

MINUTE ITEM  
This Calendar Item No. C90  
was approved as Minute Item  
No. 90 by the State Land  
Commission by a vote of 3  
to 0 of its 11/15/94 CALENDAR ITEM  
meeting.

C90

11/15/94

A 74

W 24053

Fossum

S 38

A. Scott

J. Smith

CONSIDER APPROVAL OF COMPROMISE TITLE SETTLEMENT  
AGREEMENT PURSUANT TO THE KAPILOFF LAND BANK ACT  
INCLUDING ISSUANCE OF A  
GENERAL LEASE - PROTECTIVE STRUCTURE USE

PRC7789

APPLICANT:

Ken Wood  
P.O. Box 2842  
Big Bear Lake, California 92315

AREA, TYPE LAND AND LOCATION:

A parcel of sovereign tide and submerged land in the Pacific Ocean, located adjacent to 521 Pacific Avenue, Solana Beach, San Diego County.

LAND USE:

Construction and maintenance of a shotcrete seawall to protect existing residence including the filling of sovereign lands as part of proposed settlement agreement to permanently fix the boundary between public and private lands.

BASIS FOR CONSIDERATION:

Pursuant to 2 Cal. Code Regs. 2003.

APPLICANT STATUS:

Applicant is owner of upland.

PREREQUISITE CONDITIONS, FEES AND EXPENSES:

Filing and processing costs have been received.

STATUTORY AND OTHER REFERENCES:

A. P.R.C.: Div. 6, Parts 1 and 2; Div. 7; Div. 13.

B. Cal. Code Regs.: Title 2, Div. 3; Title 14, Div. 6.

PROPOSED SETTLEMENT AGREEMENT:

A title dispute exists between the State, acting by and through the State Lands Commission (Commission), and Mr. Ken Wood concerning ownership interests in approximately 820 square feet of real property (Subject Property) within the City of Solana Beach in San Diego County. The Subject Property is sandy beach at the base of a bluff within a cove and includes an area which formerly was part of a collapsed sea cave.

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The staff of the Commission is of the opinion that the title evidence and the applicable legal principles lead to the conclusion that the State, in its sovereign capacity, is the owner of some public trust right, title, or interest in the subject property. The exact extent and nature of the State's interest is, however, subject to both factual and legal uncertainty and dispute.

The staff of the Commission and the private party's consultant have evaluated the property and submitted opinions and factual evidence relating to the value of the Subject Property.

The Subject Property is proposed to be filled and reclaimed by the construction of a concrete seawall 30 feet wide and 30+ feet deep. This project is to reconfigure the shoreline and protect existing improvements on top of the bluff from erosion and collapse caused by wave action. The proposed settlement agreement is to lease the cove to Mr. Wood, the upland owner, for purposes of construction of the seawall and upon completion of the project to terminate any State property interest in the Subject Property through a Kapiloff Land Bank transaction.

The proposal is made as a means of compensating the public for the permanent loss of property and conversion of use to a primarily private benefit. The City of Solana Beach, the County of San Diego, the California Coastal Commission and the U.S. Army Corps of Engineers have all taken action that allows the construction to proceed.

The staff of the Commission and Mr. Wood have agreed to resolve the title dispute by written agreement in compromise settlement of the legal and evidentiary issues. Commission staff recommends approval of the settlement in substantially the form of the agreement now on file with the Commission.

While the agreement sets forth all the specific terms and conditions of the settlement, a brief summary of some of the principal terms and conditions of the settlement is set forth below, as follows:

1. Mr. Wood will deposit the sum of \$12,500 into an interest bearing escrow account. Escrow fees and any title insurance will be without cost to the State.

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2. The Commission will issue to Mr. Wood a short-term lease to allow construction of a concrete seawall 30 feet wide and 30+ feet deep. Specific lease terms are as follows:

Lease Type: General Lease - Protective Structure Use  
Lease Period: One-year beginning November 15, 1994.  
Consideration: Public Health and Safety; with the State reserving the right at any time to set a monetary rental if the Commission finds such action to be in the State's best interest.

Public liability

insurance: Combined single limit coverage of \$1,000,000.

Special

Conditions: Lessee will provide copies of "as-built" plans and legal description.

3. Upon completion of the project, the Executive Officer will certify that the lands have in fact been filled, reclaimed and are no longer subject to tidal action and record the trust termination and title settlement agreement in which the State will convey to Mr. Wood all its right, title, and interest in the Subject Property.
4. The funds in escrow will then be transferred into the Kapiloff Land Bank Fund which is administered by the State Lands Commission as trustee pursuant to P.R.C. 8600 et seq.

Commission staff has appraised the Subject Property and has evaluated the law and evidence bearing on the title dispute, and is of the opinion that the sum of \$12,500 is equal to or greater than the value of the State's interest in the Subject Property.

AB 884:

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**OTHER PERTINENT INFORMATION:**

1. An EIR was prepared and certified for this project by the City of Solana Beach on April 6, 1992 (SCH 89030812). A Mitigation Monitoring Program was adopted designating the City as the responsible agency for monitoring.

