

MINUTE ITEM

This Calendar Item No. 22
was approved as Minute Item
No. 22 by the State Lands
Commission by a vote of 3
2 at its 6-26-80
meeting.

CALENDAR ITEM

22.

6/80
WP 2589
Faber/Poe
PRC 2589

GENERAL LEASE - PUBLIC AGENCY USE

APPLICANT: State of California
Department of General Services
c/o Real Estate Services Division
650 Howe Avenue
Sacramento, California 95814

AREA, TYPE LAND AND LOCATION:
A parcel of tide and submerged land beneath
the existing Malibu pier, at Malibu, Los
Angeles County.

LAND USE: Public use fishing pier, bait and tackle
shop, small cafe, and charter fishing boat
operation.

TERMS OF PROPOSED LEASE:
Initial period: 10 years from date of
close of escrow No. 7812937-10
with First American Title
Insurance Company of
Los Angeles which transfers
pier ownership to the
State of California.

CONSIDERATION: The public use and benefit.

BASIS FOR CONSIDERATION:
2 Cal. Adm. Code 2005.

PREREQUISITE TERMS, FEES AND EXPENSES:
Applicant will become owner of the upland
and pier upon close of escrow.

STATUTORY AND OTHER REFERENCES:
A. P.R.C.: Div. 6, Parts 1 & 2.
B. Cal. Adm. Code: Title 2, Div. 3.

OTHER PERTINENT INFORMATION:
1. BACKGROUND: Pursuant to Chapter 782,
Statutes of 1978, and Chapter 1065,
Statutes of 1979, the Department of

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Parks and Recreation was appropriated \$2.5 million for acquisition of the Malibu Beach and pier for the State park system. The property is owned by Malibu Pier Corporation (William B. Huber), currently a carry-over lessee of the State Lands Commission under lease PRC 2589.1, covering the pier portion of the property to be acquired.

Briefly, the Statute authorizes:

- a. The Department of General Services, Division of Real Estate Services, on behalf of Parks, acquires the property, upon notification from State Lands that our lessee has fulfilled all rental obligations (such notification has been given).
- b. General Services, prior to transfer of jurisdiction to Parks, is to do work necessary to put the pier into a condition of reasonably sound repair - said work not to exceed a cost of \$150,000. General Services is to be reimbursed for their cost from net revenues from the pier and restaurant. Staff recommends the Commission preconsent to the assignment of this lease from General Services to Parks and Recreation.
- c. Once Parks has jurisdiction, the Wildlife Conservation Board is to perform major rehabilitation during the next five-year period. Pier and upland restaurant rental revenues during that five years are to reimburse the WCB for their costs.
- d. At the time of acquisition and pursuant to an executed Operating Agreement, a copy of which is attached hereto as Exhibit C, with Parks, the County of Los Angeles is to

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operate the property, including the pier, on behalf of the State. Upon completion of major repairs by WCB, the County will be responsible for continued maintenance as well as operation of the pier.

2. Certain deletions of and minor modifications have been made to Section 4 of proposed Lease to more appropriately reflect the unique relationships of the numerous public agencies involved in this transaction, as well as reflect the public use and benefits to be accrued by State acquisition and operation.
3. The annual rental value of the site is estimated to be \$8,800.
4. An EIR is not required. This transaction is within the purview of 14 Cal. Adm. Code, Section 15101, which exempts an existing structure or facility where there is no evidence of record to show injury to adjacent property, shoreline erosion, or other types of environmental degradation.
5. This project is situated on State land identified as possessing significant environmental values pursuant to P.R.C. 6370.1, and is classified in a use category, Class B, which authorizes Limited Use.
6. This project is not a development project within the guidelines of the Coastal Act.

EXHIBITS: A. Land Description. B. Location Map.
 C. Operating Agreement.

IT IS RECOMMENDED THAT THE COMMISSION:

1. DETERMINE THAT AN EIR HAS NOT BEEN PREPARED FOR THIS ACTIVITY AS SUCH REPORT IS NOT REQUIRED UNDER THE PROVISIONS OF P.R.C. 21000 ET SEQ., 14 CAL. ADM. CODE 15100 ET SEQ., AND 2 CAL. ADM. CODE 2907.

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2. FIND THAT GRANTING OF THE LEASE WILL HAVE NO SIGNIFICANT EFFECT UPON ENVIRONMENTAL CHARACTERISTICS IDENTIFIED PURSUANT TO SECTION 6370.1, OF THE P.R.C.
3. DETERMINE THAT THIS PROJECT IS EXEMPT FROM THE REQUIREMENTS OF ARTICLE 6.5 OF TITLE 2 OF THE CAL. ADM. CODE BECAUSE THIS PROJECT IS NOT A DEVELOPMENT WITHIN THE MEANING OF SECTION 2503, OF THE CAL. ADM. CODE AND SECTION 30105 OF THE P.R.C.
4. AUTHORIZE ISSUANCE TO THE STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES OF A 10-YEAR GENERAL LEASE - PUBLIC AGENCY AS ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION, USE FROM THE DATE OF TRANSFER OF PIER OWNERSHIP TO THE STATE OF CALIFORNIA THROUGH ESCROW NO. 7812937-10 WITH FIRST AMERICAN TITLE INSURANCE COMPANY OF LOS ANGELES; IN CONSIDERATION OF THE PUBLIC USE AND BENEFIT; FOR OPERATION, REHABILITATION AND MAINTENANCE OF A PUBLIC USE PIER AND RELATED FACILITIES ON THE LAND DESCRIBED ON EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF.
5. PRECONSENT TO THE ASSIGNMENT OF THIS LEASE TO THE DEPARTMENT OF PARKS AND RECREATION, UPON COMPLETION OF REQUIRED PIER REPAIRS BY THE DEPARTMENT OF GENERAL SERVICES, AND THEIR TRANSFER OF PIER JURISDICTION TO PARKS AND RECREATION.

