MINUTE ITEM
This Calendar Item No. 39
was approved as Minute Item
No. 39 by the State Lands
Commission by a vote of 2
to 0 at its 12/12/1989
meeting.

CALENDAR ITEM

A 76

39

S 39

12/12/89
PRC 7301
Frey

SETTLEMENT FOR TRESPASS AND CONVERSION
OF MINERALS, SAN DIEGO COUNTY

APPLICANT: Nelson and Sloan Co.
P. O. Box 448
Chula Vista, California 92012.

AREA, TYPE LAND AND LOCATION:
Patented, State school lands, with 100 percent (100%) minerals reserved to the State and further described as follows: The SW 1/4 of NW 1/4, and the N 1/2 of SW 1/4 of Section 36, T14S R1W, SBM, southwestern San Diego County excepting therefrom those lands specifically excluded as contained in Exhibit "A".

LAND USE: Extraction of rock, sand and gravel. The material is processed on site at a crushing and screening plant for production of a variety of salable products.

BACKGROUND:

Nelson and Sloan, Inc., a sand, gravel, and cement company, occupies a parcel of land in Section 36, Township 14S, Range W, SBM, San Diego County. The parcel surface was originally sold by the State in 1946. One hundred percent (100%) of the minerals were reserved to the State. Through subsequent conveyances, the parcels vested in Tri-Way Materials, Inc. in 1965. None of these deeds contained the mineral reservation. On March 17, 1974, Nelson and Sloan entered into a stock merger with Tri-Way and gained ownership of the parcel.

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Nelson and Sloan report that gravel has been extracted from the parcel since the mid-1960's. This unauthorized extraction of the State's minerals was discovered by staff in 1984. When presentation of the State's claim was made, Nelson and Sloan denied it.

In 1985, a lawsuit was filed by the State Lands Commission against Nelson and Sloan seeking to quiet title and receive compensation for minerals removed. A number of meetings were held with Nelson and Sloan in an attempt to settle this matter without further litigation. An agreement was reached whereby Nelson and Sloan recognized the State's title and the State Lands Commission agreed to withdraw its lawsuit for a settlement amounting to $207,260.25 as payment for past extraction, including interest, and execution of a mineral extraction lease. This agreement was approved by the Commission on May 31, 1989.

Subsequent to this first settlement, it was discovered, through an aerial survey, that Nelson and Sloan had been trespassing since June 1986 on lands otherwise believed to be private. Further meetings were held with Nelson and Sloan and have resulted in this current settlement. Under the terms of the settlement, Nelson and Sloan will pay the State $124,174.57, including interest, over a six-month period beginning December 1, 1989. Staff recommends approval of the settlement.

The lease approved by the Commission on May 31, 1989 contained a lease term which began on July 1, 1989. This was a technical error in that the parties intended the lease to begin June 1, 1989. Because of this error, Nelson and Sloan was assessed penalty and interest on its first quarter royalty payments because of late payment. Staff believes that because the error occurred in its document, Nelson and Sloan should not be liable for the penalty payment. Nelson and Sloan concurs and has agreed to pay interest because it also failed to notice the error. Staff recommends approval of this compromise.

STATUTORY AND OTHER REFERENCES:

A. Cal. Code Regs.: Title 2, Section 1911

B. P.R.C.: Section 6224.2.

AB 884: N/A.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 15061), the staff has determined that this activity is exempt from the requirements of the CEQA because the activity is not a "project" as defined by CEQA and the State CEQA Guidelines.

   Authority: P.R.C. 21065 and 14 Cal. Code Regs. 15378.

EXHIBITS:

A. Land Description.
B. Location Map.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY P.R.C. 21065 AND 14 CAL. CODE REGS. 15378.

2. AUTHORIZE THE SETTLEMENT OF LITIGATION FOR TRESPASS AND CONVERSION FOR $124,174.57 PAYABLE IN SIX INSTALLMENTS BEGINNING DECEMBER 1, 1989.

3. AUTHORIZE THE WAIVER OF PENALTY FOR THE FIRST LEASE QUARTER BECAUSE OF A TECHNICAL ERROR IN THE LEASE DOCUMENT.

EXHIBIT "A"

PRC 7301

LAND DESCRIPTION

A parcel of school land, being the North 1/2 of the Southwest 1/4 and the Southwest 1/4 of the Northwest 1/4 of Section 36, T14S, R1W, SBM, in the County of San Diego, California, according to the official plat thereof.