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

Authority: P.R.C. 21080.11.

3. In taking action on this staff recommendation, the Commission is acting as the trustee of the Kapiloff Land Bank Fund created by P.R.C. 8610.

**EXHIBITS:**

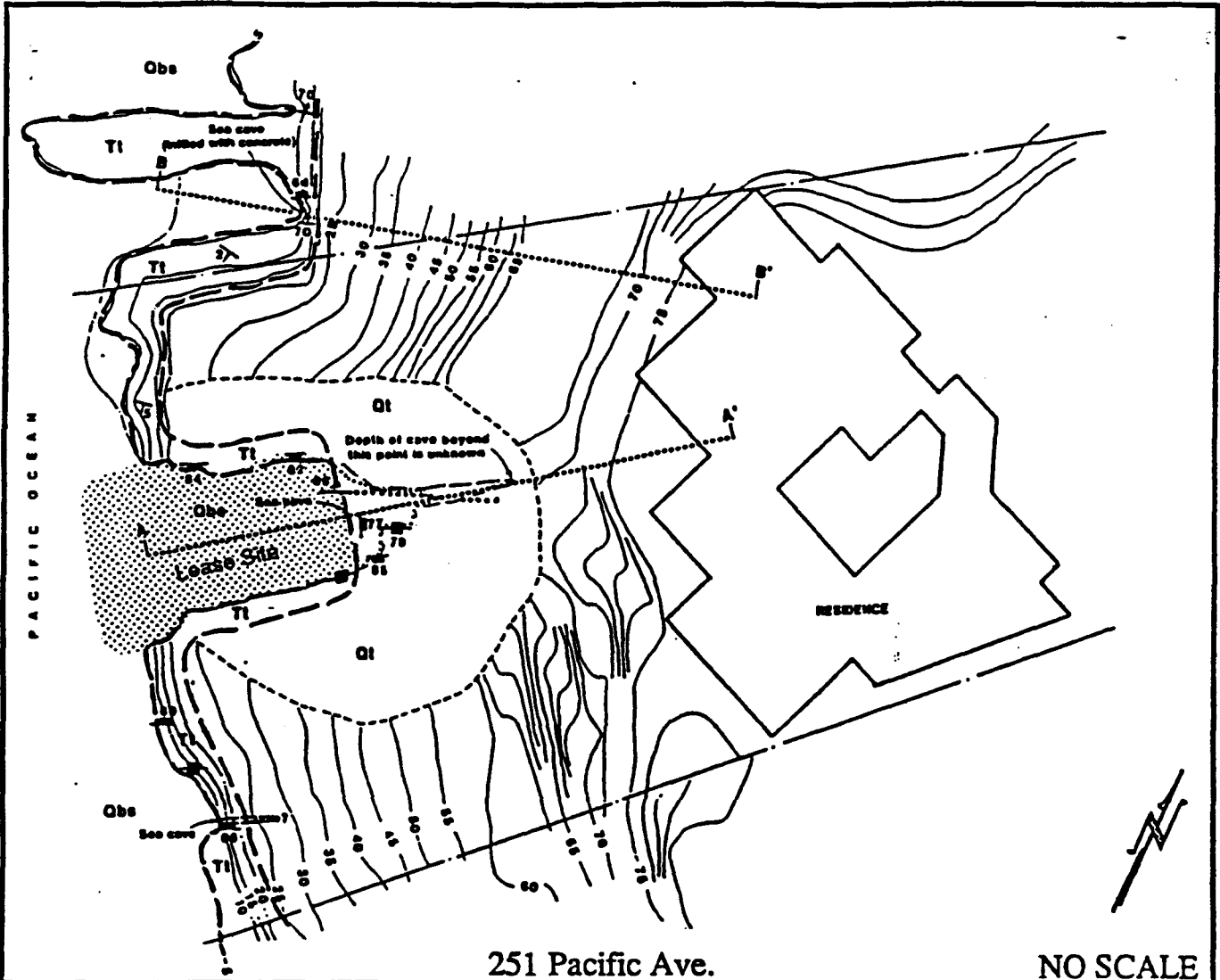
- A. Location and Site Map

**IT IS RECOMMENDED THAT THE COMMISSION:**

1. FIND THAT THE ACTIVITY 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. FIND THAT WITH RESPECT TO THE PROPOSED COMPROMISE TITLE SETTLEMENT AGREEMENT, INCLUDING THE EXCHANGE OF THE STATE'S INTEREST IN THE SUBJECT PROPERTY FOR FUNDS WITH WHICH TO BUY AN EXCHANGE PARCEL:
  - A. THE AGREEMENT IS IN THE BEST INTERESTS OF THE STATE FOR PUBLIC HEALTH AND SAFETY CONSIDERATIONS AND FOR PROTECTION OF BLUFFTOP PROPERTY IN IMMINENT DANGER OF COLLAPSE DUE TO EROSION OF THE BLUFF FROM WAVE ACTION.
  - B. THAT THE MONIES RECEIVED BY THE STATE ARE OF A VALUE EQUAL TO OR GREATER THAN THE VALUE OF THE INTEREST IN THE SUBJECT PROPERTY BEING RELINQUISHED BY THE STATE.
  - C. THAT UPON COMPLETION OF CONSTRUCTION OF THE SEAWALL UNDER THE TERMS OF THE GENERAL LEASE - PROTECTIVE STRUCTURE USE, THE SUBJECT PROPERTY HAS BEEN IMPROVED, RECLAIMED AND FILLED, AND IS NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR PUBLIC TRUST PURPOSES AND IS NO LONGER IN FACT TIDE AND SUBMERGED LAND.

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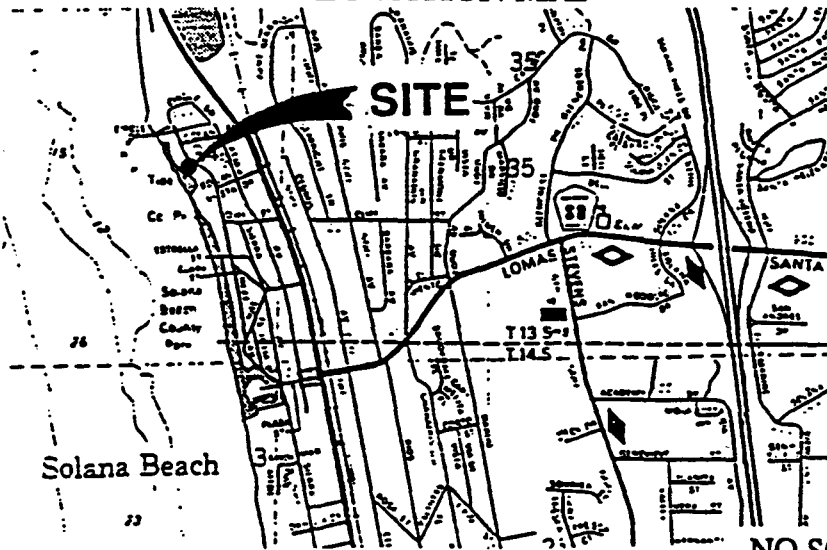
- D. THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE AS TO THEIR RESPECTIVE INTERESTS WITHIN THE SETTLEMENT PARCEL.
