

MINUTE ITEM

This Calendar Item No. 1
was approved as Minute Item
No. 1 by the State Lands
Commission by a vote of 3
to 0 at its 11-17-80
meeting.

MINUTE ITEM

11/17/80
RW 22581
Horn

1. DETERMINATIONS UNDER PRC 6701, ET SEQ., RELATIVE TO A LEASE BETWEEN THE CITY OF LONG BEACH AND WRATHER PORT PROPERTIES, LTD.

During consideration of Calendar Item 1 attached, Mr. Leslie H. Grimes, Deputy Chief, Division of Land Management and Conservation, summarized the transaction. He stated that the staff is recommending that the Section 6702 findings be made subject to the lease being amended with the following two conditions:

1. Require that the Commission have review authority over proposed developments within the option area (Parcels 4, 5 and 6); and
2. Require that the marina rent schedule be reviewed at 20-year intervals.

Chairman Kenneth Cory asked why this item is before the Commission in terms of its responsibilities under Section 6702 of the Public Resources Code. Mr. N. Gregory Taylor, Assistant Attorney General, explained the reason the statute was enacted was to ensure that lessees of trust property would have a valid lease if there is a revocation or modification of the grant. He advised the Commission must determine 1) if the lease is consistent with the terms of the grant; 2) that the proceeds from the lease go into the appropriate trust account; and 3) that the lease is in the best interests of the State.

Commission-Alternate David Ackerman asked if it is required that the Commission approve this lease. Mr. Taylor explained that it is not required that a local agency submit the lease to the Commission unless they want the protections afforded under Section 6702. In this case because of the financial arrangements involved, the lender needs this protection. Since this application was formally submitted to the Commission, it is required to take action within 90 days or the project is automatically deemed approved.

At the outset of the meeting, Chairman Cory made it clear that as it presently stands, he could not make the determinations as set forth in the calendar item.

Assemblyman David Elder, 57th District, appeared in support of the item. Mr. Elder stated he had prepared a report on the Queen Mary in July 1977 while he was employed by the Port of Long Beach as Director of Special Projects. He submitted copies of this report to the Commission for its information. In the report, Mr. Elder noted that the Queen Mary was fraught with innumerable problems and since the project such as the State Lands Commission, the Attorney General's Office and the Los Angeles Grand Jury, the effect had been to impair the image of the project. He discussed in his report six operating alternatives:

1. Continue the current operation
2. Termination of the existing leases
3. Private operator
4. Make the ship free to the public
5. Master lease for the entire project
6. Close the ship down

Mr. Elder stated Option 5 was the most desirable alternative. Not only has the City achieved that objective by entering into this lease with the Wrather Corporation, but it has found a company with background, experience, determination and an excellent track record to make the project successful. By approving this lease, he stated the city and State have the opportunity to turn the project into a profitable venture and end 13 years of anguish because of the problems the City has had in managing a project of this type.

Mr. Robert Parkin, City Attorney, City of Long Beach, appeared in support. He addressed the two conditions attached to the staff's report in the calendar item. With regard to the future review authority over the option area, it is his feeling there is no requirement that any future development in the option area must be resubmitted to the Commission. He stated the city, as grantee, is obligated by general trust laws to administer the lands and is hereby limited as to what improvements can go in the area in that they must be consistent with the trust. He reiterated Mr. Elder's comments stating that by entering into this lease with Wrather, the \$2 million+ a year loss which the City has been incurring will be turned in a profit. He pointed out the sole purpose of this hearing is to determine whether or not this lease is in the best interests of the State in the event the grant is revoked.

Chairman Cory pointed out that the city has other options in lieu of continuing this loss. Mr. Parkin agreed that the city could find another lessee or it could continue operating the ship as it has been doing for the past few years; however, he stated that under the terms of this proposed lease, it is hard to imagine that it is not in the best interests of the State.

Chairman Cory again emphasized that he is not in a position to find the project is in the best interests of the State. He was upset that the City had entered into this arrangement with Wrather unilaterally without the State's consultations and advice and is now asking the State to approve it with limited review time. He stated the whole Queen Mary Project was initiated before he became a member of this Commission, it is his feeling it is a local decision which has reached this point without the State's approval, it has been burdened with difficulties since its inception, and at this time he is not willing to step in and endorse it.

Mr. Parkin inserted that given the past difficulties with the ship, the city is now attempting to dramatically improve the situation by entering into this lease. He stated that by making these determinations, the Commission would not be blessing the entire project. It would just be making determinations with regard to this particular lease. It was Mr. Cory's opinion that the Commission would be endorsing the entire project if it approves this lease, and as stated previously, he is not in a position to do that. Mr. Cory also was concerned that the grant might be revoked and returned to the State. He suggested that given the history of the Queen Mary, the Commission may want to consider Assemblyman Elder's suggestion of Option 6--closing the ship down. At this point Mr. Elder repeated his comments and urged that in going with Wrather, the likelihood of the ship's financial success is very optimistic. He stated if Wrather fails in making it a success, Option 6 would have to be considered.

Commission-Alternate David Ackerman echoed Mr. Elder's comments. While many would wish to turn the clock back to 1967, when the Ship was first purchased, he stated the Commission must deal with the present. He lauded the city for its efforts and stated that it was the Lieutenant Governor's position to support getting government out of the project and an entrepreneur such as Wrather is more flexible and can be innovative where the State is not allowed that luxury. He stated his present inclination was to approve the lease and stay and discuss the concerns raised by staff, as well as soliciting comments from the city and Wrather.

