

**CALENDAR ITEM
C57**

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**CONSIDER A BOUNDARY LINE AGREEMENT INVOLVING CERTAIN REAL
PROPERTY IN AND ADJACENT TO SANTA MONICA STATE BEACH,
LOS ANGELES COUNTY**

PARTIES:

Jonathan G. Ornstein
The Ornstein Family Trust dated April 6, 2005
506 Palisades Beach Road
Santa Monica, CA 90402

State of California, State Lands Commission
State of California, Department of Parks and Recreation
City of Santa Monica

IDENTIFICATION OF PROPERTIES AFFECTED BY THIS AGREEMENT:

This proposed boundary line agreement ("BLA") involves the common boundary between sovereign tidelands along Santa Monica State Beach located waterward of the 1921 Mean High Tide Line and a privately-owned upland parcel situated at 506 Palisades Beach Road ("Ornstein parcel"). The Encroachment Area identified on Exhibit 1 to the Encroachment Permit depicts (for reference purposes only) the extent of the existing encroachments on state-owned lands. Such encroachments will be covered by the proposed Encroachment Permit for Improvements and Option Agreement ("Encroachment Permit") to be issued by the City of Santa Monica ("City").

BACKGROUND:

The subject property is sovereign land owned by the State of California, located adjacent to the Ornstein parcel. The City is trustee of the tide and submerged lands granted to it by the California Legislature, pursuant to Chapter 78 of the Statutes of 1917, as amended (G05-08).

The subject property is situated directly waterward of the mean high tide line ("MHTL") of the Pacific Ocean as originally determined by a survey of the then existing MHTL within the city limits, as ordered by the Santa Monica City Council

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and adopted by Ordinance No. 188 (Commissioners' Series) on July 25, 1921 ("the 1921 MHTL"). In 1978, Commission staff completed a resurvey of said 1921 MHTL tying it to current monuments of record so that its location is known with relation to existing conditions ("the 1921 MHTL Retraced 1978").

On or about August 1, 1921, the City and the Santa Monica Land Company (Ornstein's predecessor in interest) entered into a BLA utilizing the 1921 MHTL as the common and fixed boundary line between the subject property and the upland parcel. Said agreement was affirmed by the California Supreme Court in the case of *Muchenberger v. City of Santa Monica* (1929) 206 Cal. 635.

Jurisdiction over the tidelands of Santa Monica State Beach is currently in the California Department of Parks and Recreation (Parks) and was transferred from the Commission to Parks on October 25, 1991, pursuant to the terms of BLA 256. Jurisdiction will revert back to the Commission on October 24, 2051, upon expiration of the 60-year JTO term. Santa Monica State Beach is currently managed, operated, and controlled by the City under an operating agreement executed by Parks and the City, effective beginning on June 1, 2006 ("the 2006 Operating Agreement") that shall expire concurrently with the jurisdiction transfer to Parks.

In March 1981, the California State Lands Commission, pursuant to Minute Item No. 37, authorized settlement of litigation through BLAs 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. However, sometime after that date an area 25 feet waterward of the 1921 MHTL was enclosed by a fence.

Thereafter, the Commission by approval of Calendar Item No. 39 at its meeting of July 15, 1991, approved and authorized execution of a Boundary Line Agreement (BLA 264) and a Permit for Improvements (PRC 7546.1) on Santa Monica State Beach with the then owner of 506 Palisades Beach Road, Mr. Elliott J. Horowitz. The terms of the proposed settlement were indistinguishable from and consistent with all prior boundary line agreements and settlements along this stretch of Santa Monica State Beach.

Notably, PRC 7546.1 was executed by Mr. Horowitz and the Executive Officer of the Commission, and was duly recorded against the upland parcel on October 24, 1991, as Instrument No. 91-1683523, in the Official Records of Los Angeles County. The recorded Permit references BLA 264 on its face, however there is no evidence in the Commission's files or the record chain of title that BLA 264

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was ever executed in confirming the 1921 MHTL as the true and correct boundary line at 506 Palisades Beach Road.

When Elliot J. Horowitz sold the upland parcel on or about November 22, 1995, to Mr. Georges Marciano, he recorded an Assignment of Permit for Improvements concurrently with the Grant Deed purportedly transferring rights under said Permit to Mr. Marciano. There is no evidence in the file to suggest that the Commission ever considered or approved this assignment.

The Ornstein Encroachments consist of an area of approximately 1,541 square feet of private landscaping and glass fencing extending waterward of the 1921 MHTL at Santa Monica State Beach.

STAFF ANALYSIS AND RECOMMENDATION:

Based upon information and belief, the current fee title owner of 506 Palisades Beach Road, in the city of Santa Monica is Jonathan G. Ornstein, Trustee of the Ornstein Family Trust dated April 6, 2005. All parties of the proposed BLA are hereinafter collectively referred to as “upland parties.” Upland parties own the private upland parcel adjoining the subject property.

