MINUTE ITEM
This Calendar Item No. 24
was approved as Minute Item
No. 24 by the State Lands
Commission by a vote of 3
to 0 at the 2/17/87
meeting.

MINUTE ITEM

24

02/17/87
BLA 137
WP 4960
PRC 4960 PRC 4735
Louie
Lien
Kauffman
Fossum

APPROVAL OF REIMBURSEMENT AGREEMENT - SIGNAL LANDMARK, INC.

During consideration of Calendar Item 24, attached, Acting Chairman McCarthy requested that staff obtain statements for the file, within the next few months, from the City of Huntington Beach and County of Orange as to how they view this project now.

Without objection, Calendar Item 24 was approved as presented by a vote of 3-0.

Attachment: Calendar Item 24.

CALENDAR ITEM

A 58

S 37

24

02/17/87
BLA 137
WP 4960
PRC 4735
Louie
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Fossum

APPROVAL OF REIMBURSEMENT AGREEMENT

PARTY: Signal Landmark, Inc.
Attn: Jeffrey Holm
17890 Skypark Circle
Irvine, California 92714

BACKGROUND:
The State Lands Commission and Signal Landmark, Inc. (Signal) are parties to a Boundary Settlement and Exchange Agreement BLA 137 covering certain lands in the Bolsa Chica area of Orange County which, in addition to vesting ownership of 327.5 acres in the State, would give the State an additional 230 acres of land provided that the following major conditions were met:

(1) The State obtains appropriations for construction of the ocean entrance channel within specified time limits. (This appropriation would not have to be State funds. It could be from revenue bonds issued by a local district, loan from the United States Corps of Engineers, etc.)

(2) The ocean entrance channel is completed within specified time limits.

The proposed construction of the ocean entrance will require an engineering feasibility study and environmental review to be performed by the United States Corps of Engineers who would ultimately be constructing it. The United States Corps of Engineers requires that the project have a local sponsor to fund and support the feasibility study and project.

(REVISED 02/11/87)

CALENDAR ITEM

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(REVISED 02/11/87)

CURRENT SITUATION:
The Waterways Experiment Station (WES), a branch of the United States Corps of Engineers, has agreed to initially perform an expedited portion of the feasibility study under a "Work For Others Program" which must be financed by a local sponsor. Signal has asked the State Lands Commission to act as the local sponsor in this program and is prepared to sign a reimbursement agreement for this purpose. The cost to the State Lands Commission to act as the local sponsor would be negligible since Signal would fully reimburse the State for its participation which is expected to cost an estimated $640,000 in addition to State Lands Commission staff costs. It should be noted that completion of the "Work for Others Program" may also provide the County of Orange with certain information which it needs to present to the Coastal Commission in order to gain confirmation of their Land Use Plan for the area.

By fulfilling the terms of the option agreement the State would acquire fee ownership of an additional 230 acres. This would allow the State to construct income-producing facilities such as a marina and attendant commercial facilities on at least a portion of the 230 acres. Revenue from this source, in turn, would be used to offset State costs incurred in constructing and maintaining the ocean entrance and provide revenue for restoration and continuing maintenance of the ecological reserve owned by the State. It would also create needed boat berthing and other recreational facilities for the public. State Lands Commission participation in the "Work for Others Program" as a local sponsor will enable WES to proceed with the expedited portion of the feasibility study for the ocean entrance. However, such involvement does not commit the State to any additional financial demands beyond those in the 1973 Boundary Agreement.

AB 884: N/A.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Adm. Code 15061), the staff has determined that this activity is exempt from the requirements of the CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The staff believes there is no possibility that this project may have a significant effect on the environment.

Authority: 14 Cal. Adm. Code 15061(b)(3).