Mr. Ackerman stated it was his understanding the Commission had three options:

1. Approve the lease
2. Disapprove the lease
3. Take no action at all which, in essence, approves the project

He stated the Commission is looking at disapproving a lease which never had to come before them in the first place. Mr. Taylor pointed out that the city had to bring the lease before the Commission because of the financing which would be necessary for

any future development. He stated if they choose not to go ahead with that development, they would not have to come before the Commission, but they would not have the protections afforded under Section 6702.

Mr. Jim Gray, Commissioner for the Port of Long Beach, appeared in support. He stated that the whole intention of this project was to take a \$2.56 million loss and turn it into an income producer, while at the same time bringing into the City an operation which is positive. The city realized the only way to achieve this was to bring in an outside entrepreneur who has the expertise and financial capabilities to undertake such a project; Wrather was the successful company. He stated they realized the history of the Queen Mary and the fact the City had made some poor decisions in the past. However, the potential for a guaranteed minimum income makes this agreement very favorable and, in the city's opinion, in the best interests of the State. Chairman Cory again pointed out that the option of closing the ship down was still available, but Mr. Gray stated by doing that the chance of the ship producing any income would be eliminated.

Mr. Cory's concern was that a lot of decisions had been made by the city, but he did not know why they were reached and was not willing to cast his vote without knowing those reasons. He felt he would not be exercising good judgment in accordance with the code section with the information which had been made available to him.

Mr. Richard Stevens, President of Wrather Hotels and Wrather Properties, appeared in support. It was his opinion that the people of California would be irrevocably damaged if the agreement is not approved. The State Legislature recently passed emergency legislation to enable the salvation of the Hughes Flying Boat which was designated as a national monument. The people of California, as well as the Nation, want to see the boat saved. In his opinion if the subject lease is not approved, the boat will be destroyed. He further stated that it is Wrather's intention to make sure the project does not fail. From both a financial and historical standpoint, he is convinced it will be a tremendous success.

Since one of the determinations the Commission must make is to find that the lease is in the best interests of the State, Mr. Ackerman asked what must the Commission consider to make these findings. Mr. Taylor stated the Commission must look at the project as a whole to determine whether it makes sense to them from a statewide perspective and must exercise its judgment as to whether the project is in the best interests of the State. Mr. Taylor clarified for the record that the only issues before the Commission at this time are determinations regarding the

lease. None of the intervening events that have taken place since there was a compromise between the Commission and the city over the first part of the administration of the Queen Mary and the date of this lease is presently before the Commission. He stated that any other actions the City has taken is their sole responsibility.

Mr. Taylor explained that there might be serious legal problems in recommending a 6702 affirmative finding over the developments in the option area when no specific plans have been submitted for these future developments and that it was the staff's feeling that when specific plans for development in the option area were formulated that at that time the City should come back to the Commission on that portion of the project for their approval. The staff is proposing that the subject lease be approved, but when the master plan is prepared by Wrather, it would come back to the Commission for its approval. In doing this, the staff is attempting to help the city by allowing the proposed lease to proceed while at the same time ensuring that any future plans be submitted to the Commission. Mr. Taylor stated the city disagreed with the staff's position. The city proposes that language be added to the effect that approving this lease does not waive any right the commission has in the future to object to any uses the city puts to the property; it was Mr. Taylor's opinion that does not solve the problem. Mr. Parkin then addressed Mr. Taylor's comments. He stated that the city is obligated by law to exercise judgment in a prudent manner and the city will exercise its judgment in approving any future developments. He stated if there is any reason the trust may be revoked prior to the exercise of that judgment, that judgment then becomes the State's to exercise. He did not agree the state needs to know everything in advance before they make a finding of what is the best interest of the State.

Mr. Marvin Wolff, Executive Vice President, Wrather Port Properties, appeared in support. Mr. Wolff impressed upon the Commission the importance of the economic and educational benefits to the State, as well as to the local community, of having the Queen Mary and the Hughes Flying Boat paired as a tourist attraction.

Mr. Gray asked for clarification as to whether or not the approval of the Hughes Flying Boat was included in the staff's recommendation, and if not, he felt it needed a specific finding. Mr. Taylor stated it was his understanding the Flying Boat was included in the lease and therefore additional authorization would not be necessary. Jim McJunkin, General Manager, Port of Long Beach, appeared and stated the only place the Flying Boat is specified in the lease is in the next section and that Wrather would have to return to the Commission for its approval of the airplane hanger. Mr. Taylor addressed this issue later on in the meeting.

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As lessee, Mr. Stevens expressed his concern over the staff's provision concerning the 20-year rental review periods. He stated Wrather would be nervous about an imposition of additional open end qualifications because the investment would require between \$40 to \$50 million which would have to be financed, and lenders would be hesitant to do so under these conditions.

Chairman Cory at this time submitted two letters into the record: One from Councilman Edd Tuttle, City of Long Beach, to Mr. Cory dated November 12, 1980, in which he posed various questions; and one from Ms. Ruby Pfenning, a citizen of Long Beach, dated October 31, 1980. Mr. Tuttle's questions were addressed.

