

CALENDAR ITEM

C33

MINUTE ITEM

This Calendar Item No. C33 was approved as Minute Item No. 33 by the State Lands Commission by a vote of 3 to 0 at its 5/26/94 meeting.

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05/26/94
PRC 7229
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TERMINATION OF LEASE

LESSEE:

Abalone Unlimited, Inc.
Mr. Hugh W. Staton
2455 Jacarada Lane
Los Osos, California 93402

Abalone Unlimited, Inc.
Michael H. Gault
4813 Hernandez Drive
Guadalupe, California 93434

Abalone Unlimited, Inc.
Andrew Davlin, Jr.
122 Ridge Street
Reno, Nevada 89501

Abalone Unlimited, Inc.
Richard Bennett
50 West Liberty Street, Ste. 650
Reno, Nevada 89501

Abalone Unlimited, Inc.
Brenda Toriyama
50 West Liberty Street, Ste. 650
Reno, Nevada 89501

Abalone Unlimited, Inc.
C. Lou Kemper
50 West Liberty Street, Ste. 650
Reno, Nevada 89501

AREA, TYPE LAND AND LOCATION:

0.867-acre parcel of tide and submerged land in the Pacific Ocean, near the Santa Maria River, San Luis Obispo County.

LAND USE:

One intake pipeline and one discharge pipeline for a mariculture facility.

CALENDAR PAGE	165
MINUTE PAGE	2087

CALENDAR ITEM NO. C33 (CONT'D)

LEASE PERIOD:

25 years beginning January 1, 1989.

SURETY BOND:

\$2,000

PUBLIC LIABILITY INSURANCE:

Combined single limit coverage of \$500,000.

CONSIDERATION:

\$2400 per annum; five year rent review.

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.
2. PRC 7229 was authorized by the Commission pursuant to Minute Item No. 13, August 10, 1988. At the subsequent request of the Lessee, the construction deadlines set out in the lease were twice extended at respective Commission meetings held April 26, 1989, and March 27, 1990. Construction, however, has still not yet commenced, as verbally confirmed on August 26, 1993 by an upland property owner, Maretti & Minetti Ranch Company. Additionally, the lease is in default as described below.
3. The Lessee is a Nevada Corporation, according to filings with the Secretary of State. The Corporation was suspended by the State Franchise Tax Board on May 1, 1991, according to the Secretary of State's Office. The members of the Corporation are now scattered and are no longer functioning as a corporation. Attempts to reach some of the members have been unsuccessful.
4. The first year's rental was paid by the Lessee; no further payments have been received for the period January 1, 1990 through the present time.

CALENDAR ITEM NO. C33 (CONT'D)

5. On October 21, 1993, the staff notified the Lessee that it had breached the lease by not maintaining liability insurance and not keeping up rental payments. The Lessee has made no effort to cure the breaches and staff concludes that a cure is not forthcoming. Staff also concludes that the expense of recovering all unpaid rental, penalty and interest could easily exceed the amount due.
6. Since the lands within the lease area have not been used by the Lessee, and insofar as the lease rental would be difficult to recover, and at possible high expense if so attempted, staff is of the view that (1) the lease should be terminated for cause and, (2) that all unpaid rental, including penalty and interest thereon, should be waived.
7. The lease provides, in the event of breach, that the Lessor may terminate the lease and that such termination shall be effective upon Lessor's written notice, and upon receipt of such notice the Lessee shall immediately surrender possession of the Lease Premises to the Lessor. The staff intends to transmit such notice, in the form set out in Exhibit "B", following the Commission's approval thereof. The notice will terminate the lease retroactively as of January 1, 1990.

EXHIBITS:

- A. Land Description.
- B. Form of Notice of Lease Termination.

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. FIND THAT ABALONE UNLIMITED, INC. HAS BREACHED THE TERMS OF LEASE PRC 7229, AND THAT SAID LEASE SHOULD BE TERMINATED.
3. AUTHORIZE STAFF TO ISSUE A LEASE TERMINATION NOTICE TO ABALONE UNLIMITED, INC., EFFECTIVE JANUARY 1, 1990, IN THE FORM SET OUT IN EXHIBIT "B", ATTACHED AND BY REFERENCE INCORPORATED HEREWITH.