EXHIBIT "A"

LAND DESCRIPTION

WP 2589

A parcel of tide and submerged land lying in the Pacific Ocean, City of Malibu, Los Angeles County, California, said parcel being immediately beneath an existing pier, TOGETHER WITH a necessary use area extending no more than 15 feet from extremities of said pier, said pier being adjacent to and southerly of that certain parcel of land as described in Grant Deed filed August 15, 1944, in Book 21117, Page 357, Los Angeles County Records.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the Pacific Ocean.

END OF DESCRIPTION

REVIEWED JUNE 13, 1980 BY TECHNICAL SERVICES UNIT, ROY MINNICK, SUPERVISOR

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EXHIBIT "C"

OPERATING AGREEMENT
MALIBU PIER AND BEACH

THIS AGREEMENT, made and entered into this _____ day of _____, 19____, by and between the STATE OF CALIFORNIA, acting through its Department of Parks and Recreation, hereinafter called "PARKS", and the COUNTY OF LOS ANGELES, hereinafter called "LOCAL AGENCY";

W I T N E S S E T H:

WHEREAS, pursuant to the provisions of Section 5007 of the Public Resources Code of the State of California, PARKS may enter into contracts with political subdivisions of the State of California for the care, maintenance, and control, for the purposes of the State Park System, of lands under the jurisdiction of PARKS; and

WHEREAS, funds are available, pursuant to, Chapter 782, Statutes of 1978, and amended by Chapter 1065, Statutes of 1979, and subject to conditions set forth therein, for acquisition, for State Park System purposes, of certain real property hereinafter described; and

WHEREAS, acquisition of said real property is subject to the Property Acquisition Law Part 11, (commencing with Section 15850) of Division 3 of Title 2 of the Government Code; and

WHEREAS, PARKS and LOCAL AGENCY desire to enter into an agreement to provide for such care, maintenance, and control of the real property so acquired; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto do hereby covenant and agree as follows:

1. LOCAL AGENCY shall be responsible for the care, maintenance, operation, and control of the real property described in Exhibit "A" attached hereto. Parcel 1, 2 and 3 may hereinafter be referred to as "said upland property", Parcel 4 may hereinafter be referred to as "sovereign lands", and all four parcels may hereinafter be referred to as "said property." Said property is to be used for the purposes of the State Park System.

The right to use parcel 4 herein will be to the extent of and only as provided by a public agency lease to be issued by the State Lands Commission (hereinafter referred to as "Commission") to the Department of General Services (hereinafter referred to as DGS) on terms approved by PARKS and LOCAL AGENCY, which approval shall not be unreasonably withheld. (The form of said lease is attached hereto as Exhibit "B"). All obligations of DGS under said lease (except those imposed on DGS, PARKS, and WILDLIFE CONSERVATION BOARD by Chapter 782 (1978) as amended) shall be assumed by LOCAL AGENCY for the term of said lease or this agreement whichever is shorter. It is understood that although DGS will transfer its interest under said lease to PARKS upon its completion of certain pier repairs the obligation of LOCAL AGENCY will remain unchanged.

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LOCAL AGENCY'S obligations and rights under this agreement, as to each parcel of said real property, shall commence on acquisition by the State of California and shall continue for ten (10) years thereafter. During said period LOCAL AGENCY shall pay all costs of developing, maintaining, controlling, and operating said property for said purposes and PARKS shall not be liable for the cost of said development, maintenance, control, or operation, except that State agencies shall perform the work contemplated by Section 1 of Chapter 782, Statutes of 1978, as amended, and shall be responsible for the costs thereof. Nothing herein shall preclude LOCAL AGENCY from receiving grants for such purposes to the full extent otherwise permitted by law. It is understood that there is an existing "Restaurant Lease" dated May 26, 1972, on a portion of the property and that LOCAL AGENCY shall have the rights and the responsibilities of the "Landlord" thereunder, and under any other leases on said upland property including tenants indemnification and insurance coverage obligations, but the rentals therefrom shall be collected by the appropriate State Agency as provided in paragraph 4 hereof.

2. While this agreement is in force and effect, said property shall, at all times, be accessible and subject to the use and enjoyment of all citizens of the State of California, and all other person entitled to use and enjoy the same subject, however, in the manner of such use and enjoyment, to the control of LOCAL AGENCY in conformity with this agreement and to closures necessary in connection with work performed by State Agencies pursuant to Chapter 782, Statutes of 1978, as amended. LOCAL AGENCY may adopt rules and regulations for the use and enjoyment of said property by the public. Any such rules and regulations adopted by LOCAL AGENCY shall conform to and be consistent with the rules and regulations adopted by PARKS and generally applicable to the State Park System, including said property. Said property shall not be used for any other purpose than the purposes herein enumerated.

3. Subject to prior approval in writing by PARKS, LOCAL AGENCY may grant concessions in or upon said property consistent with the use by the general public thereof for park and recreational purposes. In addition all such concessions which affect said sovereign lands or fixtures attached thereto shall only be granted after prior approval by the Commission. The rights of the public to the use and enjoyment of said property shall thereupon be limited by such concession agreements. All such concessions shall be granted in substantial compliance with Public Resources Code Section 5019.10 et seq.

4. LOCAL AGENCY shall not collect the income or revenue produced by the operation of the pier and the restaurant during the period beginning with the date of this agreement and ending five (5) years after jurisdiction over the pier and restaurant is transferred to PARKS by the Department of General Services, which income and revenue is reserved to State of California and shall be collected by the appropriate State Agency and deposited in the appropriate accounts in the State Treasury. All other income and revenue received by LOCAL AGENCY may be used for development, maintenance, control, and operation of said property or as otherwise provided in the agreement. After

said five year period, LOCAL AGENCY shall collect all income from said property for the balance of the respective agreements covering each parcel.