Mr. Cory then asked the wishes of the Commission. Mr. Ackerman stated he is prepared to stay as long as necessary to discuss the technical aspects of the agreement since they had not yet been discussed, but he questioned whether that would be in the best interests of the State since the Chairman had overriding concerns, or if the agreement should be held over for further review. He stated it was his desire to stay and discuss the agreement in the hopes of reaching an agreement.

Commission-Alternate Susanne Morgan stated she did not like the idea of political entities entering into long-term lease agreements especially where the State is a party. However, she understands if the city is to make this project a success, they need a long-term commitment. She said the basic question is if it is in the public's best interest, and in her opinion at this time, it appears to be in the city's best interest rather than the State's. She stated if this project were a State venture, it would have kicked off some checks and controls that have been completely bypassed.

Mr. Ackerman stated he was concerned about being fair to both sides. He felt the private investor needed protection. They could not be expected to expend millions of dollars without any commitment from the State, while at the same time the State needs assurances that the lease is consistent with the granting statute. Mr. Parkin was concerned because he felt there seems to be some problem with the Commission on the entire concept of making the findings as proposed. Mr. Cory stated that is why he had not focused on the conditions to the lease as proposed by staff because the city is advising him the developer and the city need to proceed under Section 6702 or the project is not feasible. Mr. Parkin explained that is a requirement of their financing. In that case, Mr. Cory stated he could not vote on the project until he had made a total review of all the decisions the city had made leading up to the agreement in order for him to determine if it is in the best interests of the State. At this time the Commission recessed for five minutes (11:45 a.m.) for the city and Wrather to confer.

After the meeting reconvened (11:50 a.m.) since it was nearing noon, it was suggested that the meeting adjourn over lunch during which time the city and staffs of the Attorney General and State Lands Commission could attempt to reach some compromises.

When the meeting again reconvened (1:38 p.m.), Mr. Parkin stated agreement had been reached and the city was prepared to accept the condition to return to to Commission with future developments for review and approval. In addition, they agreed to the marina rent reviews, but not at 20-year intervals. He suggested that the rent reviews be made following amortization of the first permanent loan that they take out for construction of the marina. He indicated that staffs of the Attorney General's Office and the Commission were in agreement with this concept. Chairman Cory questioned why the rent review must be addressed at this time since they could not build a marina until they returned to the Commission with a specific proposal. Mr. Parkin indicated that the condition could be dropped. Mr. Taylor wanted it understood that the rent review provision would be dropped with the understanding that it would not be foreclosed by this approval and that it would come back to the Commission as part of any future transaction. The city agreed. Mr. Taylor also raised the question as to what the status of the Hughes Flying Boat would be. If it were placed on Parcels 1 and 2, there would be no problem; however, if it were an extension to Parcel 1, there would be a problem. He stated if the Commission is going to act at this meeting, it would have to specifically approve the Flying Boat project as set forth in the lease. Mr. Stevens indicated it would be on Parcel 1 and therefore there was no problem. Mr. Taylor also pointed out that if the grant were to be revoked, the successor to the grantee has the option of either affirming the lease or refusing to accept it. If they refused to accept it, the lease would remain the responsibility of the former grantee.

Mr. Cory asked if Wrather determines the ship will not be a success, can they go ahead and develop something else on the parcel where the ship is presently located. Mr. Taylor advised they could not; they would have to return to the Commission for its approval. He explained there are three places where the city would have to return to the Commission for its approval:

1. If the overall plan to Parcels 1 and 2 were changed.
2. In the development of Parcels 4, 5 and 6.
3. If the Queen Mary were scrapped in five years and Wrather wanted to develop Parcels 1 and 2 without the ship being there.

He stated further that Mr. McJunkin feels the Flying Boat should have specific approval at this meeting rather than just being included in the lease.

Ms. Morgan asked the staff if in their opinion the lease was in the best interests of the State; Mr. Northrop responded that at this time as the staff's recommendation is presently written, it is.

Mr. Ackerman raised the question of how detailed does the Commission have to be in making the consideration as to what the best interests of the State would be in each individual project which will come before the Commission. Mr. Taylor stated it would be up to the Commission to give the staff direction on this, but in the absence of such direction, the normal procedure has been that a detailed plan is submitted to the staff for review. Mr. Ackerman was concerned that the same type of detail would be required at every local level so applicants would not have to generate separate reports to each agency. Mr. Northrop advised this is not a problem because agencies exchange documents.

One of Mr. Cory's greatest concerns was that given the Queen Mary's poor history, he was entering into this project at the tail end and he wanted to know how much of this project the Commission is endorsing. Many statements had been made in the past that the Queen Mary's problems had been the result of government. He therefore wanted a statement in the recommendation stating to the effect that, given the past history of the ship, the Commission feels this lease is in the best interests of the State. In addition to the foregoing, it was agreed the recommendation should be amended to read that the Flying Boat project located on Parcel 1 is approved as described within the lease and that any future developments shall return to the Commission for its approval.

Mr. Knox Mellon, State Historic Preservation Officer, appeared. He urged that the Flying Boat be relocated to the proposed site because of its historic significance.

At Mr. Cory's request, Mr. Stevens gave a brief overview of the Wrather Corporation and described the types of projects in which it has been involved.

