim all right, title, and interest in the subject property waterward of the 1921 MHTL as retraced in 1978.
4. The upland party will be permitted to maintain existing improvements waterward of the 1921 MHTL as retraced in 1978,

subject to the terms and conditions set forth in the "Permit for Improvement".

5. The "PERMIT FOR IMPROVEMENTS" provides as follows:
- (a) Upland Party may maintain the existing improvements for a period of ten (10) years. No additional improvements may be placed upon the area waterward of the 1921 MHTL as retraced in 1978.
  - (b) Upland party shall pay fair rental value annually for the use of the premises.
  - (c) At the termination of the lease term, all improvements must be removed at the sole expense of upland parties.

All rental payments shall be made to the State Lands Commission and subsequently transmitted to the City of Santa Monica, as the operator at Santa Monica State Beach, for use in the improvement and development of the beach areas within the city limits.

GENERAL

The settlement accomplishes the objective of the State Lands Commission to establish a boundary between private uplands and tidelands, and removes the possibility of litigation.

The City Council of Santa Monica, on March 24, 1981, authorized the execution of a boundary line agreement and approved, in concept, the Permit for Improvements in the case of People v. Mae West, including the property located adjacent to this property. The City Council also authorized the City Attorney and City Manager to execute similar boundary line agreements with other property owners along the Santa Monica State Beach.

It will be necessary to obtain the signature of the Department of Parks and Recreation on the boundary line agreement.

This project is situated on State land identified as possessing significant environmental values pursuant to P.R.C. 6370.1, and is classified as having a use category, Class C, which allows multiple use.

Staff review indicates that the boundary settlement and issuance of a permit will have no significant effect upon the identified environmental values. The permit is for existing facilities.

EXHIBITS:

- A. Legal Description
- B. Sketch of Permit Area
- C. Site Map

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY, EXECUTION OF A BOUNDARY LINE AGREEMENT, IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO P.R.C. 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.
2. DETERMINE THAT THE ACTIVITY, ISSUANCE OF A PERMIT FOR EXISTING IMPROVEMENTS, IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061AS A CATEGORICALLY EXEMPT PROJECT, CLASS 1, EXISTING FACILITIES, 2 CAL. CODE REGS. 2905(a)(2).
3. DETERMINE THAT THE ESTABLISHMENT OF A BOUNDARY LINE IS EXEMPT FROM THE REQUIREMENTS OF ARTICLE 6.5, TITLE 2 OF CAL CODE REGS BECAUSE IT IS NOT A DEVELOPMENT WITHIN THE MEANING OF SECTION 2503 OF TITLE 2 OF THE CAL. CODE REGS. AND SECTION 30106 OF THE P.R.C.
4. FIND THAT GRANTING OF THIS PERMIT WILL HAVE NO SIGNIFICANT EFFECT UPON ENVIRONMENTAL CHARACTERISTICS IDENTIFIED PURSUANT TO SECTION 6370.1 OF THE P.R.C.
5. FIND THAT THE PROPOSED SETTLEMENT IS IN THE BEST INTERESTS OF THE STATE.
6. APPROVE AND AUTHORIZE THE EXECUTION, ACKNOWLEDGEMENT, AND RECORDATION, ON BEHALF OF THE COMMISSION, OF THE FOLLOWING DOCUMENTS:
  - (A) THE BOUNDARY LINE AGREEMENT IN SUBSTANTIALLY THE FORM OF THE COPY OF SUCH AGREEMENT ON FILE WITH THE COMMISSION.
  - (B) THE PERMIT FOR IMPROVEMENTS IN SUBSTANTIALLY THE FORM OF THE COPY ON FILE WITH THE COMMISSION.
  - (C) THE STATE'S CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORDING OF A QUITCLAIM DEED TO THE STATE FROM THE UPLAND PARTY OF ANY RIGHT, TITLE, OR INTEREST THE UPLAND PARTY MAY HAVE IN THE SUBJECT PROPERTY.

7. AUTHORIZE AND DIRECT THE STAFF OF THE STATE LANDS COMMISSION AND/OR THE CALIFORNIA ATTORNEY GENERAL TO TAKE ALL NECESSARY OR APPROPRIATE ACTIONS ON BEHALF OF THE STATE LANDS COMMISSION, INCLUDING THE EXECUTION, ACKNOWLEDGEMENT, AND RECORDATION OF DOCUMENTS OF TITLE, CONVEYANCES, STIPULATIONS, ESCROW INSTRUCTIONS, DEEDS, AGREEMENTS, CERTIFICATES OF ACCEPTANCE, AND CONSENTS TO RECORDATION, AND SUCH OTHER DOCUMENTS AS MAY BE REASONABLE AND CONVENIENT TO CARRY OUT THE SAID TITLE SETTLEMENT AGREEMENT; AND TO APPEAR ON BEHALF OF THE COMMISSION IN ANY LEGAL PROCEEDINGS RELATING TO THE SUBJECT MATTER THEREOF.