5. Any charges, fees, or collections made by LOCAL AGENCY for services, benefits or accommodations to the general public shall be limited to actual needs for maintenance, control, and operation, and for development of said property to provide needed additional public facilities, and that commercialization for profit beyond that in existence at the time the State acquires said upland property shall not be engaged in by LOCAL AGENCY.

6. All income received and all expenditures made by the LOCAL AGENCY in relation to concessions, special services, and all other matters incident to the development, maintenance, control, and operation of said property shall be reported annually to PARKS. All such income and fees shall be used for maintenance, control, and operation of said property and such portion of income as may exceed the cost and expense incurred by the LOCAL AGENCY for maintenance, control, and operation may be utilized for the care, maintenance, control, and operation of other State Park Units operated by LOCAL AGENCY. Such annual reports shall be made for the annual period commencing on July 1st and terminating on June 30th and shall be filed with PARKS not later than September 30th of each year. The first report hereunder shall cover the period beginning with the effective date of this contract and terminating the following June 30th, and shall be filed by LOCAL AGENCY by the following September 30th.

The report shall include a reasonable estimate of the weekly number of visitors to the area as well as the number of vehicles.

The books, records, and accounts kept by LOCAL AGENCY applying to the operation of the State Park area, shall at all reasonable times be open for audit or inspection by PARKS.

7. LOCAL AGENCY may, by its own forces or by contract, undertake projects for the development, construction, or improvement to said property. Plans and specifications for any such project shall be submitted to PARKS for approval. No such project shall be commenced by LOCAL AGENCY'S own forces or contracts awarded prior to PARKS approval of such plans and specifications. PARKS has the right to disapprove such plans and specifications. Such development, construction, or improvement shall be in accordance with a General Plan which also shall be subject to prior approval in writing by PARKS.

8. Improvements erected on said upland property by LOCAL AGENCY shall, upon completion, become a part of the realty and title to said improvements shall vest in PARKS, except that PARKS may, at its option, require that LOCAL AGENCY remove any or all such improvements at the end of the term hereof. LOCAL AGENCY upon termination of this agreement may, at its option, remove any or all of such improvements erected on said upland property by LOCAL AGENCY, (other than improvements erected with funds realized through income from said property) provided

it gives PARKS notice promptly that it desires to do so. Any such removal required by PARKS or at the option of LOCAL AGENCY shall be completed by LOCAL AGENCY within ninety (90) days after the termination of this agreement (except that if longer than 90 days is required for actual removal such removal may still be made provided it has been commenced promptly and is carried on with due diligence).

Upon removal, title to the material so removed shall vest in LOCAL AGENCY. Any removal authorized thereunder shall be made without damage to adjacent improvements and if adjacent improvements are damaged, LOCAL AGENCY shall reimburse PARKS therefor or shall repair the improvement so damaged at the option of PARKS. After removal, the premises shall be left free and clear of all debris and in a condition reasonably similar to the present condition of said upland property.

9. LOCAL AGENCY agrees that all projects or improvements which affect said sovereign lands or fixtures attached thereto shall only be undertaken pursuant to the prior written consent of the Commission and the terms of the public agency lease referred to in Paragraph 1, above.

10. LOCAL AGENCY shall not, without prior written approval of the State, remove, move, demolish, or alter in any manner, any improvement, natural features, or accretions existing on said property on the effective date of this agreement or subsequently occurring.

11. If said property or portion thereof is taken by proceeding in eminent domain, the State shall receive the entire award for such taking except that LOCAL AGENCY shall receive out of said award the fair market value of any improvements then existing and constructed by LOCAL AGENCY (other than improvements erected with funds realized through income from said property) on said property as said fair market value may be determined by said proceedings taking into consideration the terms of this instrument.

12. LOCAL AGENCY hereby waives all claims and recourse against PARKS including the right to contribution for loss or damage to persons or property arising from growing out of or in any way connected with or incident to this agreement except claims arising from the concurrent or sole negligence of PARKS, its officers, agents, and employees.

PARKS, to the extent it may legally do so and subject to the availability of funds, shall indemnify, hold harmless, and defend LOCAL AGENCY, its officers, agents, and employees against any and all claims, demands, damages, costs, expenses, or liability costs arising out of the acquisition, of the property described herein or out of the repair, improvement, or rehabilitation of said pier and restaurant by State of California pursuant to Chapter 782, Statutes of 1978, as amended, which claims, demands, or causes of action arise under Government Code Section 895.2 or otherwise except for liability arising out of the concurrent or sole negligence of LOCAL AGENCY, its officers, agents, or employees.

In the event LOCAL AGENCY is named as co-defendant in a legal action under the provisions of the Government Code Sections 895 et seq., and PARKS is served with process in such legal action, then PARKS shall notify LOCAL AGENCY of such fact and if such action relates only to acquisition of the property or to the repair, improvement, rehabilitation, or replacement of said pier and restaurant by PARKS then PARKS shall, to the extent it may legally do so and subject to availability of funds, represent LOCAL AGENCY in such legal action unless LOCAL AGENCY undertakes to represent itself as co-defendant in such legal action in which event LOCAL AGENCY shall bear its own litigation costs, expenses, and attorney's fees.

LOCAL AGENCY, to the extent it may legally do so and subject to availability of funds shall indemnify, hold harmless, and defend PARKS, its officers, agents, and employees against any and all claims, demands, damages, costs, expenses, or liability costs arising out of the development, construction, operation, or maintenance of the property described herein which claims, demands, or causes of action arise under Government Code Section 895.2 or otherwise except for liability arising out of the concurrent or sole negligence of PARKS, its officers, agents, or employees. It is expressly understood that until the State completes the repairs specified in Paragraph 1 hereof LOCAL AGENCY shall not be liable for any loss or damage to persons or property arising out of the condition of the pier except claims arising from the concurrent or sole negligence of LOCAL AGENCY, its officers, agents, and employees.