At the conclusion of the meeting, Chairman Cory stated for the record that in 1967 he had an agreement with the City fathers of Long Beach that the Queen Mary or anything connected therewith would ever be brought to him for approval. This is the first time it has occurred and that is why he requested that the recommendation be amended to mention its prior difficulties. He made it very clear to the city that in future development projects,

it is going to have to do a better job of submitting documents in a timely fashion and bringing the staff on board in the initial stages of negotiation. Mr. Cory stated that if this were the city's project alone, he might not have approved it, but because it involved a private third party who had extended itself financially and was under certain time constraints, he was going to make the determinations as set forth in the calendar item.

Mr. Ackerman concurred with Mr. Cory. He emphasized that good faith negotiations necessitate the sharing of information in advance. He instructed the staff that in future transactions, a 30 to 90 day requirement for submission of the necessary documents to the staff be required of applicants.

The above represents a summary of the proceedings of this meeting. It should not be construed as a verbatim transcript. If there are any discrepancies concerning its contents, please refer to the official transcript for clarification, which is on file in the office of the Commission.

Upon motion duly made and carried, the following resolution was approved by a vote of 3-0.

THE COMMISSION:

1. FINDS THAT THE CITY OF LONG BEACH, THROUGH ITS BOARD OF HARBOR COMMISSIONERS ON SEPTEMBER 2, 1980, FOUND AND DETERMINED THAT THE SUBJECT LEASE TO WRATHER PORT PROPERTIES, WAS CATEGORICALLY EXEMPT FROM THE PROVISIONS OF CEQA.
2. MAKES THE FOLLOWING DETERMINATIONS, REQUIRED BY SECTION 6792 OF THE PUBLIC RESOURCES CODE, AS APPLYING TO THAT CERTAIN LEASE DATED OCTOBER 7, 1980, BETWEEN THE CITY OF LONG BEACH (THROUGH ITS HARBOR DEPARTMENT) AND WRATHER PORT PROPERTIES, LTD., ON FILE IN THE PRINCIPAL OFFICE OF THE COMMISSION AND BY REFERENCE MADE A PART HEREOF.
 - A. THAT SAID LEASE IS IN ACCORDANCE WITH THE TERMS OF THE GRANTS UNDER WHICH TITLE TO THE LANDS IN QUESTION ARE HELD BY THE CITY OF LONG BEACH.
 - B. THAT, PURSUANT TO LONG BEACH CITY CHARTER SECTION 229d(a), ALL REVENUES DERIVED BY THE CITY FROM THE LEASE SHALL BE DEPOSITED IN THE CITY'S "HARBOR REVENUE FUND" AND EXPENDABLE ONLY FOR STATE-WIDE PUBLIC PURPOSES AS AUTHORIZED BY THE GRANTING STATUTES.
 - C. THESE FINDINGS RELATE SOLELY TO THE LEASE DATED OCTOBER 7, 1980, BETWEEN THE CITY OF LONG BEACH AND WRATHER PORT PROPERTIES, LTD., AND NOT TO ANY PRIOR TRANSACTION TO DATE REGARDING THE QUEEN MARY PROJECT.

D. THAT GIVEN THE CIRCUMSTANCES, IN WHICH THE CITY HAS PLACED ITSELF BY ITS PRIOR ACTIONS, SAID LEASE IS IN THE BEST INTEREST OF THE STATE PROVIDED THAT:

1. THE "PLAN OF FURTHER DEVELOPMENT" REFERENCED IN ARTICLE IV, SECTION IV, SECTION 4.1 OF THE LEASE SHALL BE SUBJECT TO REVIEW AND APPROVAL BY THE STATE LANDS COMMISSION AS A CONDITION TO HAVING THE PROVISIONS OF SECTION 6701 OF THE P.R.C. APPLY TO DEVELOPMENT THEREUNDER.
2. THAT THE HK 1 PROJECT LOCATED ON PARCEL 1 IS APPROVED AS DESCRIBED WITHIN THE LEASE.

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DETERMINATIONS UNDER PRC 6701 ET SEQ.
RELATIVE TO A LEASE BETWEEN
CITY OF LONG BEACH AND
WRATHER PORT PROPERTIES, LTD.

The City of Long Beach has requested the Commission to make the determinations set forth in Section 6702(b) of the Public Resources Code with respect to the lease described below: Briefly, the determinations relate to: (a) conformance with the granting statutes; (b) proceeds of the lease shall be expended for statewide purposes as authorized by such granting statutes; and (c) that the lease is in the best interests of the State.

LESSOR: City of Long Beach
c/o James H. McJunkin, General Manager
of the Long Beach Harbor Department
925 Harbor Plaza
Long Beach, California 90802

LESSEE: Wrather Port Properties, Ltd.
270 North Canon
Beverly Hills, California 90210

LOCATION: The RMS Queen Mary together with approximately 45 acres of filled sovereign lands on Pier J, including the site of the Queen Mary Heating and Cooling Plant, City of Long Beach. Wrather has an option to lease a water-covered site adjacent to the leased area of approximately 235 acres for future development of a small boat marina, additional hotels and restaurants.

LAND USE: Operation of a maritime museum and tour of the Queen Mary, the operation of a hotel, restaurants, retail shops aboard the Queen Mary and other ancillary facilities. In addition, Wrather has been granted the right to additionally develop the land fill site pursuant to a master plan to be approved by the Board of Harbor Commissioners. Initially, Wrather proposes to construct an exhibit facility for the HK-1 ("Spruce

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Goose") in the area southerly of Mary's Gate Village.

