MINUTE ITEM

This Calendar Item No. C37 was approved as Minute Item No. 37 by the California State Lands Commission by a vote of 3 to Ø at its 11/27/00 meeting.

Minute Item
C37

11/27/00
W 200725.103
J. SMITH
C. FOSSUM

CITY OF DEL MAR
(APPLICANT)

Calendar Item C37: Presentation was made to Commissioners on maintenance of the opening of the San Dieguito Lagoon. The item was approved as presented

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A 74

S 38

PRC 8248

11/27/00
W 20725.103
J. Smith
C. Fossum

GENERAL LEASE - PUBLIC AGENCY USE

LESSEE:

City of Del Mar
1050 Camino Del Mar
Del Mar, California 92014-2698

AREA, LAND TYPE, AND LOCATION:

Sovereign lands in the Pacific Ocean and the San Dieguito Lagoon Inlet, city of Del Mar, San Diego County.

AUTHORIZED USE:

Breaching of the San Dieguito Lagoon mouth and maintenance of the opening.

LEASE TERM:

One year, beginning September 15, 2000.

CONSIDERATION:

The public health and safety; with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interest.

SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance: Combined single limit coverage of $1,000,000; or an approved self-insurance plan.

OTHER PERTINENT INFORMATION:

1. Applicant has a right to use the uplands adjoining the lease premises.

2. Commission staff was notified in September, 2000 that the Applicant was proposing to conduct a minor excavation of the San Dieguito Lagoon Inlet. The lagoon had been closed to tidal flushing since April 11, 1999. As a

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result, hundreds of fish died and several thousand fish were threatened. A letter was received from county health officials which raised the specter of a human health hazard from mosquitoes. The Applicant, in consultation with the critical resource agencies, deemed it necessary to seek authorization under emergency permits to perform excavation of approximately 15,000 cubic yards of material from the inlet to open the river mouth to tidal flushing. Pursuant to a letter issued by the Commission's Executive Officer on September 15, 2000, the Applicant was given permission to perform the necessary excavation on State sovereign lands. That letter of permission required the Applicant to submit a completed formal application to Commission staff within 60 days. The application has been received and processed by staff.

3. The Applicant received an emergency permit from the California Coastal Commission on September 14, 2000 (Emergency Permit Number 6-00-134-G). The Applicant is required to submit an application for a regular coastal development permit to the California Coastal Commission by November 14, 2000. The U.S. Army Corps of Engineers approved the project on September 21, 2000, as complying with the terms and conditions of Nationwide Permit 27. The California Department of Fish and Game (DFG) issued Streambed Alteration Agreement 5-261-00 on September 18, 2000. According to the Applicant, the authorizations obtained provide for the initial breaching that began on September 18, 2000, as well as two follow up maintenance episodes, if necessary, to ensure that the lagoon mouth stays open between now and January.

4. On September 15, 2000, litigation was filed in Sacramento County Superior Court seeking issuance of a temporary restraining order to halt the emergency breaching (Citizens United To Save The Beach, et al. v. California State Lands Commission, et al., Superior Court Case Number 00AS05062). The judge issued a restraining order allowing the excavation to proceed but prohibiting the final breaching of the lagoon mouth until a subsequent hearing by the Court on September 21, 2000. At the September 21, 2000 hearing, the judge determined that the activity, while not constituting an emergency, did not violate the California Environmental Quality Act (CEQA) and denied plaintiffs' request for an injunction and allowed the project to proceed.

5. The project, which began on September 18, 2000, was completed on

September 23, 2000. Approximately 14,850 cubic yards of sand were excavated and the material disposed of on the beach north of the lagoon inlet. The beach, for a distance of approximately 200 feet upcoast and downcoast, was closed during project operation for five days. The Applicant reports that the project is considered to be a success; the lagoon mouth remains open and immediate beneficial results were noted as a result of the lagoon being open to tidal flushing.

6. The Applicant, as lead agency pursuant to the CEQA, filed a Notice of Exemption on September 18, 2000, declaring that the project was exempt under Class 7, Actions by Regulatory Agencies for Protection of Natural Resources; Class 8, Actions by Regulatory Agencies for Protection of the Environment. These exemptions were found applicable to the project by the Superior Court on September 21, 2000.

7. The Applicant filed a second Notice of Exemption on September 22, 2000, declaring that the project was also exempt under Class 1, Maintenance of Existing Facilities; and Class 4, Minor Alteration to Land.