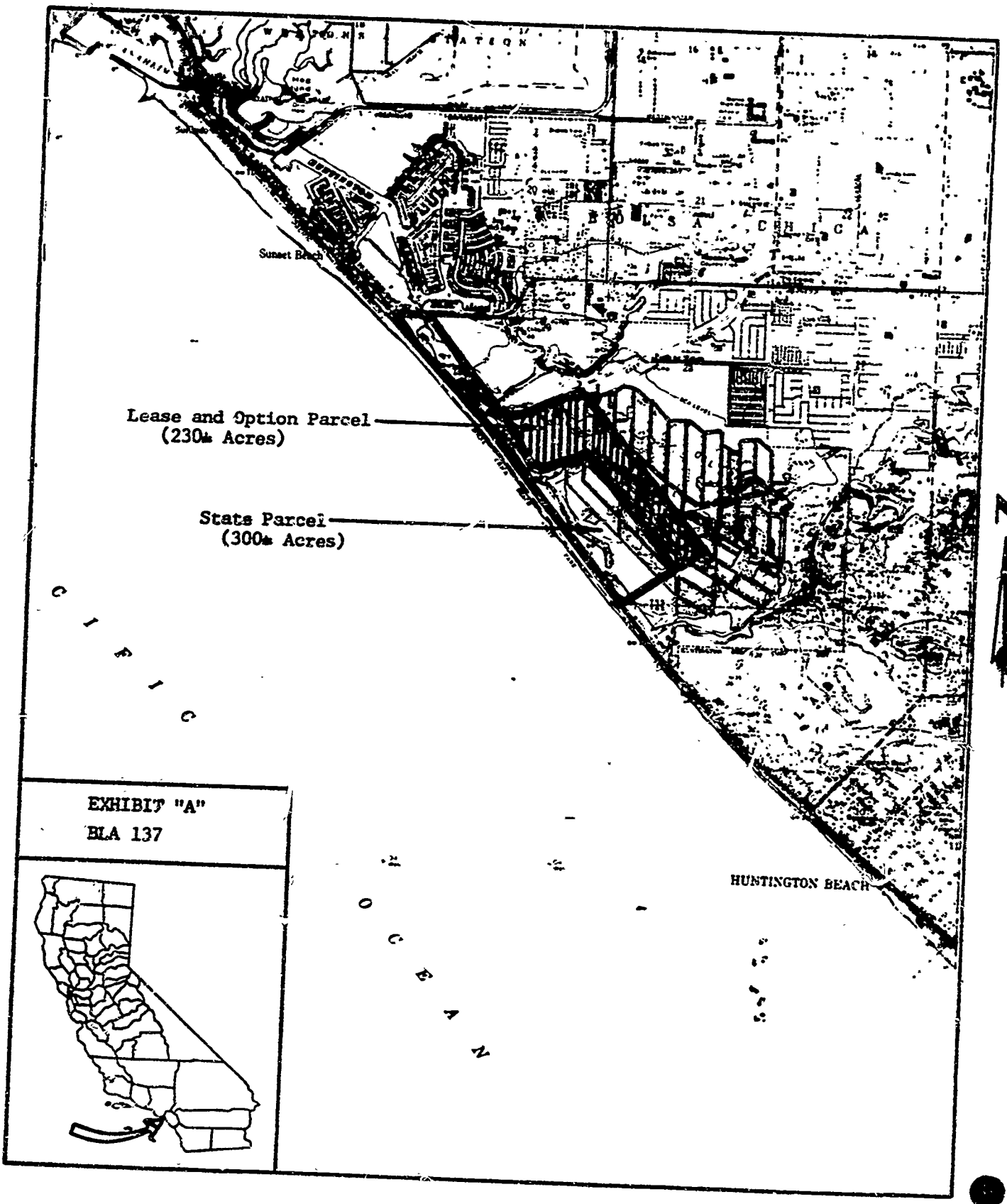
EXHIBITS:
A. Site Map.
B. Reimbursement Agreement.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. ADM. CODE 15061 BECAUSE THERE IS NO POSSIBILITY THAT THE ACTIVITY MAY HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT. (14 CAL. ADM. CODE 15061(b)(3))

2. AUTHORIZE THE EXECUTION OF A REIMBURSEMENT AGREEMENT WITH SIGNAL LANDMARK, INC. SUBSTANTIALLY IN THE FORM ATTACHED AS EXHIBIT "B" TO PROVIDE FUNDING TO THE STATE LANDS COMMISSION FOR COSTS TO BE INCURRED AS LOCAL SPONSOR OF A "WORK FOR OTHERS PROGRAM" TO BE CONDUCTED BY THE UNITED STATES ARMY CORPS OF ENGINEERS WATERWAYS EXPERIMENT STATION STUDYING PHYSICAL AND ENVIRONMENTAL EFFECTS OF A PROPOSED OCEAN ENTRANCE SYSTEM AT BOLSA CHICA, ORANGE COUNTY, CALIFORNIA.

(ADDED 02/11/87)



(ADDED 02/11/87

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EXHIBIT "B"

February 12, 1987
DRAFT

REIMBURSEMENT AGREEMENT

THIS AGREEMENT is made and entered into as of this _____day of _____, 1987, by and between SIGNAL LANDMARK, INC., a California corporation ("Signal") and the CALIFORNIA STATE LANDS COMMISSION ("SLC").