Under the lease Wrather may also build a new heating and cooling plant on the land-fill site. Preliminary studies indicate that construction of a new plant is not economically feasible.

LEASE TERMS:

Duration: 40 years from the first day of the month following State Lands Commission action on the lease pursuant to 6701, et seq. of the P.R.C.

Early Termination: During the fifth lease year only, Wrather shall have the right to terminate (a) the lease in its entirety or (b) as to the Queen Mary and the Queen Mary Heating and Cooling Plant only. In either event, Wrather must purchase the Queen Mary, dispose of the furniture, furnishings, equipment and artifacts and solicit proposals from salvagers for the removal of the Queen Mary from the present site. The gross proceeds from the sale and salvage, together with the sum of \$500,000 and any rents due the City (payment of which has been deferred) constitute the purchase price payable by Wrather to the City.

Rent: (a) Fixed Minimum Rent: The first lease year's rental is \$600,000, which sum is increased periodically to \$2,000,000 during the fifteenth lease year. The amount of fixed minimum rent is subject to adjustment every fifth year commencing with the eleventh lease year. The fixed minimum rent is subject to a partial offset during the second through sixth lease years up to a total of \$2,000,000 for excess costs of operating the Queen Mary Heating and Cooling Plant. Any rent so offset becomes payable during the seventh through seventeenth lease years as an addition to the fixed minimum rent for those years.

The rent deferrment and recoupment procedures do not provide for the payment of interest on deferred rentals. Depending on which

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option Wrather exercised regarding the Queen Mary, this interest loss may be as great as 2½ million dollars.

It is also possible under the recoupment procedure, that recoupment may not be achieved.

(b) Percentage Rent: For the permitted activities on the leased and option areas the City shall receive the following percentage rental amounts:

1) Hotel Rooms	7.5%
2) Food and Beverage	3%
3) Sublease Rentals	10%
4) Museum and Tour	5%
5) Marina	10%
6) Parking and Other	5%

The City will receive the difference between the above amounts and the fixed minimum rent if the gross receipts exceed the fixed minimum rent reserved for the same year.

To provide an incentive to Wrather to refurbish the exterior appearance of the Queen Mary, its decks and railings and to institute energy conservation measures in the museum and tour areas, Wrather is allowed to apply only from percentage rents payable to City for the first through third lease years inclusive an amount equal to one-half of the costs incurred by Wrather for painting and maintaining the exterior hull and superstructure of the Queen Mary, installing energy conservation controls within the museum and tour areas and the maintenance and repair of the decks and rails during those three lease years. The sums so applied become payable to the City during the seventh through seventeenth lease years in addition to the fixed minimum rent and the deferred fixed minimum rent mentioned above.

OTHER LEASE/OPTION DEVELOPMENTS:

Wrather is proposing to construct and operate an exhibit facility for the Hughes Flying Boat ("HK-1") on the land area southerly

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of Mary's Gate Village. This development is subject to approval by the Board of Harbor Commissioners. In addition, Wrather is required to prepare and submit to the Board of Harbor Commissioners a master plan of further development within two (2) years after the commencement date of the lease. The option expires five years from the commencement of the lease.

TITLE TO IMPROVEMENTS:

Upon expiration of the term, title to all improvements made by Wrather shall vest in the City.

OPTION TO PURCHASE QUEEN MARY:

After the fifth lease year, Wrather has the option to purchase the Queen Mary for a purchase price to be agreed upon but not to exceed \$9.5 million. If the option is exercised, the Queen Mary will remain at its present site at Pier J and continue to be operated for the balance of the term of the lease. The percentage rents for those activities conducted on the Queen Mary are reduced by one-half upon consummation of the purchase.

GUARANTEE:

Wrather Corporation has guaranteed the performance of all its wholly owned subsidiary's obligations under the lease.

ENVIRONMENTAL IMPACT OF THE LEASE:

AB 1023 (Elder) (Chapter 836, Statutes 1980) recently signed by the Governor expressly exempts the movement and permanent display of the "HK-1" (Spruce Goose) from the provisions of CEQA.

The City of Long Beach through its Board of Harbor Commissioners found and determined in Ordinance No. HD 1258 dated September 7, 1980 that the lease between the City and Wrather Port Properties, Ltd. was categorically exempt from the provisions of CEQA.

Even though the lease provides for further possible development of the lease area

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and option area, such development will be subject to the provisions of CEQA and the City shall not be estopped from requiring mitigation measures as a condition to the issuance of any permits that may be required. In addition, the lease requires Wrather to pay for all costs associated with the City's environmental documentation which may be required for subsequent development.

COASTAL ACT REQUIREMENTS:

The Port's Master Plan was certified by the State Coastal Commission in October of 1978. Said Port Master Plan contemplates the continued operation of the Queen Mary as a maritime museum with ancillary commercial/recreation activities. Exhibition of the Hughes Flying Boat ("HK-1") should be consistent with existing City zoning for the site and Port Master Plan.

Further development of the site and option area must conform to City zoning ordinances, the Port Master Plan and any other applicable laws.

STAFF ANALYSIS:

Conformance with Granting Statutes.

The following legislative enactments apply to the subject site in addition to the general public trust.

