

MINUTE ITEM
This Calendar Item No. C78
was approved as Minute Item
No. 78 by the State Lands
Commission by a vote of 3
to 0 at its 10-17-95
meeting.

CALENDAR ITEM
C78

A 67

10/17/95

S 35

PRC 7144.1

FOSSUM

SCOTT

CONSIDER TERMINATION OF LEASE PRC 7144.1; SETTLEMENT OF CLAIMS AND
ACCEPTANCE OF LEASE QUITCLAIM INVOLVING LANDS IN SEAL BEACH,
ORANGE COUNTY

APPLICANT:

Seal Beach Gateway, Inc.
c/o The SAFECO Company
Attn: Mr. Jeffery M. Talbot
238 S. Atlantic Boulevard
Alhambra, California 91801

BACKGROUND:

The property that is the subject of this calendar item was originally part of a title settlement involving a dispute over the location of the historic tidal channel of the San Gabriel River. When the original Lessee terminated the lease, rather than pay a proposed increase in rent in 1976, the staff of the Commission solicited new proposals for development. It was staff's intent to secure the best and most profitable public trust development for this property. After reviewing several proposals and negotiating with several potential Lessees, the Commission issued a new lease for development in 1981. The new Lessee attempted to secure approval of several proposed developments from the City of Seal Beach and was unable to secure approval for any of their proposed projects and in late 1986 began working with staff to arrange for the termination of their lease and the issuance of a new lease to the current Lessee.

In November of 1987, the Commission, authorized the termination of the lease issued in 1981 and the issuance of the current lease to Seal Beach Gateway, Inc. for the development of a hotel on this parcel of land located in the City of Seal Beach at the intersection of Pacific Coast Highway and First Street. During the years following approval by the Commission, the State's current Lessee has undertaken substantial and costly efforts to secure the approval of various proposals through the City of Seal Beach and other permitting agencies. The Lessee has been unable to secure complete approval for any of the several developments they have proposed due to engineering problems, local opposition to adjoining developments, the City planning process and environmental issues.

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During this same period of time, the economy has been in a state of decline and funding for hotel development has become prohibitively expensive or unavailable. The cost to maintain the property, including rental to the State, property taxes and physical maintenance of the site has placed a significant financial burden on the Lessee. The Lessee is currently delinquent in rent to the State owing \$34,000 in back rent plus penalty and interest. The property has been allowed to accumulate refuse and debris, is overgrown with vegetation and is being occupied by homeless persons without permission. Staff has received several complaints from the City of Seal Beach and private citizens requesting that the property be cleaned and fenced in order to return the property to an acceptable state and prohibit the property's unauthorized use.

CURRENT SITUATION:

Staff has been in contact with the Lessee and has made a formal written demand that the Lessee cure defaults under this lease including, but not limited to, payment of rent due including penalty and interest, cleaning of the property and construction of improvements as required by the terms of the lease.

Lessee has responded with an offer to settle all claims of the Commission. The Lessee has offered to pay the back rent owed in the amount of \$34,000, clean the property and quitclaim the leasehold back to the Commission. The Lessee has asked that the Commission waive all accrued penalty and interest, provide a written release for the Certificate of Deposit placed by them as a security deposit and waive all present and future claims against the Lessee that relate to the lease.

Staff has considered the offer of settlement and believes that the Commission may waive the penalty and interest due on the back rent because of the problems faced by the Lessee which have been beyond their control, including several moratoriums on development, litigation over development involving adjoining property, requirements to process additional environmental documents, the severe economic recession, etc. Staff also believes that the cleaning of the site, together with the repair of fencing around the property, will result in a more favorable treatment of future development proposals by the City and local citizens.

Staff recommends to the Commission that it approve a limited release of claims against the Lessee. Such release would be for all claims involving the lease agreement other than for personal injury or other tortious conduct during the term of the lease. The Commission would not relieve the Lessee from any cause of action for which the Lessee was strictly liable.

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STATUTORY AND OTHER REFERENCES:

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

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

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: Public Resources Code Section 21065 and 14 Cal. Code Regs. 15378.

EXHIBITS:

- A. 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 PUBLIC RESOURCES CODE SECTION 21065 AND 14 CAL. CODE REGS. 15378.
2. AUTHORIZE STAFF TO ACCEPT \$34,000 AS BACK RENT FOR THE PERIOD NOVEMBER 1991 THROUGH THE DATE OF RECORDATION OF THE QUITCLAIM OF LEASEHOLD.
3. WAIVE ACCRUED PENALTY AND INTEREST ON BACK RENT.
4. AUTHORIZE THE ACCEPTANCE AND RECORDATION OF A QUITCLAIM OF LEASE PRC 7144.1 AND THE WRITTEN RELEASE OF A CERTIFICATE OF DEPOSIT ACCOUNT NO. 871-903151, OMNI BANK.
5. AUTHORIZE THE EXECUTION ON BEHALF OF THE COMMISSION OF A LIMITED

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RELEASE OF CLAIMS AGAINST SEAL BEACH GATEWAY, INC.(LESSEE)
SUBSTANTIALLY IN THE FORM OF THAT LIMITED RELEASE ON FILE IN THE
SACRAMENTO OFFICE OF THE COMMISSION.