  - E. THE PROPOSED AGREEMENT CONSTITUTES A COMPROMISE OF THE CONTESTED ISSUES OF LAW AND FACT UPON WHICH THE DISPUTE IS BASED.
  - F. THE AGREEMENT IS IN LIEU OF THE COSTS, DELAYS AND UNCERTAINTIES OF TITLE LITIGATION, AND IS CONSISTENT WITH AND IS AUTHORIZED BY THE REQUIREMENTS OF LAW.
  - G. UPON THE CLOSE OF ESCROW AS PROVIDED IN THE AGREEMENT AND CONSISTENT WITH ITS TERMS, THE SUBJECT PROPERTY WILL NO LONGER BE NECESSARY OR USEFUL FOR THE PURPOSES OF THE PUBLIC TRUST AND THE PUBLIC TRUST INTEREST MAY BE TERMINATED.
3. APPROVE AND AUTHORIZE THE EXECUTION, ACKNOWLEDGMENT AND RECORDATION ON BEHALF OF THE COMMISSION OF THE FOLLOWING DOCUMENTS:
- A. THE COMPROMISE TITLE SETTLEMENT AGREEMENT IN SUBSTANTIALLY THE FORM OF THE COPY OF SUCH AGREEMENT ON FILE WITH THE COMMISSION.
  - B. A PATENT OF THE SUBJECT PROPERTY IN SAN DIEGO COUNTY, CALIFORNIA, DESCRIBED IN EXHIBIT "A", FREE OF THE PUBLIC TRUST.
4. AUTHORIZE AND DIRECT THE STAFF OF THE STATE LANDS COMMISSION AND/OR THE CALIFORNIA ATTORNEY GENERAL TO TAKE ALL NECESSARY OR APPROPRIATE ACTION ON BEHALF OF THE STATE LANDS COMMISSION, INCLUDING THE EXECUTION, ACKNOWLEDGEMENT, ACCEPTANCE, AND RECORDATION OF ALL DOCUMENTS AND PAYMENTS AS MAY BE NECESSARY OR CONVENIENT TO CARRY OUT THE COMPROMISE TITLE SETTLEMENT AGREEMENT; AND TO APPEAR ON BEHALF OF THE COMMISSION IN ANY LEGAL PROCEEDINGS RELATING TO THE SUBJECT MATTER OF THE AGREEMENT.



251 Pacific Ave.

NO SCALE

LOCATION MAP



NO SCALE

EXHIBIT "A"

W 24053

APN 263 - 041 - 04

Solana Beach

SAN DIEGO COUNTY



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.

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