In the event PARKS is named as co-defendant in a legal action, under the provisions of the Government Code Sections 895 et seq., and LOCAL AGENCY is served with process in such legal action, then LOCAL AGENCY shall notify PARKS of such fact and if such action relates to other than to acquisition of the property or the repair, improvement, rehabilitation, or replacement of said pier and restaurant by PARKS, LOCAL AGENCY shall represent PARKS in such legal action unless PARKS undertakes to represent itself as co-defendant in such legal action in which event PARKS shall bear its own litigation costs, expenses, and attorney's fees.

In the event judgment is entered against PARKS and LOCAL AGENCY because of the concurrent negligence of PARKS and LOCAL AGENCY, their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither party shall request a jury apportionment.

13. This agreement shall not, nor shall any interest therein or thereunder, be assigned, mortgaged, hypothecated, or transferred either by LOCAL AGENCY or by operation of law, nor shall LOCAL AGENCY let or sublet, or grant any licenses or permits with respect to the use and occupancy of said property or any portion thereof, without the written consent of PARKS first had and obtained. To the extent such activity includes said sovereign lands consent must also be first had and obtained from the Commission.

14. Notices desired or required to be given hereunder or under any law now or hereafter in effect may, at the option of the party given same, be given by enclosing the same in a sealed envelope addressed to the party from whom intended and by depositing said envelope, with postage prepaid, certified with return receipt requested, in the United States Post Office or any substation thereof.

In the event such notice is being given to LOCAL AGENCY, such notice and the envelope containing the same shall be addressed to the County of Los Angeles, Department of Beaches, 2600 Strand, Mahattan Beach, California 90266, or such other place as may hereafter be designated in writing by or on behalf of LOCAL AGENCY and in the event that said notice is being sent to PARKS, said notice and the envelope containing the same shall be addressed to the Department of Parks and Recreation, Post Office Box 2390, Sacramento, California 95811.

15. Said real property shall be named and classified as a unit of the State Parks System by the State Park and Recreation Commission. LOCAL AGENCY shall supply PARKS after said property is acquired, in a form acceptable to PARKS: (1) an inventory of the real property's scenic, natural, and cultural features including but not limited to ecological, archeological, historical, and geological features; and (2) a draft Resource Management Plan and draft General Development Plan all as required by Section 5002.1 and 5002.2 of the Public Resources Code.

16. The attached standard form 3 is incorporated herein and the reference therein to contractor shall mean LOCAL AGENCY.

17. It is further agreed and understood between the parties hereto that any development, beach erosion control, or protection work which may be undertaken by State of California or the United States of America, along or on said property, in the manner provided by law or under the rules of the State, shall not, in any way, be construed as constituting a termination of this agreement or in any way affecting same.

The State shall have the right to enter into agreements for such work during the term hereof and to go upon said property or to authorize any person, firm, or corporation to go upon said property for the purpose of such construction, beach erosion protection, or control work, or the doing of other public work for the improvement or development of said property, provided that State shall give LOCAL AGENCY written notice of its intention to do any of the work herein mentioned before such work is undertaken.

18. This operating agreement is subject to all valid and existing contracts, leases, licenses, encumbrances, and claims of title which may effect said property. The State reserves the right of ingress and egress to said property to inspect, investigate, and to repair, improve, rehabilitate, or replace the pier and restaurant, and survey said property as deemed necessary by the State.

19. As to said upland property LOCAL AGENCY shall have the option to extend this agreement for an additional twenty-five (25) years, by written notice to PARKS before the end of the term hereof.

IN WITNESS THEREOF, the parties have executed this instrument upon the date first hereinabove appearing.

STATE OF CALIFORNIA
DEPARTMENT OF PARKS AND RECREATION

By _____
Director

By _____

COUNTY OF LOS ANGELES

By _____
Chairman, Board of Supervisors

ATTEST:

Executive Officer-Clerk of the Board
of Supervisors

By _____

Deputy

APPROVED AS TO FORM:

County Counsel

By _____

Deputy

1 PARCEL 1

EXHIBIT "A"

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OF

EXHIBIT "C"

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A parcel of land being a portion of the Rancho Topanga Malibu Sequit, as confirmed to Matthew Keller by patent recorded in Book 1 Page 407 et seq., of Patents, in the office of the county recorder of Los Angeles County, particularly described as follows:

Beginning at a point in the Southerly line of the 80 foot strip of land described in the deed from T. R. Cadwalader, et al. to the State of California, recorded in Book 15228 Page 342, Official Records of said county, said point of beginning being South $24^{\circ} 50' 30''$ East 40 feet and North $65^{\circ} 09' 30''$ East 81.50 feet from Engineer's center line Station 947 plus 68.93 at the Westerly extremity of that certain center line course described in said deed as North $65^{\circ} 09' 30''$ East 735.70 feet; thence along the Southerly line of said 80 foot strip South $65^{\circ} 09' 30''$ West 81.58 feet to the beginning of a tangent curve concave Southeasterly with a radius of 1960 feet; thence Southwesterly along the arc of said curve 318.42 feet; thence South $30^{\circ} 36' 30''$ East to a point in the ordinary high tide line of the Pacific Ocean; thence Northeasterly along said tide line to the intersection of said tide line and that line which bears South $24^{\circ} 50' 30''$ East from the point of beginning; thence North $24^{\circ} 50' 30''$ West to said point of beginning.

EXCEPT therefrom all minerals, oil, petroleum, asphaltum, gas, coal, and other hydrocarbon substances in, on, within and under said lands and every part thereof, but without surface right of entry, as reserved by Marblehead Land Company, in deed recorded August 15, 1944 in Book 21117 Page 357, Official Records.

1 ALSO EXCEPT any portion of said land lying outside of the patent line of the
2 Rancho Topanga Malibu Sequit, as such lines existed at the time of the
3 issuance of the patent, which was not formed by the deposit of alluvion from
4 natural causes and by imperceptible degrees.