EXCEPTING THEREFROM all that land lying southwesterly of the following described line;

COMMENCING at the northwest corner of lot 1 of the above said Section 36, which bears S 89°00' 05" E, (record S 89°23' 21" E), 229.36 feet from a field identified 2 inch iron pipe with L.S. Tag No. 2317 shown on Record of Survey No. 1960 as a point on the north line of the south 1/2 of the Southwest 1/4 of Section 35, T14S, R1W, SBM; thence along the northerly line of said Lot 1, S 88°57' 00" E,37.06 feet (record 36.41 feet) to a point of intersection with the northeasterly right of way line of California State Highway XI-SD-198-H (said right of way being the southwesterly line of the property conveyed to Tri Way Material Inc., recorded September 21, 1967, F.N. 144300); thence along said right of way line, S 54°42' 42" E, 637.82 feet; thence leaving said right of way line, N 40°40' 32" W, 412.31 feet; thence N 59°34' 15" W, 104.23 feet to the north line of said Lot 1 and the POINT OF BEGINNING; thence continuing N 59°34' 15" W, 234.92 feet to the westerly line of said Section 36 and the end of the herein described line.

END OF DESCRIPTION

PREPARED NOVEMBER 6, 1989 BY BIU 1.

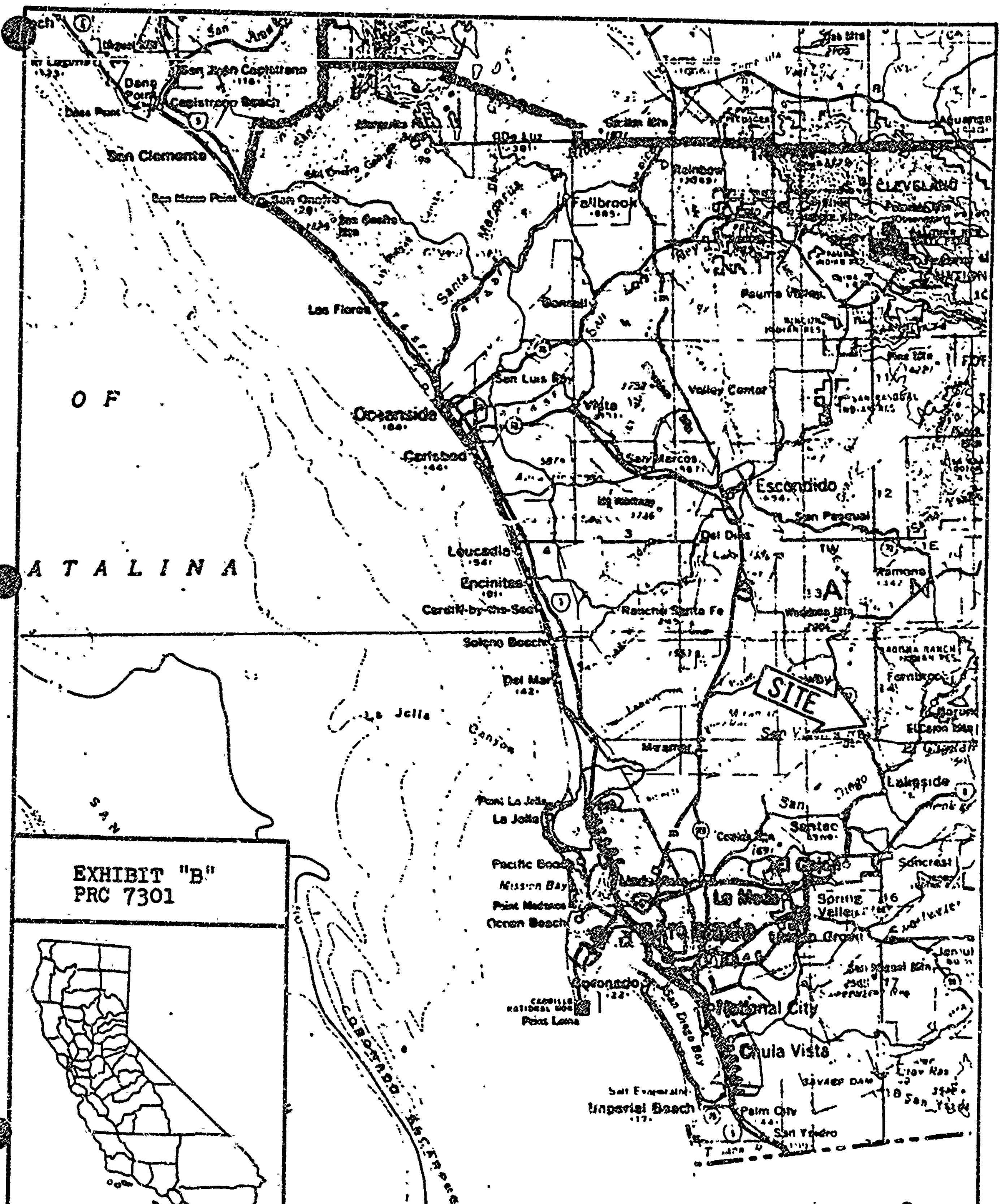

EXHIBIT "B"
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