

MINUTE ITEM
12.

11/21/83
PRC 5259
Townsend

TERMINATION OF GENERAL LEASE -
COMMERCIAL USE - PRC 5259.1
KTJ PROPERTIES

Calendar Item 12 was pulled from the agenda prior to the meeting.

Attachment: Calendar Item 12.

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CALENDAR ITEM

12

11/21/83
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TERMINATION OF GENERAL LEASE - COMMERCIAL USE
PRC 5259.1 - KTJ PROPERTIES

LESSEE: KTJ Properties, Inc.
Attention: Mr. Jack Chalabian
1552 W. 134th Street
Gardena, California 90247

AREA, TYPE LAND AND LOCATION:
A 0.894-acre parcel of tide and submerged
land, located in Huntington Harbor Channel,
Orange County.

LAND USE: Wharfage and docking facilities for small
craft incidental to the adjacent upland
residential development.

Initial period: 42 years, ten months
from June 1, 1977.

Surety Bond: \$10,000.00.

Public liability insurance: \$600,000.00
per occurrence for bodily
injury and \$400,000.00
for property damage,
or combined single limit
coverage of \$1,000,000.00.

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Consideration: \$450.00 per annum until the completion of construction, July 1, 1981. Thereafter, lessee shall pay a new annual rental to be determined by the State. The State also reserves the right to fix a different rental on each fifth anniversary of the lease.

Special: The lease provides that lessee may mortgage or encumber the leased premises and provides for mortgagee protection language, subject to the prior approval and acceptance of the lender by the Executive Officer of the Commission, and execution of a Secured Party-Lender Agreement among the Lessee, Secured Party, and the State.

STATUTORY AND OTHER REFERENCES:

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

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

AE 884: N/A.

OTHER PERTINENT INFORMATION:

1. BACKGROUND:

Lease PRC 5259.1 was initially issued to Harbour-Pacific, Ltd. for a period of 15 years, effective June 1, 1977. The leased premises, consisting of 0.593-acre, was to be developed as a commercial marina with completion of construction on September 1, 1979. Consideration was set at \$450.00 per annum until completion of the project, and \$5,200.00 thereafter, with a five-year rent review. On April 26, 1979, the Commission authorized extension of the construction dates from July 1, 1980 to July 1, 1981.

By Commission action of October 29, 1979, the lease was assigned to KTJ Properties and amended to increase the lease area, adjust the rental to \$7,858.00 upon completion of the project, and provide authorization for lessee's mortgaging or encumbrancing the leased premises with a provision for mortgage protection language. The lease was amended again on March 19, 1980, providing for a total lease term of 42 years, ten months, effective June 1, 1977; and deletion of renewal options; consideration was amended to \$450.00 per annum until completion of the project (July 1, 1981) with a new rental to be determined thereafter.

KTJ subsequently entered into a limited partnership with the Robert P. Warmington Company, and encumbered the lease for security purposes with Crocker National Bank. Staff was in the process of assigning the lease to the partnership, and amending the lease to accommodate a change in the plans from commercial to recreational use, when notified that Crocker had foreclosed upon the upland property.

2. PRESENT SITUATION:

Staff recommends termination of Lease PRC 5259.1 to KTJ Properties, effective December 21, 1983, based on the following grounds:

- A. KTJ has failed to obtain the written consent of the Commission prior to assignment of the leasehold interests to a partnership. Lengthy negotiations were entered into by staff to accommodate the assignment and proposed project.
- B. KTJ, by way of the partnership, encumbered the State's lease to Crocker National Bank for lending purposes without approval and written acceptance of that lender by the Executive Officer of the Commission. The lender foreclosed on the partnership prior to execution of a Secured Party-Lender Agreement.
- C. Pursuant to the terms of the lease, Section 5, paragraph 21(b), the leasehold interest is not severable from the rights and interests of the lessee in the littoral land without prior written approval of the Commission. By foreclosure, KTJ

has lost all right, title and interest in the upland property. KTJ has expressed an interest in reacquiring the upland parcel; however, current negotiations between Crocker Bank and a potential purchaser preclude KTJ from exercising that option.