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7 PARCEL 2

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9 A parcel of land being a portion of the Rancho Topanga Malibu Sequit, as
10 confirmed to Matthew Keller by patent recorded in Book 1 Page 407 et seq. of
11 Patents, in the office of the county recorder of Los Angeles County,
12 particularly described as follows:

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14 Beginning at a point in the Southerly line of the 80 feet strip of land
15 described in the deed from T. R. Cad alader, et al., to the State of
16 California, recorded in Book 11228 Page 342, Official Records of said county,
17 said point of beginning being South $24^{\circ} 50' 30''$ East 40 feet and North
18 $65^{\circ} 09' 30''$ East 81.53 feet from Engineer's center line Station 9'7 plus
19 68.93 at the Westerly extremity of that certain center line course described
20 in said deed as North $65^{\circ} 09' 30''$ East 735.70 feet, said point of beginning
21 being also the Northeasterly corner of the parcel of land described in a deed
22 from Marblehead Land Company to William B. Huber, et al., recorded in Book
23 21117 Page 357, Official Records of said county; thence North $65^{\circ} 09' 30''$
24 East 200 feet along the Southerly line of said 80 footstrip; thence South
25 $24^{\circ} 50' 30''$ East to a point in the ordinary high tide line of the Pacific
26 Ocean; thence Southwesterly along said tide line to the intersection of said
27 tide line and that line which bears South $24^{\circ} 50' 30''$ East from the point of

1 beginning; thence north 24° 50' 30" West to the point of beginning;
2 said last mentioned course being the Easterly line of said William B. Huber,
3 et al., parcel hereinabove mentioned.

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5 EXCEPT therefrom all minerals, oil, petroleum, asphaltum, gas, coal, and other
6 hydrocarbon substances in, on, within and under said lands and every part
7 thereof, but without right of entry as reserved by Marblehead Land Company in
8 deed recorded May 3, 1945 in Book 21959 Page 101, Official Records.

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10 ALSO EXCEPT any portion of said land lying outside of the patent line of the
11 Rancho Topanga Malibu Sequit, as such lines existed at the time of the
12 issuance of the patent, which was not formed by the deposit of alluvion from
13 natural causes and by imperceptible degrees.

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16 PARCEL 3.

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18 A parcel of land being a portion of the Rancho Topanga Malibu Sequit, as
19 confirmed to Matthew Keller by patent recorded in Book 1 Page 407 et seq., of
20 Patents, in the office of the county recorder of Los Angeles County, described
21 as follows:

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23 Beginning at a point in the Southerly line of the 80 foot strip of land
24 described in the deed from T. R. Cadwalader et al., to the State of
25 California, recorded in Book 15228 Page 342, Official Records of said county,
26 said point of beginning being South 24° 50' 30" East 40 feet and North
27 65° 09' 30" East 281.58 feet from Engineer's center line Station 947 plus

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1 68.93 at the Westerly extremity of that certain center line course described
2 in said deed as North 65° 09' 30" East 735.70 feet; thence North 65° 09'
3 30" East 50 feet along the Southerly line of said 80 foot strip; thence South
4 24° 50' 30" East to a point in the ordinary high tide line of the Pacific
5 Ocean; thence southwesterly along said tide line to the intersection of said
6 tide line and that line which bears South 24° 50' 30" East from the point of
7 beginning; thence North 24° 50' 30" West to the point of beginning.

8
9 EXCEPT therefrom all minerals, oil, petroleum, asphaltum, gas, coal, and other
10 hydrocarbon substances in, on, within and under said lands and every part
11 thereof, but without right of entry, as reserved by Marblehead Land Company,
12 in deed recorded May 29, 1945 in Book 22040 Page 81, Official Records.

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14 ALSO EXCEPT any portion of said land lying outside of the patent line of the
15 Rancho Topanga Malibu Sequit, as such lines existed at the time of the
16 issuance of the patent, which was not formed by the deposit of alluvion from
17 natural causes and by imperceptible degrees.

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19 PARCEL 4

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21 A parcel of tide and submerged land lying in the Pacific Ocean, City of
22 Malibu, Los Angeles County, California, said parcel being immediately beneath
23 an existing pier, TOGETHER WITH a necessary use area extending no more than 15
24 feet from extremities of said pier, said pier being adjacent to and southerly
25 of that certain parcel of land as described in Grant Deed filed August 15,
26 1944, in Book 21117, Page 357, Los Angeles County Records.

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1 EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark
2 of the Pacific Ocean.

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The above four parcels of real property include a restaurant, parking area,
and pier.

RECORDED AT THE REQUEST OF

State of California/State Lands Commission
Official Business — Document entitled to free
recording pursuant to Government Code
Section 27383.

WHEN RECORDED MAIL TO

State Lands Commission
1807 - 13th Street
Sacramento, CA 95814
Attention: Title Unit

LEASE NO. _____

This Lease consists of this summary and the following attached and incorporated parts:

- Section 1 Basic Provisions
- Section 2 Special Provisions amending or supplementing Section 1 or 4
- Section 3 Description of Lease Premises
- Section 4 General Provisions

SECTION 1

BASIC PROVISIONS

THE STATE OF CALIFORNIA, hereinafter referred to as Lessor acting by and through the STATE LANDS COMMISSION (1807 - 13th Street, Sacramento, California 95814), pursuant to Division 6 of the Public Resources Code and Title 2, Division 3 of the California Administrative Code, and for consideration specified in the Lease, does hereby lease,

demise and let to STATE OF CALIFORNIA -- DEPARTMENT OF GENERAL SERVICES

hereinafter referred to as Lessee:

WHOSE MAILING ADDRESS IS: _____

those certain lands described in Section 3 subject to the reservations, terms, covenants and conditions of this Lease

LEASE TYPE: GENERAL LEASE -- PUBLIC AGENCY USE

LAND TYPE: TIDE AND SUBMERGED LOCATION: LOS ANGELES COUNTY

LAND USE OR PURPOSE: SPORT FISHING, RECREATION PIER, AND RELATED TIDELANDS USES.