<u>Chapter</u>	<u>Year</u>
676	1911
102	1925
158	1935
29	1956, First Ext. Session
1560	1959
138	1964, First Ext. Session

Staff believes that further operation of the RMS Queen Mary as a maritime museum and tour together with ancillary hotel and commercial-retail activities is consistent with the public trust and the granting statutes. The authorized uses proposed

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for the site and the option area appear consistent with the granting statutes and the public trust.

Staff is recommending that approval of this lease does not constitute approval of the "master plan of further development" provided for in Article IV, Section 4.1 of the lease. Staff recommends that the City/Wrathner submit the plan of further development to the State Lands Commission for approval prior to determining that the provisions of PRC Section 6701 apply to said development under this lease.

DISPOSITION OF LEASE PROCEEDS:

Pursuant to City Charter Section 229d(a) all revenues payable to the City under this lease are required to be deposited in the City's "Harbor Revenue Fund." The Harbor Revenue Fund is impressed with the trust with proceeds to be used for statewide public trust purposes. Staff has a copy of said ordinance on file with the City's application.

Disposition of lease proceeds into this fund substantially meets the requirements of PRC Section 6702(b)(2).

**IS THE LEASE IN THE BEST INTERESTS OF THE STATE?
LAND USE:**

According to the City, the lease contemplates the continuation of operations commenced in 1971 but now under a more efficient, effective, and less costly landlord-tenant relationship than had existed previously. The City's zoning ordinances and the Port Master Plan allow the continued operation of the ship's variety of uses.

Further development of this site and option area as provided for in the lease must comport with the Port Master Plan and the public trust.

The public-user nature of the museum and tour and ancillary facilities appears to substantiate the City's contention that

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the lease is consistent with principles of general trust law.

CONSIDERATION: Fixed minimum rent, as previously shown, is \$600,000 for the first year and escalates to \$2,000,000 during the 15th lease year. Against the fixed minimum rent the City will receive a percentage of gross receipts, if the amount of gross receipt percentages exceed the amount of fixed minimum rent for the year.

The fixed minimum rental (as escalated) and the percentage rental amounts were negotiated by the parties taking into consideration the nature of the property being leased, both the intrinsic and extrinsic value of the property, the term of the lease, the local zoning and Port Master Plan governing the site, and the potential for additional uses of the site. The local zoning and Port Master Plan place severe limitations on use of the waterfront area of Pier J. Essentially the area is confined to use as commercial/recreation consistent with statutory and public trust law. Determining fair rental value of this site is a function of many variables some of which are listed above. The City and Wrather believe that the rental income anticipated from the lease provides the City with a fair return on the assets under lease.

The fixed minimum rents tend to reflect the projected operating results of the Queen Mary assets and potential development of the option area. Setting of minimum rents by projecting future operating results is common practice in large commercial ventures.

Staff review of the percentage rentals indicates that all are reasonably consistent with prudent land management practices except that for marinas. The lease provides that the marina rental shall be 10% of gross receipts for the term of the lease and any extensions. Staff has made a telephone

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survey of existing Public Agency Marina leases, 62 in all, and find all range in rentals between 20% and 27% of gross income and have a five or ten year rent review procedure. In these leases as in this lease, the lessee makes all necessary improvements. The staff believes that periodic rent reviews should be included in the lease provisions.

STATEWIDE PUBLIC BENEFIT:

The City characterizes the lease as a "triple net lease" in that the obligations of real property taxes and assessments, repairs and maintenance and insurance and the duty to restore or remove the Queen Mary are assumed by Wrather. Staff tends to disagree with such characterization especially with regard to the rental offsets granted to Wrather for excess costs associated with operating the Queen Mary Plant and as an inducement to refurbish the exterior appearance of the ship. As provided in the lease, these rental offsets could amount to several million dollars that will eventually be recouped by the City; but without interest. Because of these rental offsets staff views the lease as basically a net lease with City participation (insofar as rental offsets are concerned). Staff feels that such inducements may be necessary in order to fully develop the potential of the Queen Mary.

The City also states in its application that the lease preserves the Queen Mary as a maritime museum, the purpose for which the Queen Mary was acquired and is "manifestly in the best interests of the tideland trust" by converting unproductive property to productive property. It goes on to argue that the lease will eliminate annual losses to the tidelands trust of approximately \$2,660,000 and provide a positive cash flow to the City. In support of this argument, the City has provided staff with an unaudited financial statement for Wrather's first month of operation on the Queen Mary. The statements show that Wrather was able to net over \$124,000 from operations after

CALENDAR ITEM NO. 1. (CONTD)

paying the City \$50,229.93, as rental for the period.

Prior to Wrather's operation of the premises, the City had leases with Specialty Restaurants Corporation and PSA Hotels, Inc. which entities had made certain improvements to the Queen Mary and in turn had sublet areas within the ship. The City elected to lease the site and received various offers, the most attractive of which was the proposal by Wrather. All proposals called for the consolidation of all operations of the ship, which consolidation it was felt would reduce the expenditure of tidelands trust funds (operating losses) required under the former leases.

As indicated previously, Wrather has been able to turn the projected loss into a profit during the first month of operation.

While the first month's operating statement cannot necessarily predict the future profitability of the operation under Wrather's management, it does tend to show that proper consolidated management of the Queen Mary assets can produce positive results.

Even though staff may disagree with the City's contention that the lease is manifestly in the best interests of the tidelands trust, we do believe that reduction of perennial operating losses to the tidelands trust is a major public benefit. It is also felt that substantial public trust revenues will accrue from the Wrather lease.