8. In 1983, the California Coastal Commission issued a coastal development permit (CDP 6-83-148) to the City of Del Mar, California Coastal Conservancy and DFG for excavation of 500,000 cubic yards of material within San Dieguito Lagoon (including the channel and mouth of the lagoon) to restore and enhance habitat values in the DFG Ecological Reserve. Special Condition #7 of that permit requires the City of Del Mar to maintain the opening of the mouth of the lagoon and ensure that it is opened yearly prior to the rainy season. The Coastal Commission relying on a number of studies and reports, including but not limited to the "Final Environmental Impact Report for Tidal Basin and Channel Excavation: San Dieguito Wetland Enhancement Program, San Diego County, California" City of Del Mar, October 1980, determined that the project had complied with CEQA and that the project would have no significant impact on the environment. The 14 month period of time between April 1999 and September 2000 was the first time following issuance of the permit that the lagoon mouth was not opened successfully as required by CDP 6-83-148.

9. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, Section 15061), the staff concurs with the Applicant's (lead agency) determination that this

activity is exempt from the requirements of the CEQA as a categorically exempt project. The project is exempt under: Class 1, Maintenance of Existing Facilities; Class 4, Minor Alteration to Land; Class 7, Actions by Regulatory Agencies for Protection of Natural Resources; and Class 8, Actions by Regulatory Agencies for Protection of the Environment.

Authority: Title 14, California Code of Regulations, sections 15307 and 15308.

10. A Negative Declaration was prepared and adopted for this project by the city of Del Mar. The Commission staff has reviewed such document.

11. An EIR/EIS was prepared and certified for the San Dieguito Lagoon Wetland Restoration Project by the San Dieguito River Park Joint Powers Authority (JPA) and the U.S. Fish and Wildlife Service. That document discusses keeping the lagoon open to tidal flushing as a component of the proposed JPA wetland restoration project. Commission approval for the JPA wetland restoration project will be sought at a later date. The Commission staff has reviewed the EIR/EIS and Mitigation Monitoring Program adopted by the lead agencies. Findings were made in conformance with the State CEQA Guidelines (Title 14, California Code of Regulations, sections 15091 and 15096) and a Statement of Overriding Considerations was made in conformance with the State CEQA Guidelines (Title 14, California Code of Regulations, section 15093). This document is now the subject of an amended complaint filed by the plaintiffs in the lawsuit described in paragraph 3 above.

12. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

13. Based on all available information, including but not limited to, the history of the lagoon, the impact of past fill and other human activities that have artificially impacted the natural ability of the lagoon to maintain an opening to the Pacific Ocean and the urgent necessity to prevent the potential significant impact to the habitat and associated fish and wildlife within the lagoon and San Dieguito Lagoon Ecological Reserve, the activity of removing sand from the mouth of San Dieguito Lagoon is a project that

was necessary for the preservation of public trust values in the San Dieguito Lagoon. On balance, the temporary, minor impact of the removal of sand from the mouth of the lagoon on public recreational activities was minimal compared to the significant beneficial result of preserving the existing public trust resources by this action to restore tidal flushing of the lagoon.

APPROVALS OBTAINED:
U.S. Army Corps of Engineers; State Department of Fish and Game.

FURTHER APPROVALS REQUIRED:
California Coastal Commission; California State Lands Commission.

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

PERMIT STREAMLINING ACT DEADLINE:
February 5, 2001

RECOMMENDED ACTION:
IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDINGS:
FIND THAT EACH OF THE FOLLOWING DETERMINATIONS INDEPENDENTLY AND SEPARATELY CONFIRM THE SUBJECT ACTIVITY AS CEQA COMPLIANT:

THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 1, MAINTENANCE OF EXISTING FACILITIES; CLASS 4, MINOR ALTERATION TO LAND; CLASS 7, ACTIONS TAKEN BY REGULATORY AGENCIES FOR PROTECTION OF NATURAL RESOURCES; AND CLASS 8, ACTIONS TAKEN BY REGULATORY AGENCIES FOR PROTECTION OF THE ENVIRONMENT.

SIGNIFICANT LANDS INVENTORY FINDING:
FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE

LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.

PUBLIC TRUST FINDING:

FIND THAT THE ACTIVITY AUTHORIZED BY THIS PERMIT IS CONSISTENT WITH AND IN FURTHERANCE OF PUBLIC TRUST NEEDS OF SAN DIEGUITO LAGOON AND ITS CONNECTION WITH THE PACIFIC OCEAN.