TERM: TEN (10) years, beginning JULY 1, 1980, OR CLOSE OF ESCROW
ending JUNE 30, 1990, unless sooner terminated as provided under this Lease.
7812937-10 (First American Title Ins.)
whichever is last

CONSIDERATION, \$ PUBLIC USE AND BENEFIT

subject to modification by Lessor as specified in Paragraph 2(b) of Section 4

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AUTHORIZED IMPROVEMENTS: PUBLIC USE PIER AND RELATED FACILITIES

EXISTING: PUBLIC USE FISHING PIER, BAIT AND TACKLE SHOP AND SMALL CAFE

TO BE CONSTRUCTED, CONSTRUCTION MUST BEGIN BY: N/A

AND BE COMPLETED BY: N/A

LIABILITY INSURANCE: N/A

SURETY BOND OR OTHER SECURITY: N/A

SECTION 2
SPECIAL PROVISIONS

BEFORE THE EXECUTION OF THIS LEASE, ITS PROVISIONS ARE AMENDED, REVISED OR SUPPLEMENTED AS FOLLOWS:

Section 4, paragraph 2 is amended to read:

"2. Consideration

The consideration to Lessor for this Lease shall be the public use and benefit of the property. Lessee shall notify Lessor within ten (10) days in the event that the public is charged any direct or indirect fee for use and enjoyment of the Lease Premises."

Section 4, paragraph 4(b) is amended to read:

"(b) Repairs and Maintenance:

(1) Initial Repairs.

Pursuant to Chapter 782 Statutes of 1978 and Chapter 1065 Statutes of 1979, the lessee shall make \$150,000.00 worth of repairs to the existing pier pursuant to plans and specifications which must be provided to lessor prior to commencement of work. Said repairs are to be made to place the pier in a condition of reasonably sound repair (to the extent said funding permits) and must be completed at the earliest reasonable date.

(2) Subsequent Repairs.

Pursuant to the above-referenced statutes, lessee will thereafter transfer its interest in this lease to the State Department of Parks and Recreation. Thereafter, for a period of five (5) years, the Wildlife Conservation Board shall make all improvements, rehabilitation, or replacements necessary to protect the public health, safety, and welfare. Said activities shall be undertaken pursuant to plans and specifications approved by lessor prior to commencement of work.

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(3) Maintenance.

Any maintenance beyond that specified in paragraphs 4(b)(1) and (2) above, which is necessary to compensate for normal wear and tear and to provide general upkeep, shall be performed by lessee or its designate at its sole expense."

Section 4, paragraph 13, is amended to read:

"Restoration of Lease Premises.

Upon expiration or sooner termination of this lease, Lessor shall accept the Lease Premises, as then improved with structures, buildings, pipelines, machinery, facilities, and fills in place, provided however that Lessor may require Lessee to make such repairs as are then necessary to place said improvements into a condition of good order and safe condition or remove said improvements at Lessee's option and expense."

The following paragraphs are deleted from Section 4:

5(c), 8 and 9.

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SECTION 4 GENERAL PROVISIONS

1. GENERAL

These provisions are applicable to all leases, permits, rights-of-way, easements, or licenses or other interests in real property conveyed by the State Lands Commission.

2. CONSIDERATION

(a) Categories:

(1) Rental:

Lessee shall pay the annual rental as stated in Section 1 or 2 to Lessor without deduction, delay or offset, on or before the beginning date of this Lease and on or before each anniversary of its beginning date during each year of the Lease term.

(2) Royalty or other consideration:

Lessee shall pay a royalty or other consideration in the amount, method and manner as specified in Section 1 or 2.

(3) Non-Monetary Consideration:

If a monetary rental, royalty, or other consideration is not specified in Section 1 or 2, consideration to Lessor for this Lease shall be the public use, benefit, health or safety, as appropriate, however, Lessor shall have the right to review such consideration at any time and to set a monetary rental if the State Lands Commission, at its sole discretion, determines that such action is in the best interest of the State. Lessee shall notify Lessor within ten (10) days in the event that the public is charged any direct or indirect fee for use and enjoyment of the Lease Premises.

(b) Modification:

Lessor may modify the amount or rate of consideration effective on each fifth anniversary of the beginning date of this Lease. Should Lessor fail to exercise such right effective on any fifth anniversary it may do so effective on any one (1) of the next four (4) anniversaries following such fifth anniversary, without prejudice to its right to effect such modification on the next or any succeeding fifth anniversary. Any modification of the amount or rate of consideration made pursuant to this paragraph shall conform to Title 2, Division 3 of the California Administrative Code and no such modification shall become effective unless Lessee is given written notice at least sixty (60) days prior to the effective date.

(c) Penalty and Interest:

Any installments of rental, royalty, or other consideration accruing under this Lease not paid when due shall be subject to a penalty and shall bear interest as specified in Public Resources Code Section 2224 and Section 2.

3. BOUNDARIES

This Lease is not intended to establish the State's boundaries and is made without prejudice to either party regarding any boundary claims which may be asserted presently or in the future.

4. LAND USE

(a) General:

Lessee shall use the Lease Premises only for the purpose or purposes stated in Section 1 or 2 and only for the operation and maintenance of the improvements authorized in Section 1 or 2. Lessee shall commence use of the Lease Premises within ninety (90) days of the beginning date of this lease. Thereafter Lessee's discontinuance of such use for a period of ninety (90) days shall be conclusively presumed to be an abandonment.

