

MINUTE ITEM

This Calendar Item No. C56 was approved as
Minute Item No. 56 by the California State Lands
Commission by a vote of 3 to 0 at its
4/13/99 meeting.

CALENDAR ITEM

C56

A 41

S 23

04/13/99

PRC 8070

W 23479

AD 367

PRC 7891.1

Fossum

**CONSIDER APPROVAL OF A TITLE SETTLEMENT AGREEMENT
AND ISSUANCE A PROTECTIVE STRUCTURE LEASE
INVOLVING CERTAIN REAL PROPERTY IN THE
CITY OF MALIBU, LOS ANGELES COUNTY,
PURSUANT TO PUBLIC RESOURCES CODE SECTION 6307
AND THE KAPILOFF LAND BANK ACT**

PRIVATE PARTIES:

Theodore Polos, Trustee

of the Theodore Polos and Alma Polos Trust created pursuant to that certain trust agreement dated September 19, 1974;

Chris Spiros, Trustee

of the Chris Spiros Revocable Trust; and

Georgene Fettis, Trustee

of the Georgene Fettis Trust dated December 1, 1995

c/o Dr. Theodore Polos
1485 East Mountain Drive.
Santa Barbara, CA 93108

BACKGROUND:

A title dispute exists between the State, acting by and through the California State Lands Commission and the Private Parties listed above. This dispute involves the last natural location of the ordinary high water mark of the Pacific Ocean at the subject location. The upland portion of the subject property, as shown on Exhibit A, has been owned by the Private Parties' family for over 50 years. This property is located along the Malibu coastline at the mouth of Los Flores Creek. The location has been the site of a number of restaurants open to the public for several generations. These facilities include the Los Flores Inn, the Sea Lion Restaurant and the current Duke's of Malibu.

CALENDAR PAGE **000253**
MINUTE PAGE **005307**

CALENDAR ITEM NO. C56 (CONT'D)

On May 9, 1996 by Minute Item #C45, the Commission approved an interim lease (PRC 7891.1) to the Private Parties to allow the ongoing operation of the restaurant and time to allow the negotiation of an agreement over the respective property rights of the Private Parties and State.

The staff of the Commission has studied the historic record including, but not limited to, surveys and photographic evidence of the changes in the shoreline. For purposes of negotiation the staff concluded that the best evidence supported the 1928 survey of the mean high tide line as the last natural location. The Private Parties dispute the conclusions of the Commission staff and have asserted the 1944 mean high tide line survey is the last natural location. Both parties agree that extensive shoreline protection has been placed seaward of the existing restaurant facilities on a number of occasions since 1944 to protect the improvements from the ocean. After extensive negotiations a proposed title settlement agreement has been reached, outlined as follows:

1. The State will quitclaim its interest and clear title to the area occupied by the restaurant and adjacent parking lot and approximately half of the rock revetment that protects the facilities. That area equates to an area approximately 17 feet seaward of the face of the restaurant and parking lot as shown on Exhibit A and more particularly described in Exhibit B. This area of claimed state interest equates to approximately three-tenths of an acre.
2. The State will lease the remainder of the existing revetment, approximately two-tenths of an acre to the Private Parties for 49 years, rent free. This area is shown on Exhibit A as Parcel D and more particularly described in Exhibit D.
3. The State will terminate Lease PRC 7891.1, approved by the Commission on May 9, 1996 as Minute Item #C45. As authorized by the original lease and as an element of the agreement the State will credit the rent due towards the \$520,000.00 amount of the settlement to be placed in the Land Bank Fund.
4. The Private Parties will quitclaim any of their interest claims in the lands described in Exhibit C to the State.

CALENDAR ITEM NO. C56 (CONT'D)

5. The Private Parties will pay into the Kapiloff Land Bank Fund the sum of \$520,000.00.
6. The Private parties will quitclaim Lease PRC 7891.1 back to the State.

PERMIT STREAMLINING ACT DEADLINE:

N/A

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14 California Code of Regulations, section 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a statutory exempt project. The project is exempt because it involves settlements of title and boundary problems.

Authority: Public Resources Code section 21080.11

2. The protective structure lease area involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. 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.
3. In taking action on this staff recommendation, the Commission is acting as the trustee of the Land Bank Fund created by Public Resources Code section 8610.