AUTHORIZATION:

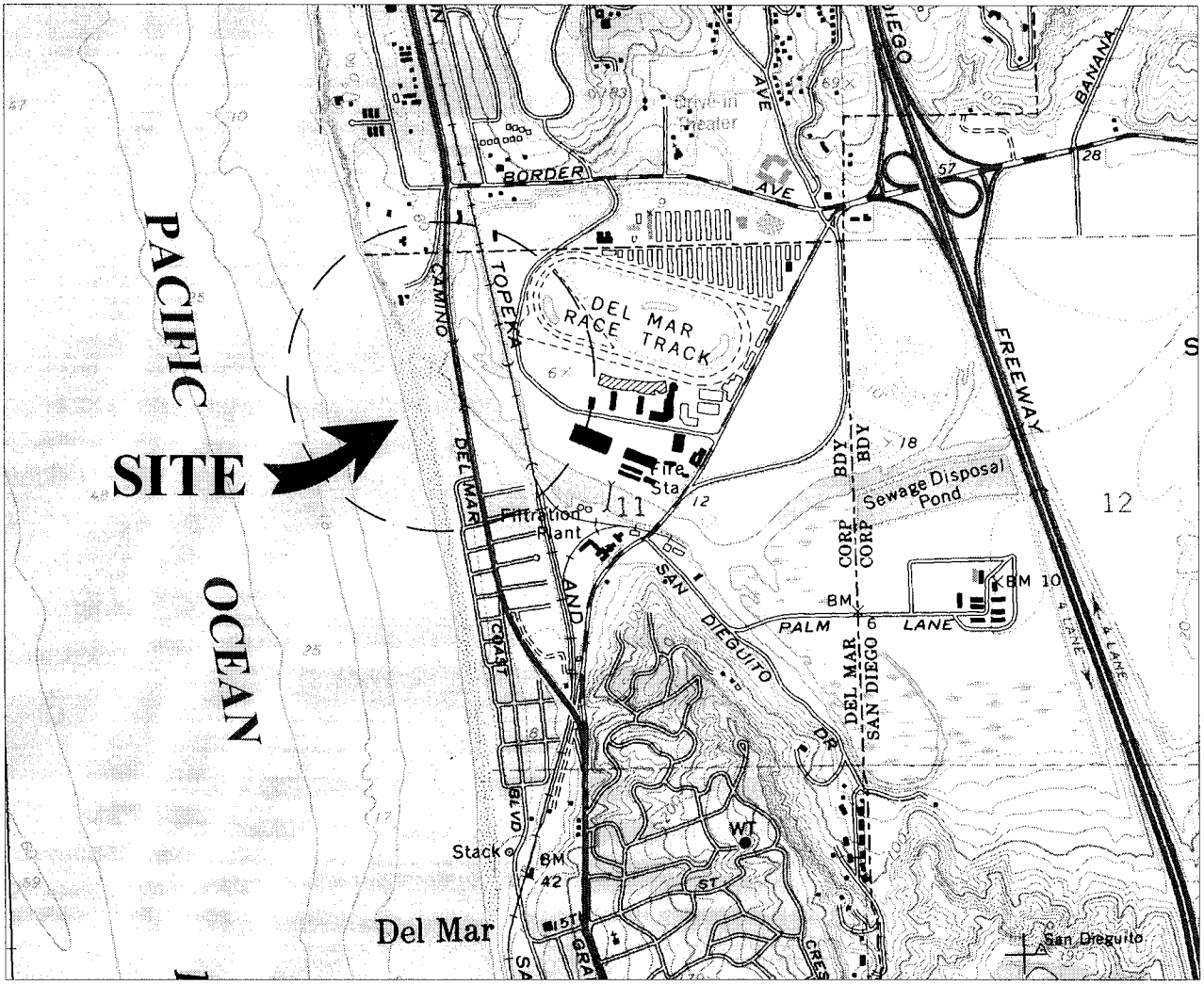
A. RATIFY, CONFIRM AND APPROVE THE EXECUTIVE OFFICER'S SEPTEMBER 15, 2000, AUTHORIZATION FOR EXCAVATION OF UP TO 15,000 CUBIC YARDS OF MATERIAL FROM THE SAN DIEGUITO LAGOON MOUTH FOR PROTECTION OF THE ENVIRONMENT.

B. AUTHORIZE ISSUANCE OF A GENERAL LEASE - PUBLIC AGENCY USE, TO THE CITY OF DEL MAR, BEGINNING SEPTEMBER 15, 2000, FOR A TERM OF ONE YEAR, FOR BREACHING OF THE SAN DIEGUITO LAGOON MOUTH AND MAINTENANCE OF THE OPENING ON THE LAND SHOWN ON EXHIBIT A AND DESCRIBED IN EXHIBIT B ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF; LIABILITY INSURANCE FOR COMBINED SINGLE LIMIT COVERAGE OF $1,000,000 OR AN APPROVED SELF-INSURANCE PLAN.

NO SCALE

LOCATION MAP

San Dieguito Lagoon Opening



NO SCALE

CALIFORNIA MAP

EXHIBIT A

SHEET 1 OF 2

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SAN DIEGUITO LAGOON OPENING

DEL MAR, SAN DIEGO

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This Exhibit is solely for purposes of generally defining the lease premises, and is not intended to be, nor shall it be construed as, a waiver or limitation of any state interest in the subject or any other property.