(b) Repairs and Maintenance:

~~Lessee shall at its own expense keep and maintain the Lease Premises and all improvements in good order and repair and safe condition.~~

(c) Additions, Alterations and Removal:

(1) Additions — No improvements other than those ex-

pressly authorized in Section 1 or 2 of this Lease shall be constructed by the Lessee on the Lease Premises without the prior written consent of Lessor. Lessee shall notify Lessor within ten (10) days after commencing the construction of authorized improvements and within sixty (60) days after completing them.

(2) Alteration or Removal — Except as provided under this Lease, no alteration or removal of existing improvements on or natural features of the Lease Premises shall be undertaken without the prior written consent of Lessor.

(d) Conservation:

Lessee shall practice conservation of water and other natural resources and shall prevent pollution and harm to the environment in or on the Lease Premises.

(e) Enjoyment:

Nothing in this Lease shall preclude Lessee from excluding persons from the Lease Premises when their presence or activity constitute a material interference with Lessee's use and enjoyment of the Lease Premises as provided under this Lease.

(f) Discrimination:

Lessee in its use of the Lease Premises shall not discriminate against any person or class of persons on the basis of race, color, creed, national origin, sex, age, or physical handicap.

(g) Residential Use:

Unless otherwise allowed under this Lease, improvements on the Lease Premises shall not be used as a residence or for the purpose of mooring a floating residence.

5. RESERVATIONS, ENCUMBRANCES AND RIGHTS-OF-WAY

(a) Reservations:

(1) Lessor expressly reserves all natural resources in or on the Lease Premises, including but not limited to oil, coal, natural gas and other hydrocarbons, minerals, aggregates, timber and geothermal resources, as well as the right to grant leases in and over the Lease Premises for the extraction of such natural resources, however such leasing shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.

(2) Lessor expressly reserves a right to go on the Lease Premises and all improvements for any purpose associated with this Lease or for carrying out any function required by law, or the rules, regulations or management policies of the State Lands Commission. Lessor shall have a right of reasonable access to the Lease Premises across Lessee owned or occupied lands adjacent to the Lease Premises for any purpose associated with this Lease.

(3) Lessor expressly reserves to the public an easement for convenient access across the Lease Premises to other State-owned lands located near or adjacent to the Lease Premises and a right of reasonable passage across and along any right-of-way granted by this Lease, however, such easement or right-of-way shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.

(4) Lessor expressly reserves the right to lease, convey, or encumber the Lease Premises, in whole or in part, during the lease term for any purpose not inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.

(b) Encumbrances:

This Lease may be subject to pre-existing contracts, leases, licenses, easements, encumbrances and claims and to be made without warranty by Lessor of title, condition or fitness of the land for the stated or intended use.

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(c) Rights-of-Way:

~~If this lease is for a right-of-way covering one or more pipelines or conduits, the Lease Premises include only lands actually underlying the pipelines or conduits, and Lessor hereby grants to Lessee a non-exclusive right to go onto the lands adjacent to the Lease Premises as is reasonable and necessary for installation, inspection and maintenance of the pipelines or conduits.~~

6. RULES, REGULATIONS AND TAXES

(a) Lessor and Lessee shall comply with and be bound by all presently existing or subsequently enacted rules, regulations, statutes or ordinances of the State Lands Commission or any other governmental agency or entity having lawful authority and jurisdiction.

(b) Lessee recognizes and understands in accepting this Lease that it may be liable for a possessory interest tax imposed by a city or county on its leasehold interest and that its payment of such a tax shall not reduce the amount of consideration due Lessor under this Lease and that Lessor shall have no liability for the payment of such a tax.

7. INDEMNITY

(a) Lessor shall not be liable and Lessee shall indemnify, hold harmless and, at the option of Lessor, defend Lessor, its officers, agents, and employees against and for any and all liability, claims, damages or injuries of any kind and from any cause, occurring on the Lease Premises or improvements, or arising out of or connected in any way with the issuance of this Lease.

(b) Lessee shall give prompt notice to Lessor in case of any accident, injury or casualty on the Lease Premises.

8. LIABILITY INSURANCE

~~(a) If so specified in Section 1 or 2, Lessee shall obtain at its own expense and keep in full force and effect during the Lease term with an insurance company acceptable to Lessor comprehensive liability insurance, for specified categories and amounts, insuring Lessee and Lessor against any and all claims or liability arising out of the ownership, use, occupancy, condition or maintenance of the Lease Premises and all improvements.~~

~~(b) The insurance policy or policies shall name the State as an additional insured or co-insured party as to the Lease Premises and shall identify the Lease by its assigned number. Lessee shall provide Lessor with a certificate of such insurance and shall keep such certificate current.~~

~~(c) The liability insurance coverage specified in this Lease shall be in effect at all times during the Lease term and subsequently until all of the Lease Premises have been either accepted as improved by Lessor or restored pursuant to Paragraph 13.~~

9. SURETY BOND

~~(a) If so specified in Section 1, Lessee shall provide a surety bond or other security device acceptable to Lessor, for the specified amount, and naming the State of California as the assured, to guarantee to Lessor the faithful observance and performance by Lessee of all of the terms, covenants and conditions of this Lease.~~

~~(b) Lessor may increase the amount of the surety bond or other security device to cover any additionally authorized improvements, alterations or purposes and any modification of consideration.~~

~~(c) The surety bond or other security device shall be maintained in full force and effect at all times during the Lease term and subsequently until all of the Lease Premises have been either accepted as improved by Lessor or restored pursuant to Paragraph 13.~~

10. ASSIGNMENT, ENCUMBRANCING OR SUBLETTING

(a) Lessee shall not either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease and shall not sublet the Lease Premises, in whole or in part, or allow any person other than the Lessee's employees, agents, servants and invitees to occupy or use all or any portion of the Lease Premises without the prior written consent of Lessor.

(b) This Lease shall be appurtenant to littoral or riparian land and any ownership interest or use rights of Lessee in such lands and it shall not be severed from such rights or interests without the prior written consent of Lessor.