R E C I T A L S:

A. Signal owns and is in the process of obtaining approvals from all necessary governmental agencies for a mixed use development ("Project") of some 1350 acres of its land (Signal Property) in Orange County, California.

B. SLC owns some 327.5 acres of real property ("State Property") which is adjacent to the Signal Property and which is contemplated to be improved in part in conjunction with the development of the Project.

C. A major element of the Project is the construction and development an Ocean Entrance and Waterway Channel System ("Ocean Entrance"), including one or more public marinas.

D. SLC has a lease and option to acquire 230 acres of Signal Property conditioned upon funding and construction of an Ocean Entrance within certain time frames.

E. The California Coastal Commission ("CCC") in 1985 conditionally approved the Bolsa Chica Local Coastal Program for

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the North Coast Planning Unit, Bolsa Chica Land Use Plan ("LUP"). The LUP, as approved, contains certain conditions, one of which requires further information be provided to the CCC regarding the physical and environmental effects ("Environmental Effects") of a proposed Ocean Entrance as part of the Project.

F. The United States Army Corps of Engineers ("COE") will have jurisdiction over the physical construction of such an Ocean Entrance and also possesses substantial experience and expertise with regard to planning for and analyzing the Environmental Effects.

G. Signal and SLC wish to cooperate with each other in assessing the feasibility of an Ocean Entrance and in undertaking further efforts toward implementing the construction of the Ocean Entrance.

H. The COE, through its Waterway Experiment Station ("WES") has agreed to perform certain partial and expedited studies and analyses regarding the Environmental Effects under its Work For Others Program if a public agency local sponsor and adequate funding are provided.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other valuable consideration the adequacy and receipt of which are hereby acknowledged, the parties agree as follows:

1. <u>SLC'S OBLIGATIONS.</u>

a. SLC hereby agrees to act as the public agency contracting with WES under the Work For Others Program

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to perform the studies of the Environmental Effects as described above.

b. The SLC shall cooperate with Signal in the preparation and negotiation of any agreements with WES regarding the Work For Others Program. A more detailed description of the services to be provided by WES thereunder is set forth in Exhibit ____ attached hereto and incorporated by reference herein.

c. SLC agrees to perform its duties under the Work For Others Program Contract ("WES Contract") promptly and fully in accordance with the terms thereof.

d. SLC agrees to provide Signal on a regular basis, no less often than once a month, with a status report of the WES's progress under the WES Contract and with complete copies of all public materials, notices, reports and studies received from the WES and COE.

e. SLC agrees to notify Signal of each meeting with WES so that they may participate in the monitoring the progress of the study.

f. SLC agrees to not terminate or amend the WES Contract without first obtaining Signal's written consent thereto.

2. <u>REIMBURSABLE COSTS</u>

a. Signal agrees to reimburse SLC for all costs incurred by SLC, subsequent to the effective date of

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this agreement, for the performance of SLC's duties in accordance with the terms and conditions of this agreement.

b. Such costs shall include, but not be limited to:

1. The actual costs paid to WES under the WES contract including the costs of any change orders for changed or additional work agreed to by SLC and Signal.

2. The actual costs of staff time and other associated activities involved in the performance of SLC's duties pursuant to this agreement. Costs shall be computed in accordance with Section 8755 of the State Administrative Manual and shall include salaries and wages of State employees, related staff benefits and administrative overhead.

3. The cost of any additional consultant to assist SLC in the performance of its obligation under this agreement not to exceed $1,000 per month.

3. PAYMENT METHODS.

Signal shall reimburse the SLC for all costs described in Section 2 Reimbursable Costs in accordance with the following procedure.

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a. Prior to exection of the WES Contract, and upon the determination of the total estimated cost to be incurred under the WES Contract, SLC shall instruct Signal to deposit that amount designated as payment for Phase I in the WES Contract. Signal shall deposit said amount within fifteen (15) calendar days from the date of the demand into an irrevocable escrow interest quarterly bearing account at a bank of the SLC's choice.

b. For each subsequent phase of work, as identified in the WES Contract, Signal shall deposit that amount of money designated as payment for that particular phase of work within fifteen (15) calendar days from the date of SLC's demand, which demand shall be made only upon notice from WES regarding the commencement of subsequent phases of work.

c. Upon demand of the SLC, the bank shall pay out of the escrow such sums as the SLC directs. Signal may be instructed by the SLC to deposit additional funds into escrow. Upon completion or termination of the WES Contract, all remaining funds plus accrued interest in escrow shall be returned to Signal.

d. Signal shall be responsible for all escrow fees and disbursement charges.

e. All other costs incurred by the SLC pursuant

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Signal shall pay an amount so billed within (30) days from the date of the invoice. The yellow copy of the billing invoice shall be returned with payment.