- D. KTJ has failed to perform within the allotted construction dates which lapsed July 1, 1981. A major investment of staff time and money has been expended by the State in order to provide KTJ every opportunity to obtain successful financing and develop the parcel, far beyond the construction completion date of July 1, 1981.
3. 30-Day Notice of Termination will be on, and subject to, the Commission's approval on November 21, 1983.
 4. On September 20, 1983, staff advised KTJ of the review being conducted relative to the status of the lease, and those provisions of the lease which were in breach and warranted recommendation for termination to the Commission. In an attempt to cure the financial breach in the lease, KTJ paid to the State the sum of \$900.00 for rental in arrears (June 1, 1982-83, and June 1, 1983-84). In the absence of a Secured Party-Lender Agreement, Crocker National Bank expressed an interest in obtaining the lease for holding purposes, and likewise attempted to cure the financial breach of the lease by remitting \$450.00, one year's rental in arrears.

Inasmuch as KTJ remitted the rental due based on staff's notice of review for termination, staff recommends that rental paid for the period of August 31, 1983 to May 31, 1984, in the amount of \$337.50, be refunded to KTJ. Staff has advised Crocker National Bank of its preference to accept application for lease from a potential purchaser, rather than issuance of a lease to the bank for holding purposes. In light of the circumstances, staff also recommends that the sum of \$450.00 paid to the State by Crocker, be refunded.

5. This activity is exempt from CEQA because it does not constitute a project pursuant to P.R.C. 21065, 14 Cal. Adm. Code 15378.

EXHIBITS: A. Land Description.
 B. Location Map.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THIS ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY 21065 PRC AND 14 CAL. ADM. CODE 15378.
2. AUTHORIZE THE TERMINATION OF THE STATE'S LEASE PRC 5259.1, TO KTJ PROPERTIES, EFFECTIVE DECEMBER 21, 1983; FOR THE LAND DESCRIBED ON EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF.
3. AUTHORIZE A REFUND TO KTJ PROPERTIES, IN THE AMOUNT OF \$337.50, AND TO CROCKER NATIONAL BANK, FOR DUPLICATE RENTAL PAID IN ARREARS BY LESSEE, IN THE AMOUNT OF \$450.00.
4. AUTHORIZE ACCEPTANCE OF A QUITCLAIM DEED FOR LEASE P.R.C. 5259.1.

EXHIBIT "A"

LAND DESCRIPTION

WP 5259

A parcel of submerged land in the State-owned Huntington Harbor Channel, situated in protracted Section 19, T5S, R11W, S8M, County of Orange, State of California, more particularly described as follows:

COMMENCING at the intersection of the southwesterly prolongation of the compromise boundary line between Rancho Los Alamitos and Rancho La Bolsa Chica as recorded in Book 115, Page 284, records of Los Angeles County, California, with the northerly line of the 400-foot wide State-owned channel described as "Strip A" in the deed recorded in Book 6368, Page 411, records of Orange County, California; thence along said northerly line of said Channel S 61° 00' 00" E. 245.67 feet to the TRUE POINT OF BEGINNING; thence continuing along said northerly line of said channel:

S 61° 00' 00" E 638.00 feet; thence
S 29° 00' 00" W 60.00 feet; thence
N 61° 00' 00" W 660.53 feet; thence
N 49° 34' 33" E 64.09 feet to the true point of beginning.