EXHIBITS:

- A. SITE MAP/ DEPICTION OF SUBJECT PROPERTY
- B. UPLAND PARCEL
- C. SOVEREIGN LAND PARCEL
- D. PROTECTIVE STRUCTURE LEASE PARCEL

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE TITLE SETTLEMENT AGREEMENT IS EXEMPT FROM

CALENDAR ITEM NO. C56 (CONT'D)

THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14 CALIFORNIA CODE OF REGULATIONS SECTION 5061 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO PUBLIC RESOURCES CODE SECTION 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS, AND PUBLIC RESOURCES CODE SECTION 8631, AN ACTION TAKEN PURSUANT TO THE KAPILOFF LAND BANK ACT, PUBLIC RESOURCES CODE SECTION 8600, ET SEQ.

2. FIND THAT THE LEASE FOR THE EXISTING PROTECTIVE STRUCTURE IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.
3. FIND THAT, WITH RESPECT TO THE PROPOSED TITLE SETTLEMENT AGREEMENT, INCLUDING THE EXCHANGE OF THE STATE'S INTEREST WITHIN THE AREA DESCRIBED IN EXHIBIT B AND LEASE OF THE LANDS DESCRIBED IN EXHIBIT D OF THIS CALENDAR ITEM FOR THE LANDS DESCRIBED IN EXHIBIT C PLUS \$520,000.00 IN FUNDS DEPOSITED IN THE LAND BANK WITH WHICH TO ACQUIRE OTHER INTERESTS IN REAL PROPERTY OF BENEFIT TO THE PUBLIC TRUST:
 - A. THE AGREEMENT IS IN THE BEST INTERESTS OF THE STATE AND CONSISTENT WITH PUBLIC TRUST NEEDS.
 - B. THAT THE PRIVATE PARTIES INTERESTS IN LANDS TO BE QUITCLAIMED TO THE STATE IN EXHIBIT C PLUS THE \$520,000.00 TO BE PLACED IN THE LAND BANK FUND IS EQUAL TO, OR GREATER THAN THE VALUE OF THE STATE'S INTEREST IN THE LAND DESCRIBED IN EXHIBITS B BEING RELINQUISHED BY THE STATE.
 - C. THE AREA OF INTERESTS IN LANDS CLAIMED BY THE STATE TO BE RELINQUISHED, WHICH IS A RELATIVELY SMALL AREA (APPROXIMATELY 0.3 ACRES) HAS, PURSUANT TO A PROJECT FOR IMPROVEMENT OF FLOOD CONTROL PROTECTION, BEEN EXCLUDED FROM THE PUBLIC CHANNELS, AND IS NO

CALENDAR ITEM NO. C56 (CONT'D)

LONGER AVAILABLE OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION AND FISHING AND IS NO LONGER IN FACT TIDE OR SUBMERGED LANDS.

- D. THE CONVEYANCES PROPOSED BY THE AGREEMENT WILL NOT INTERFERE WITH THE PUBLIC'S RIGHTS OF ACCESS TO THE WATERS OF THE PACIFIC OCEAN.
 - E. THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE AS TO THEIR RESPECTIVE INTERESTS AND CLAIMS WITHIN THE AGREEMENT AREA.
 - F. THE PROPOSED SETTLEMENT AGREEMENT CONSTITUTES A COMPROMISE OF THE CONTESTED ISSUES OF LAW AND FACT UPON WHICH THE DISPUTE IS BASED.
 - G. THE AGREEMENT IS IN LIEU OF THE COSTS, DELAYS, AND UNCERTAINTIES OF TITLE LITIGATION, AND IS CONSISTENT WITH AND IS AUTHORIZED BY THE REQUIREMENTS OF LAW.
 - H. ON THE DATE PROVIDED FOR IN THE TITLE SETTLEMENT AGREEMENT AND CONSISTENT WITH ITS TERMS, THE UPLAND PARCEL, DESCRIBED IN EXHIBIT B WILL BE FOUND TO NO LONGER BE NECESSARY OR USEFUL FOR THE PURPOSES OF THE PUBLIC TRUST AND THE PUBLIC TRUST EASEMENT WILL BE TERMINATED.
5. APPROVE AND AUTHORIZE THE EXECUTION, ACKNOWLEDGMENT, AND RECORDATION ON BEHALF OF THE CALIFORNIA STATE LANDS COMMISSION OF THE POLOS / LOS FLORES TITLE SETTLEMENT AGREEMENT IN SUBSTANTIALLY THE FORM OF THE COPY OF SUCH AGREEMENT ON FILE WITH THE COMMISSION.
6. AUTHORIZE ISSUANCE OF A 49 YEAR PROTECTIVE STRUCTURE LEASE, FOR MAINTENANCE OF A SEAWALL, TO THE PRIVATE PARTIES, BEGINNING MAY 1, 1998, ON THE LANDS SHOWN ON EXHIBIT A, AS MORE PARTICULARLY DESCRIBED IN EXHIBIT D; NO MONETARY CONSIDERATION; LIABILITY INSURANCE IN THE