To date, all homeowners along Santa Monica State Beach – except for seven remaining homeowners, including the Ornsteins – have applied for and received Encroachment Permits from the City authorizing certain pre-existing private improvements upon the payment of an annual permit fee and back rent. The City, as trustee of the subject tidelands and manager of Santa Monica State Beach, made numerous attempts to contact the remaining homeowners prior to filing suit. On May 6, 2015, the City, Parks and the Commission filed their Complaint in *City of Santa Monica, et al. v. Jonathan G. Ornstein, et al.*, Los Angeles Superior Court Case No. SC124123 (“the Litigation”) for quiet title and ejectment.

In light of both the history and complexity of matters at issue in the Litigation, Commission staff believes it is necessary to reaffirm and to redescribe with greater specificity the physical location of the 1921 MHTL of the Pacific Ocean as fixed and determined originally by Ordinance No. 188 (Commissioners’ Series) and as resurveyed by the Commission pursuant to the 1921 MHTL Retraced 1978.

If the controversy cannot be resolved by agreement, a judicial resolution of the parties’ rights, titles and interests in the subject property could require costly, protracted, and vigorously disputed litigation. The Parties consider it expedient and necessary and in the best interests of the State, the public, and the upland parties, to resolve this title dispute by an agreement to identify, describe and permanently fix the true and correct fee boundary line between the public

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tidelands and adjacent private uplands, thereby avoiding any further costs and time of litigation.

Consistent with prior settlements and BLAs in and along Santa Monica State Beach, the essence of the proposed settlement is as follows:

- a. EXECUTION OF A BOUNDARY LINE AGREEMENT which establishes as a fee 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 ("BOUNDARY LINE");
- b. The upland parties will quitclaim to the State all right, title, and interest in those lands lying waterward of the BOUNDARY LINE ("STATE PARCEL");
- c. The Commission and Parks will quitclaim to the upland parties, all right, title, and interest in those fee lands lying landward of the BOUNDARY LINE ("UPLAND PARCEL");
- d. The upland parties will be permitted to maintain existing improvements waterward of the BOUNDARY LINE subject to the terms and conditions set forth in the Encroachment Permit to be entered into and executed with the City;
- e. The Encroachment Permit, by and between the City and upland parties, provides in pertinent part as follows:
 - i. Upland parties may maintain the existing improvements for a period of ten (10) years at a nominal annual rental rate. No additional improvements may be placed upon the area waterward of the BOUNDARY LINE;
 - ii. At the expiration of the initial ten (10) year period, the upland parties may exercise up to three options each with payment of an additional fee to extend the term until December 31, 2050, subject to the fulfillment of certain conditions;
 - iii. The permit is subject to a favored nations clause which provides in pertinent part that if a more favorable term length or rental rate is provided to a similarly situated

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owner, then upland parties shall be entitled to such similar treatment. However, in no event shall the permit term extend beyond expiration of the JTO;

- iv. Payment of back rent to the City;
- v. At the termination of the permit term or any renewal period, all improvements must be removed at the sole expense of the upland parties.
- f. A judgment confirming the settlement will be obtained in Los Angeles Superior Court. The court shall retain jurisdiction to enforce the terms of the Stipulated Judgment, the Boundary Line Agreement, and the Encroachment Permit.

Commission staff recommends the proposed boundary line agreement because the settlement accomplishes the objective of the Commission to establish a boundary between private uplands and tidelands, and reduces the possibility of further litigation. The Office of the Attorney General concurs in this recommendation.

OTHER PERTINENT INFORMATION:

1. The Commission is a land and resource trust manager and thus has significant influence over development and uses of public trust lands that will be affected by sea-level rise. Future sea-level rise is expected to compound the effects of natural hazards on existing critical coastal infrastructure, and may affect the boundaries between sovereign public trust lands and privately owned uplands. In consideration of these concerns, Commission staff has consistently included a provision in all open-coast BLAs to reserve back a springing easement for commerce, navigation, fisheries and other recognized public trust purposes in the event the Upland Parcel becomes submerged or subject to the ebb and flow of the tide. This provision was originally included in a BLA authorized at the August 19, 2015 Commission meeting (Calendar Item C77). However, the site-specific California Supreme Court *Muchenberger* decision fixing and affirming the 1921 MHTL as the boundary line at this location has resulted in a situation unique as compared to other Commission-owned lands where this language would ordinarily be appropriate. Staff therefore recommends that, in that prior authorization and in authorizing this new BLA, the reservation language not be included.

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2. The State, acting by and through the Commission, is authorized under Division 6 of the Public Resources Code, and specifically pursuant to section 6357, to enter into BLAs.
3. The proposed action is consistent with the Commission's 2016-2020 Strategic Plan; Strategy 1.3 – Protect, expand and enhance appropriate public use and access to and along the State's inland and coastal waterways.
4. The staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as statutorily exempt. The subject activity is exempt because it involves settlement of title and boundary problems.

Authority: Public Resources Code section 21080.11 and California Code of Regulations, Title 14, section 15282, subdivision (f).

EXHIBIT:

- A. Location and Site Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15061 as a statutorily exempt project pursuant to Public Resources Code section 21080.11 and California Code of Regulations, section 15282, subdivision (f), settlement of title and boundary problems.