**EXHIBIT "A"**

PRC 7546

**LAND DESCRIPTION**

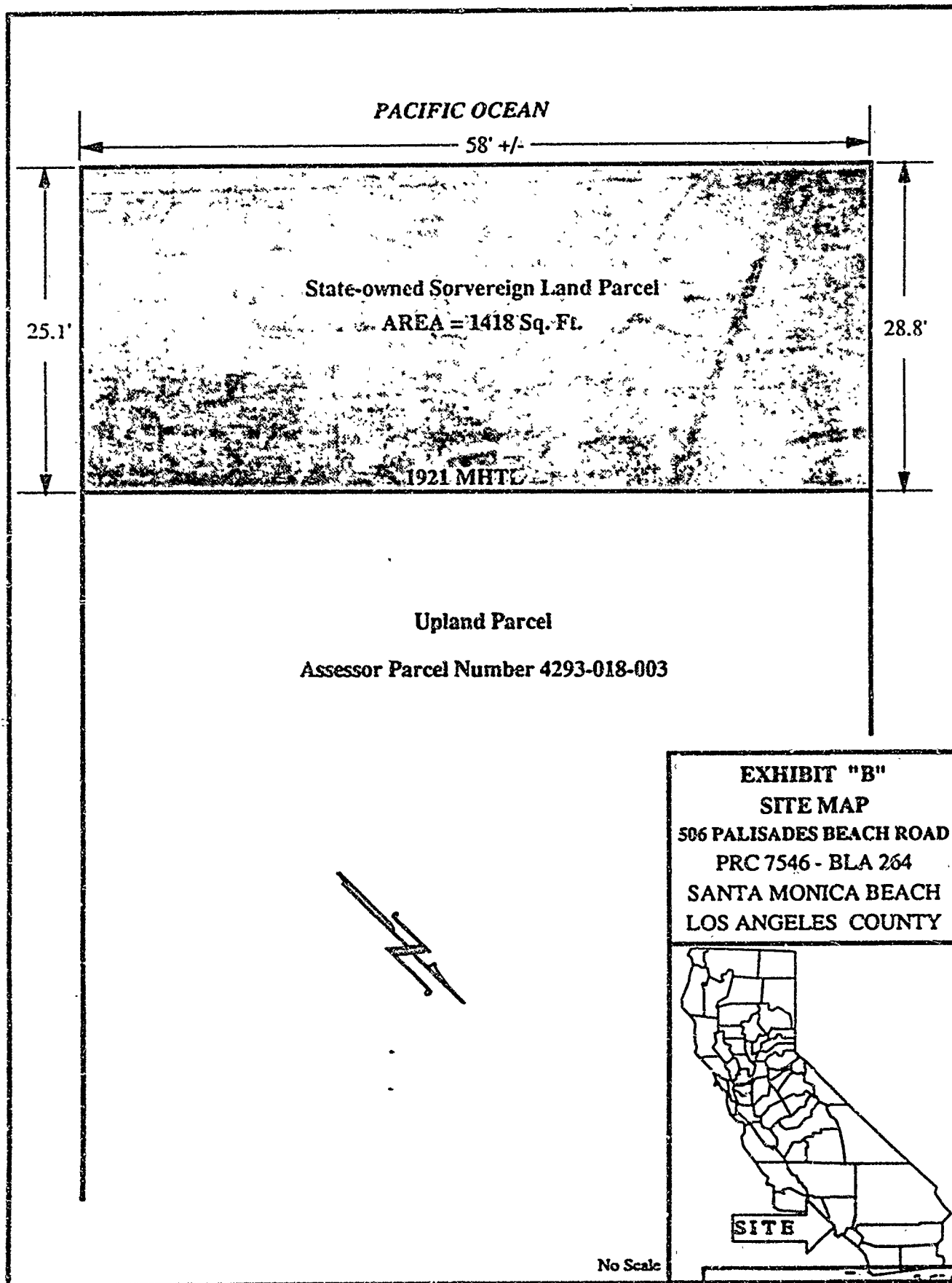
A parcel of State-owned Sovereign Land being adjacent to that parcel of land in the City of Santa Monica, County of Los Angeles, State of California, described in Document No. 1957153, recorded December 6, 1989, records of said county, said State-owned parcel is more directly described as follows:

BEGINNING at the intersection of the "1921 mean high tide line retraced 1978", as shown on that Record of Survey, filed January 3, 1980 in Book 90 of Surveys, page 39, records of said county, and the most westerly corner of said parcel recorded December 6, 1989, hereafter referred to as the upland parcel; thence along the southwest projection of of the northwest line of the upland parcel southwesterly 23.80 feet; thence southeasterly to a point that is 25.10 feet from the most southerly corner of the upland parcel; thence northeasterly along the southwest projection of the southeast line of the upland parcel 25.10 feet to the intersection of the above said 1921 mean high tide line and the most southerly corner of said upland parcel; thence along said 1921 mean high tide line, northwesterly to the point of beginning.

**END OF DESCRIPTION**

PREPARED JULY, 1991 BY LLB

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**EXHIBIT "B"**  
**SITE MAP**  
 506 PALISADES BEACH ROAD  
 PRC 7546 - BLA 264  
 SANTA MONICA BEACH  
 LOS ANGELES COUNTY



No Scale

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