END OF DESCRIPTION

Prepared

Larry E. Scott

Checked

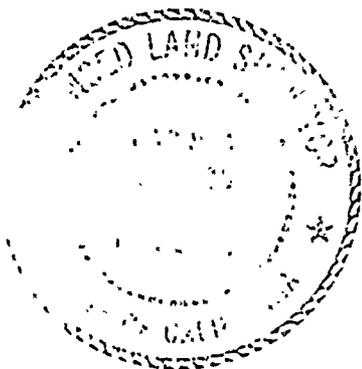
Neil Jensen

Reviewed

Larry A. Weldon

Date

9/25/79



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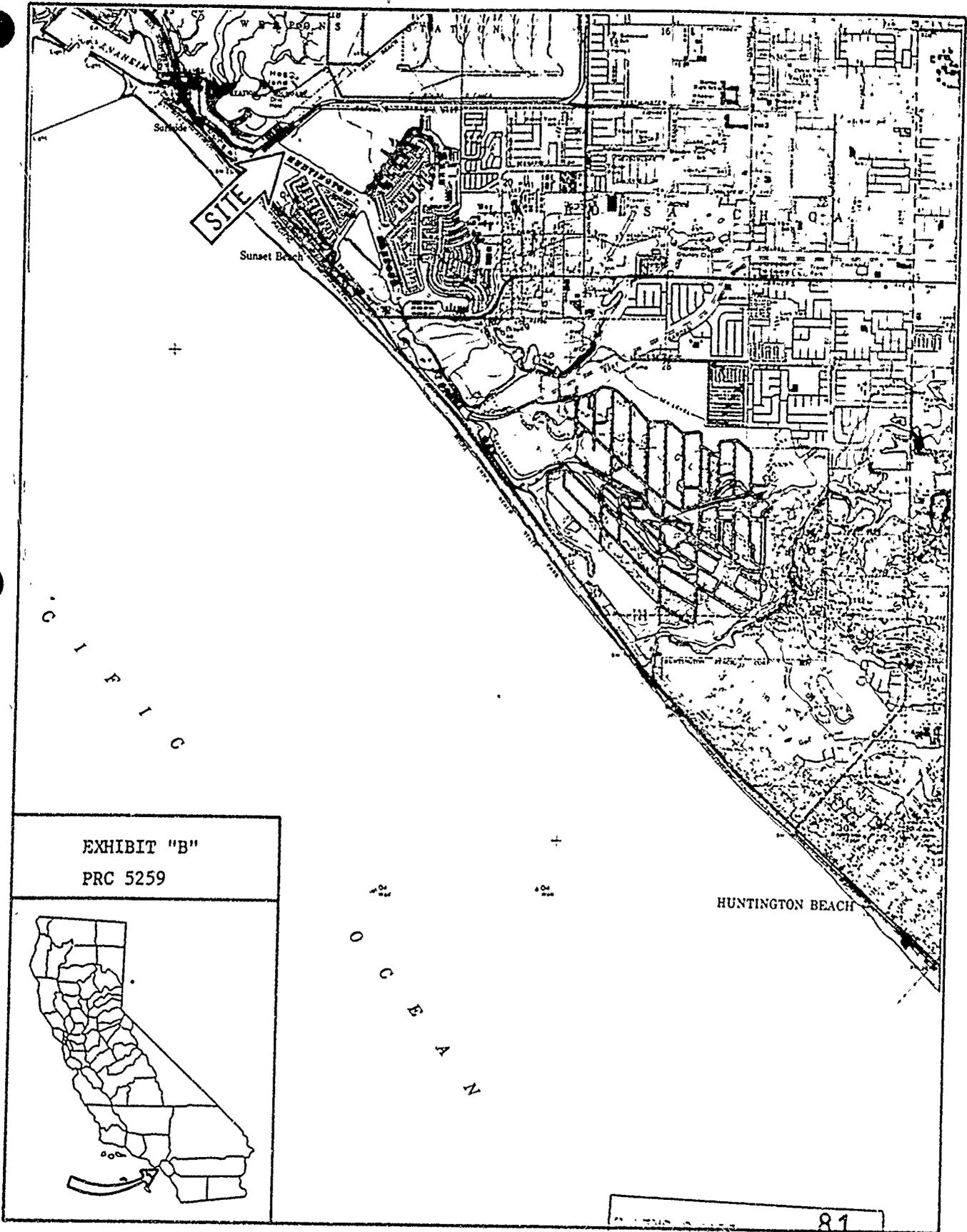


EXHIBIT "B"
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