CALENDAR ITEM NO. C56 (CONT'D)

AMOUNT OF \$1,000,000.

7. AUTHORIZE TERMINATION OF LEASE PRC 7891.1.
8. AUTHORIZE AND DIRECT THE STAFF OF THE CALIFORNIA STATE LANDS COMMISSION AND/OR THE CALIFORNIA ATTORNEY GENERAL: 1) TO TAKE ALL NECESSARY OR APPROPRIATE ACTION ON BEHALF OF THE CALIFORNIA STATE LANDS COMMISSION, INCLUDING THE EXECUTION, ACKNOWLEDGMENT, ACCEPTANCE, AND RECORDATION OF ALL DOCUMENTS AND PAYMENTS AS MAY BE NECESSARY OR CONVENIENT TO CARRY OUT THE TITLE SETTLEMENT AGREEMENT; AND 2) TO APPEAR ON BEHALF OF THE COMMISSION IN ANY LEGAL PROCEEDINGS RELATING TO THE SUBJECT MATTER OF THE AGREEMENT.

This Exhibit is solely for purposes of generally defining the lease premises 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.

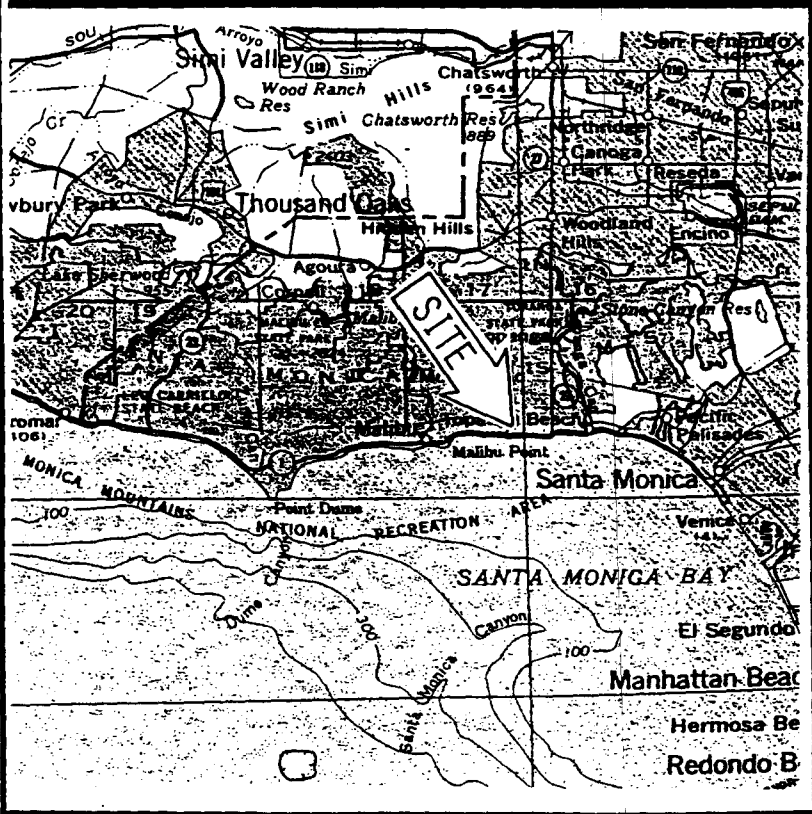
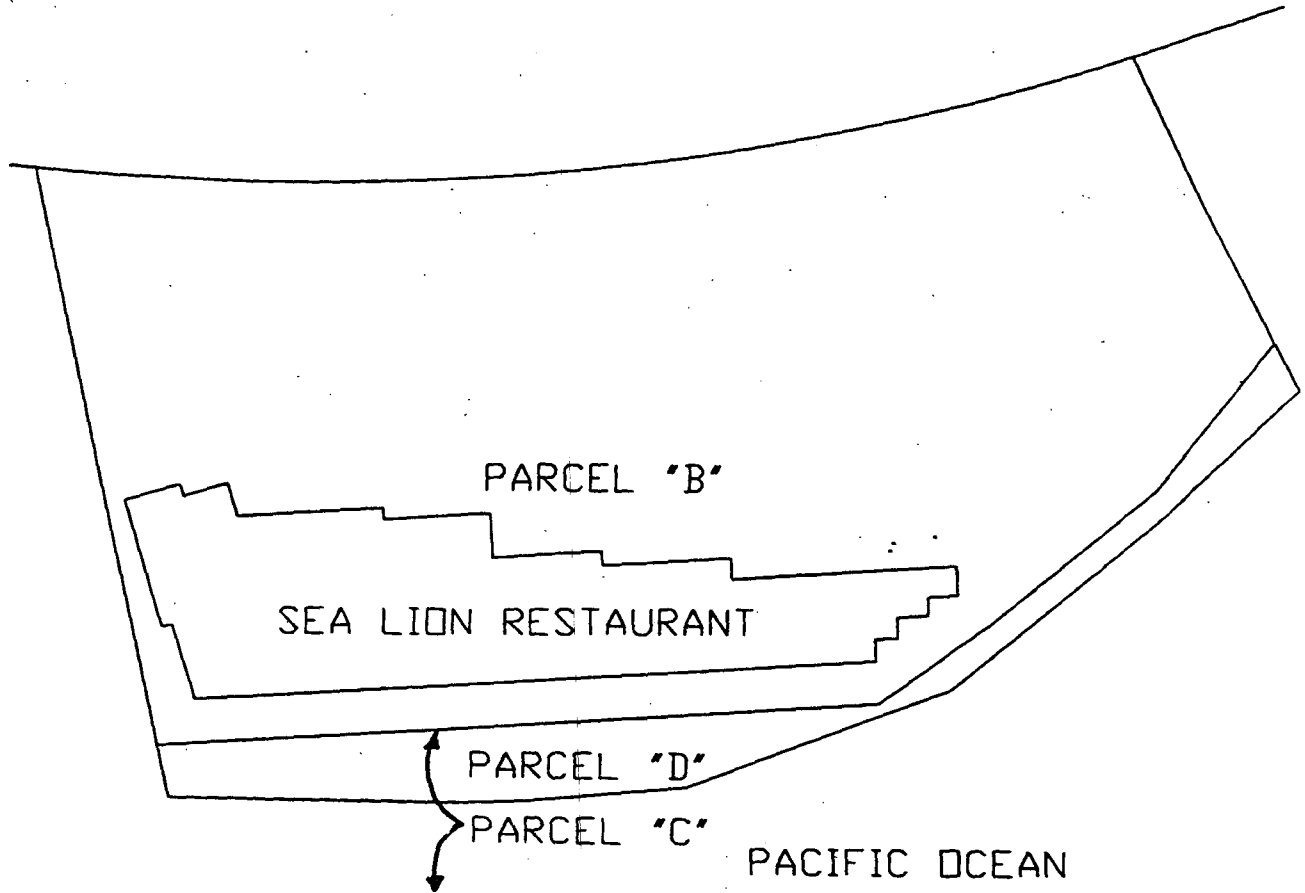


EXHIBIT "A"
LOCATION MAP - W 23479
POLOS/LAS FLORES
TITLE SETTLEMENT and
LEASE
LOS ANGELES COUNTY



CALENDAR PAGE 000259
MINUTE PAGE 005313

EXHIBIT "B"
LAND DESCRIPTION

W23479

A parcel of land being a portion of the Rancho Topanga Malibu Sequit, as confirmed to Matthew Keller by Patent recorded in Book 1 of Patents, Pages 407 et seq. and a portion of Lots 73, 74 and 75 of Tract No. 12634 per Map recorded in Book 260 of Maps at Pages 25 to 27, said documents being in the Office of the County Recorder of the County of Los Angeles, State of California together with any filled Tide and Submerged Lands of the Pacific Ocean, lying within the following described parcel.