6. AUTHORIZE STAFF TO TAKE ANY ACTIONS NECESSARY INCLUDING
LITIGATION TO ASSURE THAT THE LESSEE TAKES ALL NECESSARY ACTION
TO COMPLETE THE RESTORATION OF THE PROPERTY DESCRIBED IN EXHIBIT
"A" WITHIN 45 DAYS AS A PRECONDITION TO THE TERMINATION OF LEASE
PRC 7144.1.

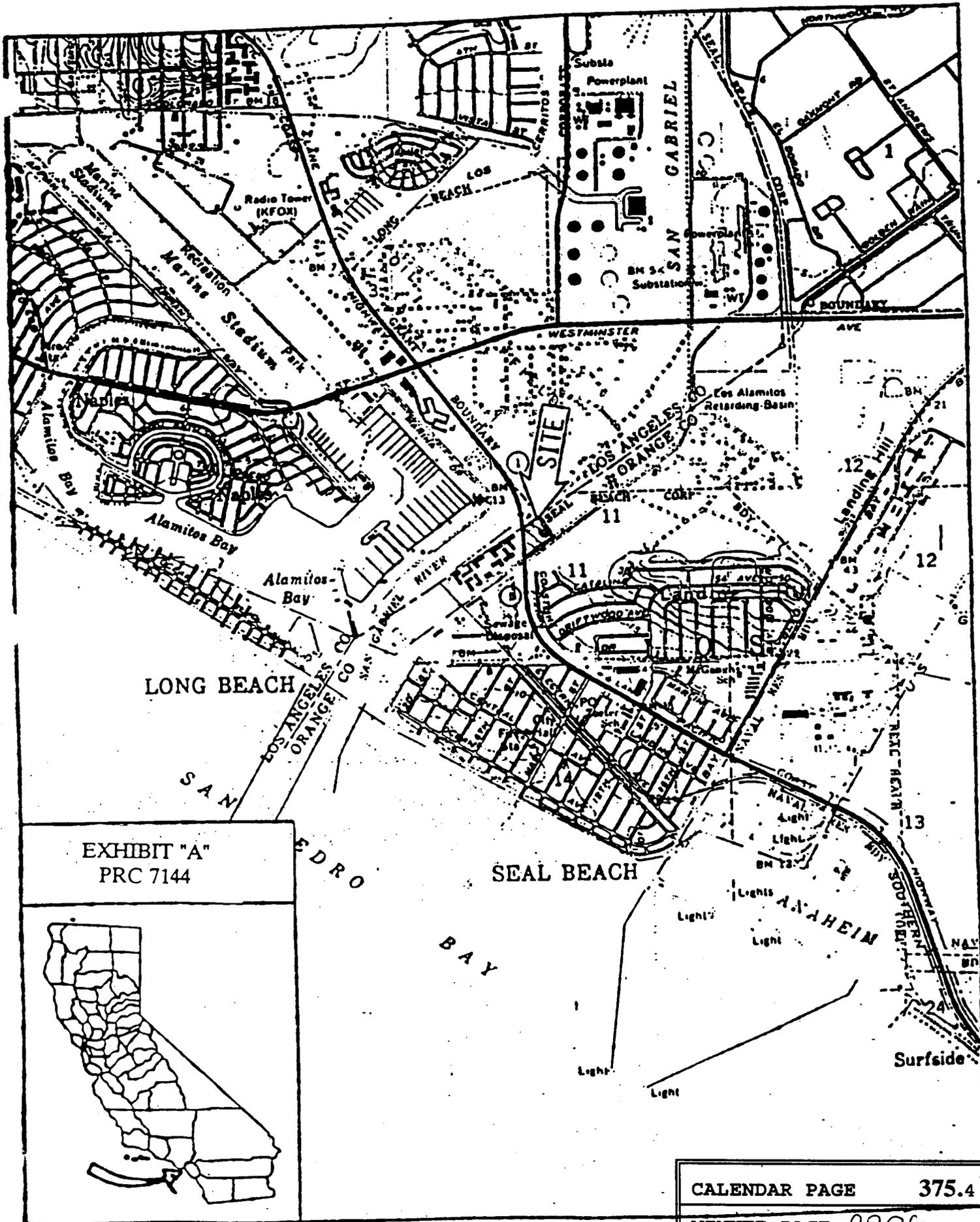


EXHIBIT "A"
 PRC 7144