11. DEFAULT AND REMEDIES

(a) Default:

The occurrence of any one or more of the following events shall constitute a default or breach of this Lease by Lessee:

(1) Lessee's failure to make any payment of rental, royalty, or other consideration as required under this Lease.

(2) Lessee's failure to obtain or maintain liability insurance or a surety bond or other security device as required under this Lease.

(3) Lessee's vacation or abandonment of the Lease Premises during the Lease term.

(4) Lessee's failure to observe or perform any other term, covenant or condition of this Lease to be observed or performed by the Lessee when such failure shall continue for a period of sixty (60) days after Lessor's giving written notice; however, if the nature of Lessee's default or breach is such that more than sixty (60) days are reasonably required for its cure, then Lessee shall not be deemed to be in default or breach if Lessee commences such cure within such sixty (60) day period and diligently proceeds with such cure to completion.

(b) Remedies:

In the event of a default or breach by Lessee and Lessee's failure to cure such default or breach, Lessor may at any time and with or without notice do any one or more of the following:

(1) Re-enter the Lease Premises, remove all persons and property, and repossess and enjoy such premises.

(2) Terminate this Lease and Lessee's right of possession of the Lease Premises. Such termination shall be effective upon Lessor's giving written notice and upon receipt of such notice Lessee shall immediately surrender possession of the Lease Premises to Lessor.

(3) Maintain this Lease in full force and effect and recover any rental, royalty, or other consideration as they become due without terminating Lessee's right of possession regardless of whether Lessee shall have abandoned the Lease Premises.

(4) Exercise any other right or remedy which Lessor may have at law or in equity.

12. LESSEE'S TERMINATION

Lessee may terminate this Lease for any reason upon giving Lessor at least sixty (60) days prior written notice. Lessee agrees that on the effective date of termination it shall responsibly leave and surrender the Lease Premises to Lessor in a state of good order, condition, repair, and restoration as provided under Paragraphs 4(b) and 13. The exercise of such right of termination shall not release Lessee from liability for any unpaid but accrued rental, royalty or other consideration which may be due under this Lease or from any other obligations still applicable under the Lease. No portion of any rental paid by Lessee in advance shall be refunded.

13. RESTORATION OF LEASE PREMISES

~~(a) Upon expiration or sooner termination of this Lease, Lessor may accept all or any portion of the Lease Premises, as then improved with structures, buildings, pipelines, machinery, facilities and fills in place; or Lessor may require Lessee to remove all or any portion of such improvements at its sole expense and risk; or Lessor may itself remove or have removed all or any portion of such improvements at Lessee's sole expense.~~

~~(b) In removing any such improvements Lessee shall restore the Lease Premises as nearly as possible to the conditions existing prior to their installation or construction.~~

~~(c) All such removal and restoration shall be to the satisfaction of Lessor and shall be completed within ninety (90) days of the expiration or sooner termination of this Lease.~~

14. QUITCLAIM

Lessee shall, within ninety (90) days of the expiration or sooner termination of this Lease, execute and deliver to Lessor in a form provided by Lessor a good and sufficient release of all rights under this Lease. Should Lessee fail or refuse to deliver such a release, a written notice by Lessor reciting such failure or refusal shall, from the date of its recordation, be conclusive evidence against Lessee and all other claimants of the termination of this Lease and any rights or interests of Lessee in the Lease Premises.

15. HOLDING-OVER

Any holding-over by Lessee after the expiration of the Lease term, with or without the express or implied consent of Lessor, shall constitute a tenancy from month-to-month and not an extension of the Lease term and shall be on the terms, covenants and conditions of this Lease with rental, royalty or other consideration payable in advance on the first day of each month, at the rate of one-twelfth (1/12th) of the annual amount.

16. ADDITIONAL PROVISIONS

(a) Waiver:

(1) No term, covenant or condition of this Lease and no default or breach of any such term, covenant or condition shall be deemed to have been waived, by Lessor's acceptance of a late or nonconforming performance or otherwise, unless such a waiver is expressly acknowledged by Lessor in writing.

(2) Any such waiver shall not be deemed to be a waiver of any other term, covenant or condition or any other default or breach of any term, covenant or condition of this Lease.

(h) Time:

Time is of the essence of this Lease and each and all of its terms, covenants or conditions in which performance is a factor

(c) Notice:

All notices required to be given under this Lease shall be given in writing, sent by United States mail with postage prepaid, to Lessor at the offices of the State Lands Commission and to Lessee at the address specified in Section 1. Lessee shall give Lessor notice of any change in its name or address.

(d) Consent:

Where Lessor's consent is required under this Lease its consent for one transaction or event shall not be deemed to be a consent to any subsequent occurrence of the same or any other transaction or event.

(e) Changes:

This Lease may be terminated and its term, covenants and conditions amended, revised or supplemented by mutual agreement of the parties.

(f) Successors:

The terms, covenants and conditions, of this Lease shall extend to and be binding upon and inure to the benefit of the heirs, successors, and assigns of the respective parties and if more than one Lessee is a party to this Lease, the obligations of the Lessees shall be joint and several.

(g) Captions:

The captions of this Lease are not controlling and shall have no effect upon its construction or interpretation.

(h) Severability:

If any term, covenant or condition of this Lease is judicially determined to be invalid, it shall be considered deleted and shall not invalidate any of the remaining terms, covenants and conditions.

STATE OF CALIFORNIA — STATE LANDS COMMISSION

LEASE P.R.C. No. _____

This lease will become binding upon the State only when duly executed on behalf of the State Lands Commission of the State of California;

IN WITNESS WHEREOF, the parties hereto have executed this lease as of the date hereafter affixed.

LESSEE

STATE OF CALIFORNIA
STATE LANDS COMMISSION

By: _____

Title _____

Date _____

ACKNOWLEDGEMENT

The issuance of this lease was authorized by the State Lands Commission on _____

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