BEGINNING at a point on the northwesterly line of Lot 74, distant along said line southwesterly 15.50 feet from the most northerly corner of said Lot 74, said point being on a curve concave to the north, having a radius of 1040 feet, the radial at said point bears N17°57'13"W; thence S26°28'13"E, 98.00 feet; thence S35°53'50"W, 165.56 feet; thence S50°05'48"W, 46.13 feet; thence S86°13'24"W, 285.67 feet; thence N12°15'15"W, 229.86 to the point of curvature of a non-tangent curve, concave to the north, having a radius of 1040 feet, a central angle of 23°35'02" and a chord of 425.07 feet, bearing N83°50'18"E; thence easterly along said curve, 428.08 feet to the POINT OF BEGINNING.

END DESCRIPTION

CALENDAR PAGE 000260

MINUTE PAGE 005314

EXHIBIT "C"
LAND DESCRIPTION

W23479

Any portion of the Rancho Topanga Malibu Sequit, as confirmed to Matthew Keller by Patent recorded in Book 1 of Patents, Pages 407 et seq. and a portion of Lots 73, 74 and 75 of Tract No. 12634 per Map recorded in Book 260 of Maps at Pages 25 to 27, said documents being in the Office of the County Recorder of the County of Los Angeles, State of California and being a portion of Tide and Submerged Lands of the Pacific Ocean, lying within the following described parcel:

COMMENCING at a point on the northwesterly line of Lot 74, distant along said line southwesterly 15.50 feet from the most northerly corner of said Lot 74, said point being on a curve concave to the north, having a radius of 1040 feet, the radial at said point bears N17°57'13"W; thence S26°28'13"E, 98.00 feet to the TRUE POINT OF BEGINNING; thence S35°53'50"W, 165.56 feet; thence S50°05'48"W, 46.13 feet; thence S86°13'24"W, 285.67 feet; thence S12°15'15"E, 100.00 feet; thence S89°31'09"E, 109.97 feet; thence N88°02'40"E, 28.43 feet; thence N84°43'00"E, 62.45 feet; thence N69°00'34"E, 109.46 feet; thence N43°27'42"E, 200.76 feet; thence N26°28'13"W, 100.00 feet to the POINT OF BEGINNING.

END DESCRIPTION

CALENDAR PAGE 000261

MINUTE PAGE 005315

EXHIBIT "D"
LAND DESCRIPTION

W23479

Tide and Submerged Lands in the Pacific Ocean, situated in the County of Los Angeles, State of California and described as follows:

COMMENCING at a point on the northwesterly line of Lot 74, of Tract No. 12634 per Map recorded in Book 260 of Maps at Pages 25 to 27, said documents being in the Office of the County Recorder of the County of Los Angeles, distant along said line southwesterly 15.50 feet from the most northerly corner of said Lot 74, said point being on a curve concave to the north, having a radius of 1040 feet, the radial at said point bears N17°57'13"W; thence S26°28'13"E, 98.00 feet to the TRUE POINT OF BEGINNING; thence S35°53'50"W, 165.56 feet; thence S50°05'48"W, 46.13 feet; thence S86°13'24"W, 285.67 feet; thence S12°15'15"E, 21.32 feet; thence S89°31'09"E, 109.97 feet; thence N88°02'40"E, 28.43 feet; thence N84°43'00"E, 62.45 feet; thence N69°00'34"E, 109.46 feet; thence N48°24'34"E, 175.31 feet; thence N26°28'13"W, 46.88 feet to the POINT OF BEGINNING.

END DESCRIPTION

CALENDAR PAGE **000262**

MINUTE PAGE **005316**