CALENDAR PAGE	167
MINUTE PAGE	2089

CALENDAR ITEM NO. C33 (CONT'D)

4. WAIVE ALL DELINQUENT RENTAL, INCLUDING PENALTY AND INTEREST AMOUNTS DUE UNDER THE TERMS OF SAID LEASE.

CALENDAR PAGE	168
MINUTE PAGE	2090

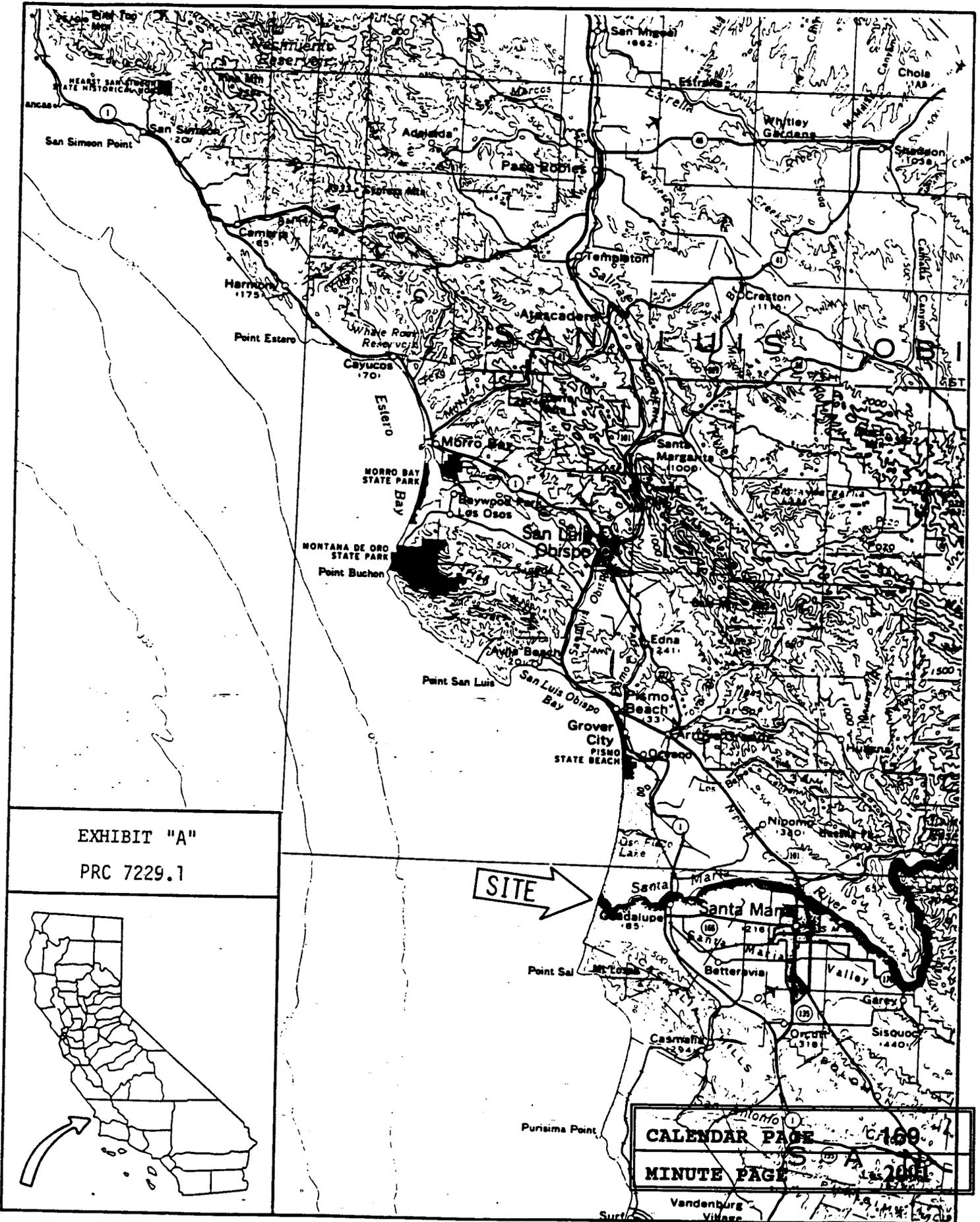


EXHIBIT "A"
 PRC 7229.1



SITE →

CALENDAR PAGE 6169
 MINUTE PAGE 2001

1807 13TH STREET
SACRAMENTO, CALIFORNIA 95814
(TDD/TT) 1-800-735-2929
(916) 445-1012

File Ref.: PRC 7229

NOTICE OF LEASE TERMINATION

You are notified that:

1. The lease pursuant to which you hold possession of State premises in San Luis Obispo and Santa Barbara Counties near the Santa Maria River, for a mariculture facility (lease No. PRC 7229.1, dated January 18, 1989), provides in Sections 1 and 4 that you are to maintain liability insurance in the amount of \$500,000 and to name the State as an additional insured.

2. The lease referred to above also requires in Section 1 that you pay \$2,400 annual rental to the State beginning January 1, 1989, and each year thereafter unless the rent is changed or the lease terminated.

3. As stated in State Lands Commission correspondence dated October 21, 1993, you have breached lease PRC 7299.1 by not maintaining liability insurance and not keeping your rental payments current.

4. In view of the above breaches, and in accordance with the provisions of Paragraph No. 11 of Section 4 of lease PRC 7229.1, you are hereby notified that said lease is terminated in its entirety effective as of January 1, 1990.

Dated: _____

Jane Sekelsky, Chief
Division of Land Management

EXHIBIT "B"

CALENDAR PAGE 170

MINUTE PAGE 2092