AUTHORIZATION:

1. Find that the proposed settlement is in the best interests of the State.
2. Rescind the Commission's prior approval of Item No. C77 at its meeting on August 19, 2015, and approve and authorize the execution, acknowledgment, acceptance, and recordation, on behalf of the Commission, of the Stipulated Judgment and Boundary Line Agreement in substantially the form of the copy of such agreement on file with the Commission, including but not limited to the State's Certificate of Acceptance and all further documents, conveyances and other instruments that may be necessary to fully effectuate the provisions of the proposed

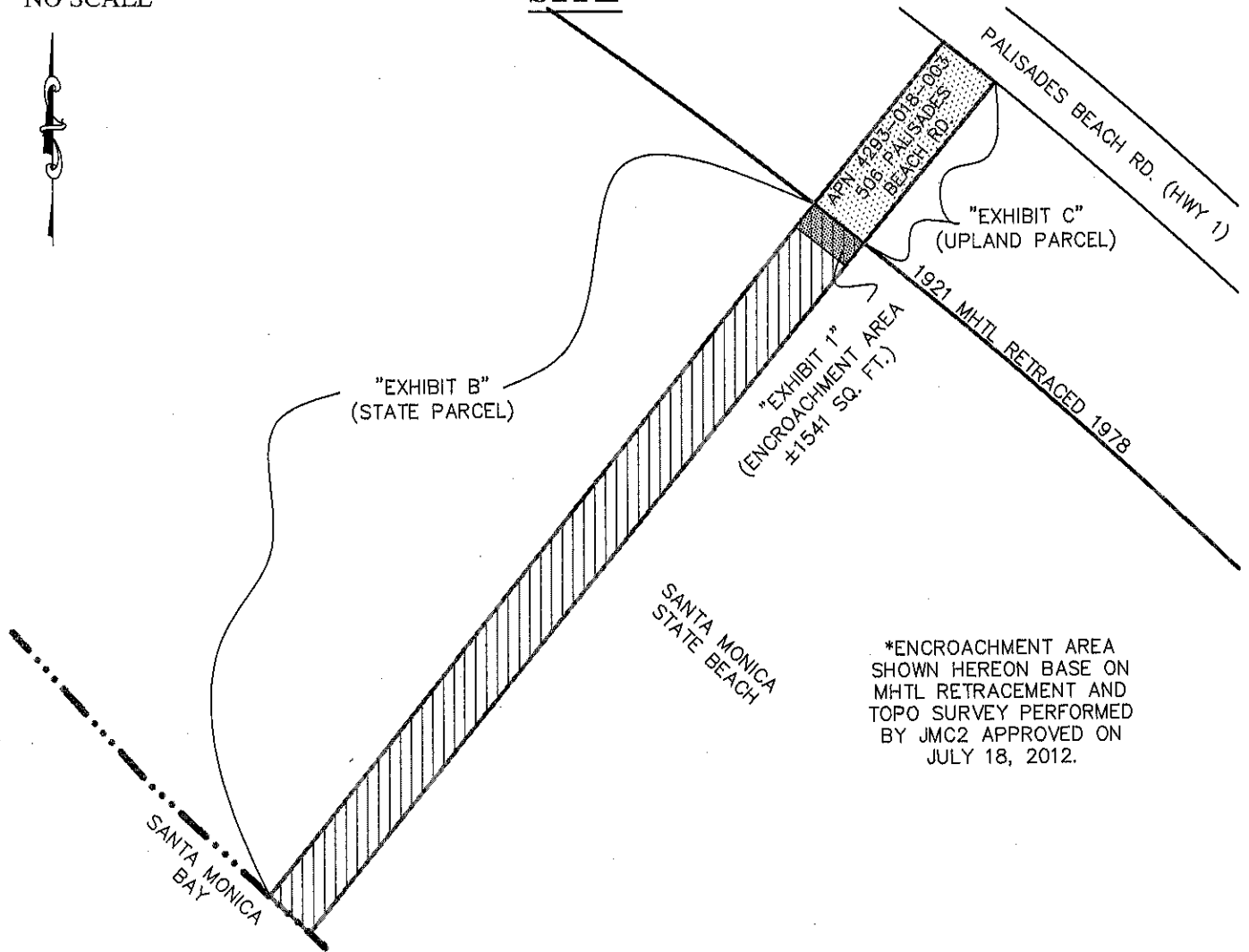
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settlement. This authorization is intended to supersede the Commission's prior approval of Calendar Item No. 39 at its meeting on July 15, 1991 (BLA 264; PRC 7546.1) to the extent not inconsistent with said prior authorization.

3. Authorize and direct the staff of the Commission and/or the California Attorney General to take all necessary or appropriate actions on behalf of the Commission, including the execution, acknowledgment, acceptance, and recordation of all documents as may be necessary or convenient to carry out the proposed settlement; and to appear on behalf of the Commission in any legal proceedings relating to the subject matter thereof.

NO SCALE

SITE



506 PALISADES BEACH RD., SANTA MONICA

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties 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

AD 649

ORNSTEIN

APN 4293-018-003

BOUNDARY LINE

AGREEMENT

LOS ANGELES COUNTY



MJF 3/17/16