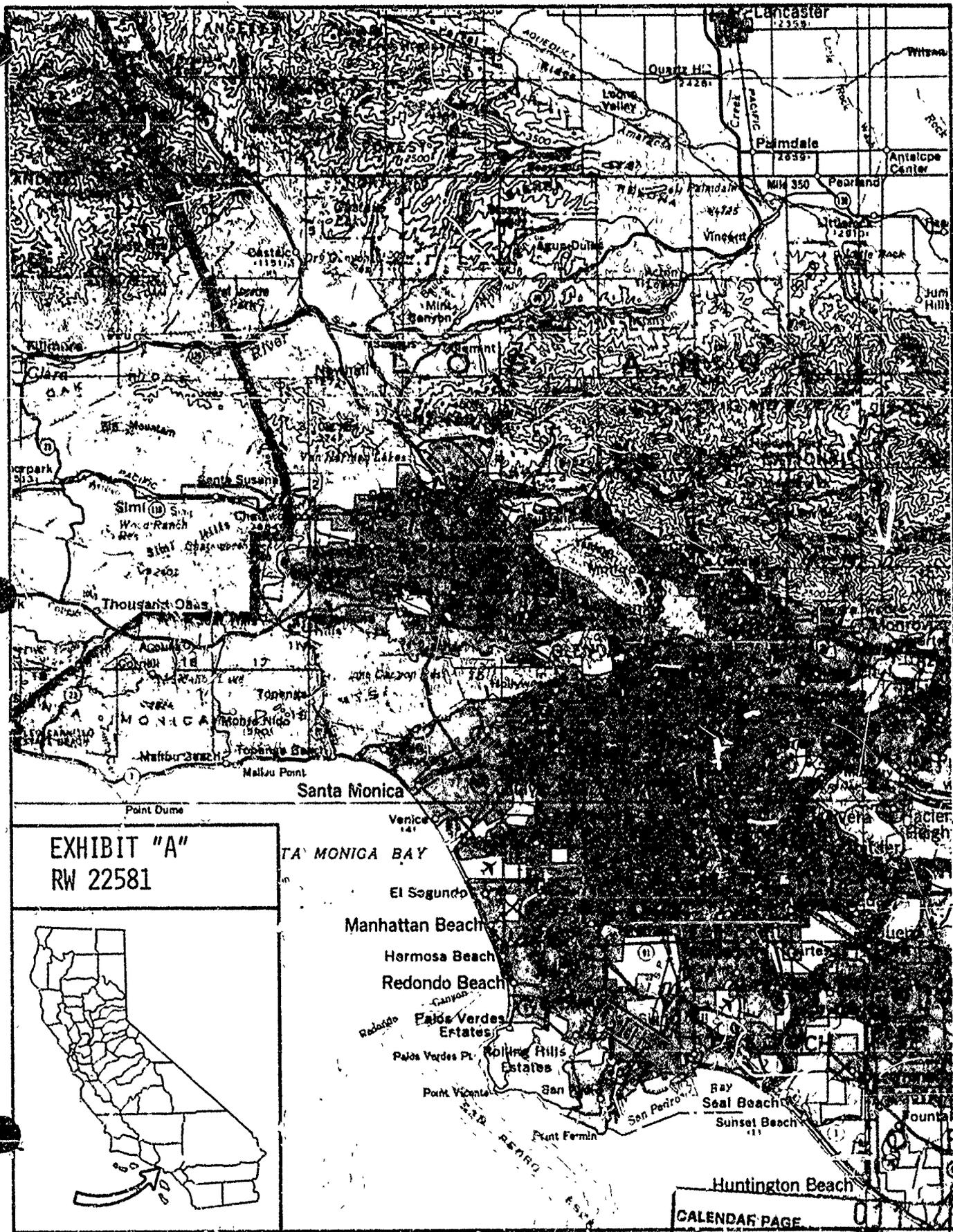
EXHIBITS: A. Location Map. B. Site Map.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE CITY OF LONG BEACH, THROUGH ITS BOARD OF HARBOR COMMISSIONERS ON SEPTEMBER 2, 1980, FOUND AND DETERMINED THAT THE SUBJECT LEASE TO WRATHER PORT PROPERTIES, WAS CATEGORICALLY EXEMPT FROM THE PROVISIONS OF CEQA.

CALENDAR ITEM NO. 1. (CONTD)