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NO SCALE

SITE MAP

San Dieguito Lagoon Opening

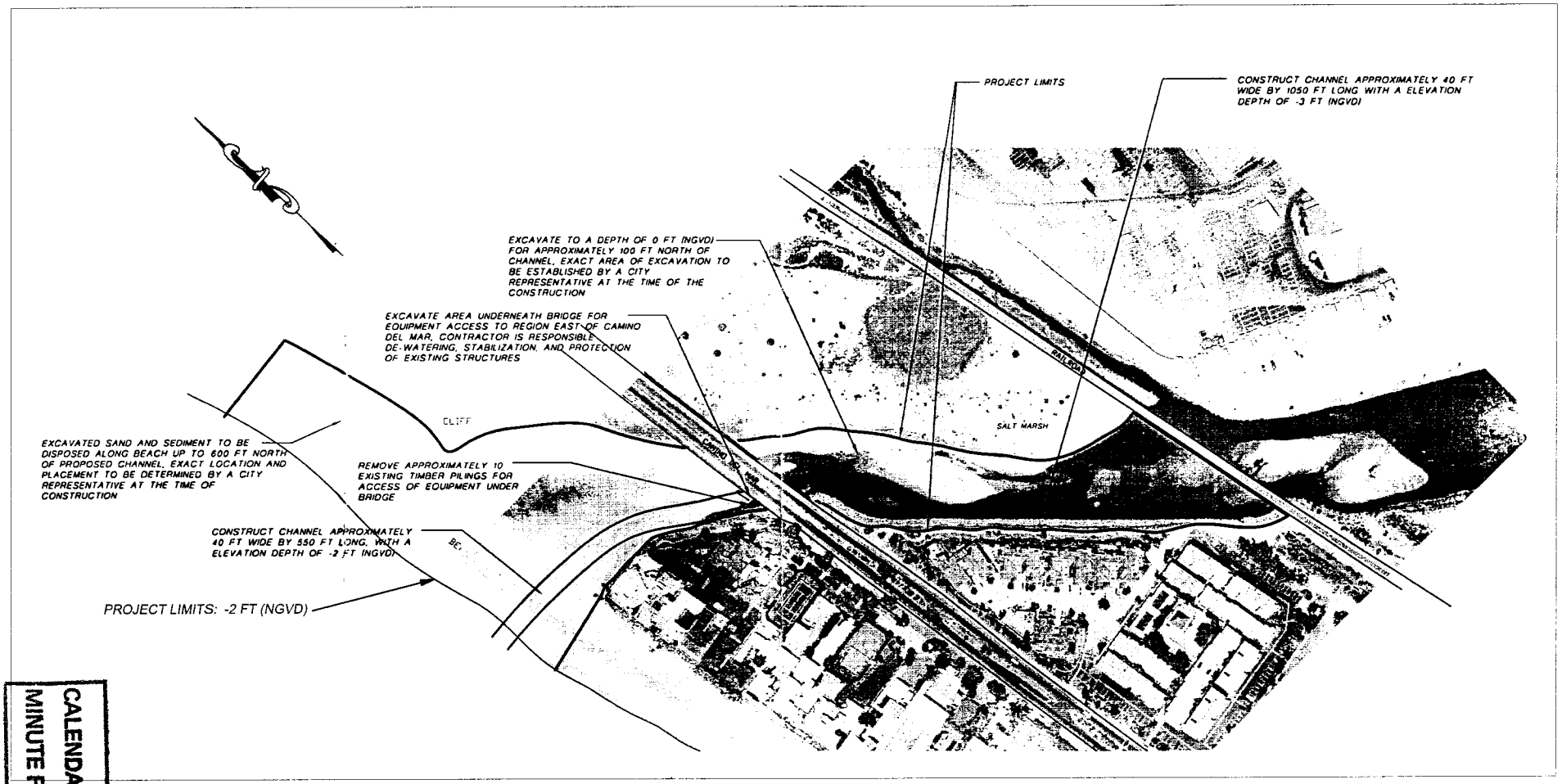

EXHIBIT A

SHEET 2 OF 2

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SAN DIEGUITO LAGOON OPENING
DEL MAR, SAN DIEGO CO.

MJB 11-09-00

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EXHIBIT B

LEGAL DESCRIPTION

A parcel of sovereign tide and submerged land in the bed of the San Dieguito River, situated in the City of Del Mar, County of San Diego, State of California described as follows:

All of those State owned sovereign tide and submerged lands located within the Project Limits as depicted on the attached Exhibit A.

END OF DESCRIPTION