4. FINANCIAL UNDERTAKINGS

Signal's payments to the SLC pursuant to Section 2 above shall be treated as a part of the non federal contribution under applicable federal law to the local cost sharing element of any subsequent COE work on the Project.

5. RECORDS.

Upon five business days notice, the SLC records relating to its costs shall be available for audit by Signal in the SLC's office in Sacramento. Said audit shall take place only during regular business hours of the SLC. Payment of costs by Signal shall not constitute a waiver of its rights to audit nor an acknowledgment by Signal of the validity of the costs that have been paid. Nothing herein shall be deemed to require t SLC, its consultants, and subcontractors to maintain books, records, or documents other than those usually maintained by them, provided that such books, records and documents reasonably segregate and identify the costs for which reimbursement is required hereunder. As used herein, "SLC's records" include any audit of the consultant by the SLC or its designated representative as authorized in this Agreement. The SLC shall provide Signal with itemized monthly statements of costs billed.

5. COOPERATION.

SLC and Signal agree to cooperate with each other in

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the requests made to the WES for work to be performed under the WES Contract, in the discussions with the WES as to further WES work regarding the Ocean Entrance and in the discussions with the County of Orange.

6. EFFECTIVE DATE.

This Agreement shall be effective on or the date of execution by the State subject to the necessary State agency approvals whichever is later and shall continue in full force and effect through the 30th day of June 1988, unless terminated earlier pursuant to the termination provisions contained herein. This Agreement may be extended by mutual consent of the parties hereto as deemed reasonably necessary for the performance of any obligations hereunder.

7. ASSIGNMENT.

Neither party shall assign this Agreement or any of such party's interest, rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

8. COUNTERPARTS.

This Agreement may be executed simultaneously or in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

9. GOVERNING LAW.

This Agreement shall be governed by, interpreted under and construed and enforced in accordance with the laws of the State of California.

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10. MODIFICATION.

No variation, modification, change or amendment of this Agreement shall be binding upon either party unless such variation, modification, change or amendment is in writing and duly authorized and executed by both parties. This Agreement shall not be amended or modified by oral agreements or understandings between the parties or by any acts of conduct of the parties.

11. NOTICES.

All notices, demands, requests, elections, approvals, disapprovals, consents or other communications given under this Agreement shall be in writing and shall be given by personal delivery, mail or telegram. Notice by personal delivery shall be deemed effective upon the delivery of such notice to the party for whom it is intended at the address set forth below. Notice by mail shall be deemed effective _____ business days after depositing such notice, first class, certified or registered mail, postage prepaid, properly stamped and sealed, with the United States Postal Service, addressed as set forth below, regardless of whether or when the notice is actually received by the addressee. Notice by telegram shall be deemed effective upon the transmission of the telegram, telegraph charges prepaid, to the party for whom it is intended at the address set forth below.

State of California State Lands Commission
1807 13th Street
Sacramento, California 95814
Attention: Mr. James F. Trout

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Signal Landmark, Inc.
17890 Skypark Circle
Irvine, California 92714
Attention: Mr. Jeffrey B. Holm

With copies to:

Jones, Day, Reavis & Pogue
3333 Michelson Drive, Suite 400
Irvine, California 92715
Attention: Donald D. Gralnek, Esq.

Steven H. Kaufman
Deputy Attorney General
Department of Justice
800 Tishman Building
3580 Wilshire Blvd.
Los Angeles, CA 90010

The parties may from time to time change their respective addresses (or the persons to whom copies should be sent or such persons' addresses) by notice to the other party given in accordance with this Section.

12. SEVERABILITY.

If any provision of this Agreement shall be determined by any court to be invalid, illegal or unenforceable to any extent, the remainder of this Agreement shall not be affected and this Agreement shall be construed as if the invalid, illegal or unenforceable provision had never been contained in this Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

SIGNAL LANDMARK, INC.
a California corporation

By: _____
Its _____

STATE OF CALIFORNIA
STATE LANDS COMMISSION

By: _____
Its Executive Officer

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