2. MAKE THE FOLLOWING DETERMINATIONS, REQUIRED BY SECTION 6702 OF THE PUBLIC RESOURCES CODE, AS APPLYING TO THAT CERTAIN LEASE DATED OCTOBER 7, 1980, BETWEEN THE CITY OF LONG BEACH (THROUGH ITS HARBOR DEPARTMENT) AND WRATHER PORT PROPERTIES, LTD., ON FILE IN THE PRINCIPAL OFFICE OF THE COMMISSION AND BY REFERENCE MADE A PART HEREOF.
- A. THAT SAID LEASE IS IN ACCORDANCE WITH THE TERMS OF THE GRANTS UNDER WHICH TITLE TO THE LANDS IN QUESTION ARE HELD BY THE CITY OF LONG BEACH.
- B. THAT, PURSUANT TO LONG BEACH CITY CHARTER SECTION 229d(a), ALL REVENUES DERIVED BY THE CITY FROM THE LEASE SHALL BE DEPOSITED IN THE CITY'S "HARBOR REVENUE FUND" AND EXPENDABLE ONLY FOR STATE-WIDE PUBLIC PURPOSES AS AUTHORIZED BY THE GRANTING STATUTES.
- C. THAT SAID LEASE IS IN THE BEST INTERESTS OF THE STATE; PROVIDED THAT:
1. THE "PLAN OF FURTHER DEVELOPMENT" REFERENCED IN ARTICLE IV, SECTION 4.1 OF THE LEASE SHALL BE SUBJECT TO REVIEW AND APPROVAL BY THE STATE LANDS COMMISSION AS A CONDITION TO HAVING THE PROVISIONS OF SECTION 6701 OF THE P.R.C. APPLY TO DEVELOPMENT THEREUNDER.
 2. THAT THE LEASE BE AMENDED TO PROVIDE FOR MARINA RENT REVIEWS AT 20 YEAR INTERVALS.
- D. THESE FINDINGS RELATE SOLELY TO THE LEASE DATED OCTOBER 7, 1980, BETWEEN THE CITY OF LONG BEACH AND WRATHER PORT PROPERTIES.



N
A

EXHIBIT "A"
RW 22581



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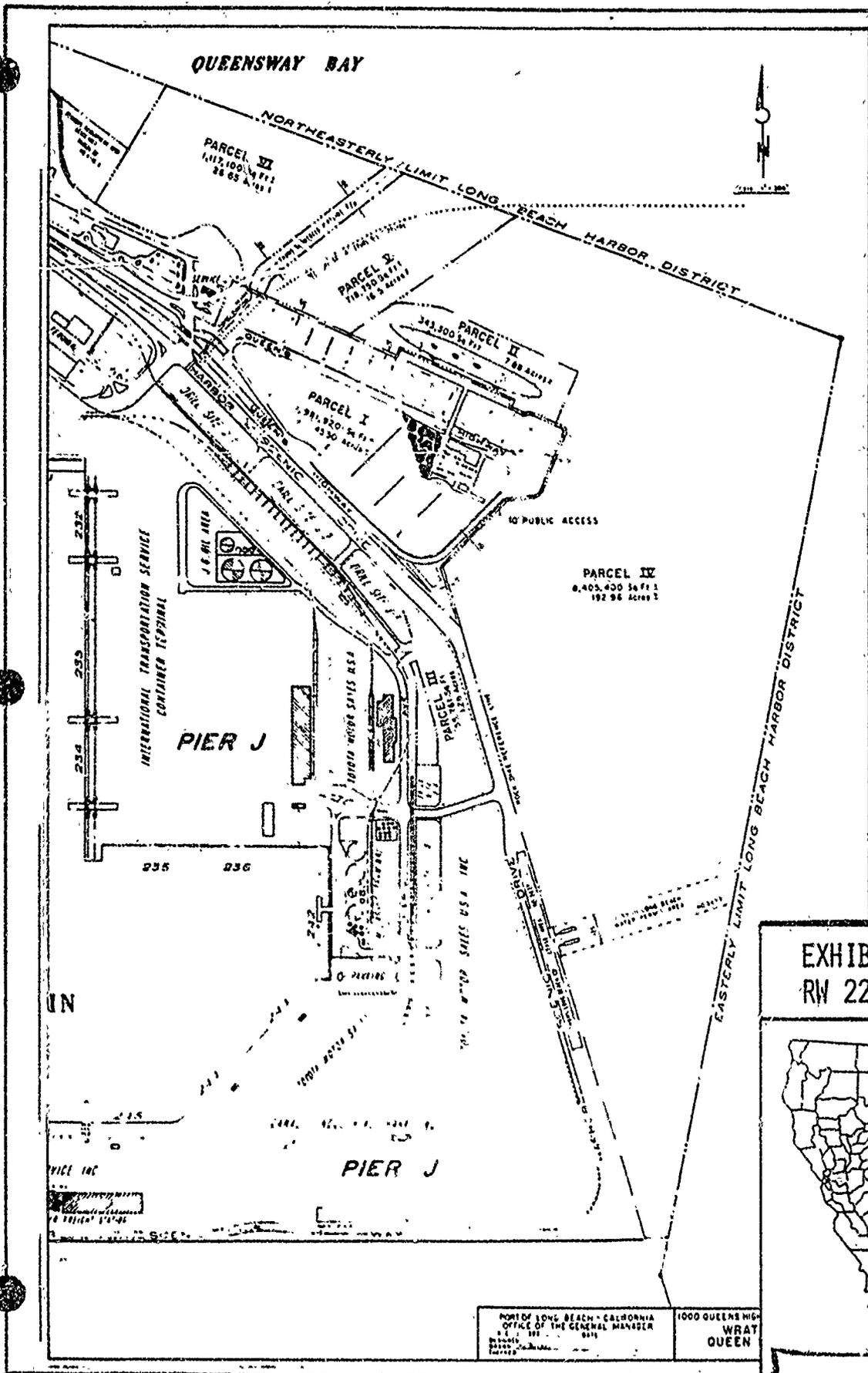


EXHIBIT "B"
RW 22581



PORT OF LONG BEACH - CALIFORNIA
OFFICE OF THE GENERAL MANAGER
1000 QUEENS HIGHWAY
LONG BEACH, CALIFORNIA 90801

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