MINUTE ITEM

This Calendar Item No. C40 was approved as Minute Item No. 40 by the California State Lands Commission by a vote of 3 to 0 at its 10/20/03 meeting.

CALENDAR ITEM
C40

A 78

S 39

PRC 8491

10/20/03
W 25779
J. Smith

GENERAL LEASE - PUBLIC AGENCY USE
AND
APPROVAL OF SUBLEASE

APPLICANT/SUBLESSOR:

San Diego Unified Port District
P.O. Box 120488
San Diego, California 92112-0488

SUBLESSEE:

San Diego Aircraft Carrier Museum,
a California Non-Profit Public Benefit Corporation
1355 North Harbor Drive
San Diego, California 92101

AREA, LAND TYPE, AND LOCATION:

SLC/Port Lease: 0.11 acres, more or less, of sovereign lands in San Diego Bay, San Diego, San Diego County.

Port/San Diego Aircraft Carrier Museum (SDACM) Sublease: The proposed lease between the Port and the SDACM includes 6.52 acres, more or less, of which 0.11 acres, more or less, is ungranted sovereign lands (area of sublease) and 6.41 acres, more or less, is granted sovereign lands, in San Diego Bay, San Diego, San Diego County. The only consideration before the Commission is the issuance of a lease for the 0.11-acre parcel. The Port's lease to the SDACM will, for convenience, be referred to hereafter as a "sublease".

AUTHORIZED USE:

Mooring of the USS Midway and development and operation of a non-profit museum of naval aviation history.

TERM:

SLC/Port Lease: 40 years, beginning December 1, 2003.

Port/SDACM Sublease: 40 years, the effective date of which is contingent upon satisfaction of the Port's lease conditions contained in the Option to Lease; but in no event shall the term of the sublease exceed the term of the Lease.

CONSIDERATION:

SLC/Port Lease: The public use and benefit, 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.

Port/SDACM Sublease: No base rent with 1) 4% of the gross income from the sale of food and beverages; provided, however, for food and beverages sold at the Leased Premises through another tenant of the Applicant, sublessee is not required to pay percentage rent on those sales if said tenant is required to report those sales and is required to pay percentage rent to the Applicant on those sales pursuant to the tenant's lease with the Applicant; and,

2) 20% of the gross receipts for any and all services or uses not specifically authorized under the terms of the sublease.

SPECIFIC PROVISIONS:

SLC/Port Lease:

Insurance:

Liability insurance with coverage of no less than $1,000,000 to be maintained through a combination of self-insurance (first $500,000) and commercial liability insurance.

Port/SUBLEASE:

Insurance:

Commercial General Liability with coverage of no less than $5,000,000 and Liquor Liability with coverage of no less than $1,000,000.

Bond:

SDACM will secure a Construction Performance Bond in the amount of the total estimated construction costs of the proposed improvements.

SDACM will provide a letter of credit to the Applicant in the amount of $500,000 guaranteeing removal of the USS Midway, if necessary, at no cost to the Applicant.

OTHER PERTINENT INFORMATION:

1. The Port owns the tide and submerged lands adjoining the lease premises.

2. The Applicant, the San Diego Unified Port District (Port), is proposing to enter into a lease agreement with the SDACM, a California Non-Profit Public Benefit Corporation, for the mooring of the USS Midway. The USS Midway was donated by the Navy to the SDACM pursuant to a contract entered into on August 28, 2003. The ship will be docked on the south side of Navy Pier 11A, near Seaport Village. The Navy has quitclaimed its interest in approximately 5.9086 acres consisting of Pier 11A and Building 11 to the Port. The Port accepted the quitclaim deed on August 26, 2003, pursuant to Ordinance 2261.

   The ship will be located almost entirely on property that the Port manages pursuant to their legislative grants. Of the total water area of approximately 6.52 acres, only 0.11 acres is located waterward of the pierhead line, and is the area that is the subject of this calendar item. The proposed lease area also covers the observation deck that will be available for public access free of charge.

   The Port will have to undertake repairs on Pier 11A prior to the ship's arrival in San Diego, tentatively scheduled for December. The Port will fund the repairs through a combination of grant money ($8 million from the Department of Boating and Waterways) and projected parking revenues of $100,000 year.

   The flight deck and hanger bay will display vintage aircraft as well as a memoribilia collection. The SDACM will conduct tours and organize overnight events for youth groups. In the future, the SDACM hopes to develop theaters on board to show movies highlighting the role of naval aviation in our country's military history.

   The SDACM will provide free public access to a designated public viewing area on the bow deck of the ship, which constitutes the proposed SLC/Port lease area. Separate access to the public viewing area will be provided.

Facilities to be constructed on a portion of Pier 11A in support of the ship include boarding stairs, management offices, a museum store, utility facilities and waste containers.

The Navy will continue to utilize Building 11 for government administrative operations pursuant to a four-year Tideland Use and Occupancy Permit.

3. An EIR was prepared and certified for this project by the San Diego Unified Port District. The California State Lands Commission staff has reviewed such document and Mitigation Monitoring Program adopted by the lead agency.

   Findings made in conformance with the State CEQA Guidelines (Title 14, California Code of Regulations, sections 15091 and 15096) are on file in the Sacramento Office of the Commission.

4. 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.

APPROVALS OBTAINED:

U.S. Army Corps of Engineers; California Coastal Commission; San Diego Unified Port District.

EXHIBITS:

A. Location and Site Map
B. Land Description

PERMIT STREAMLINING ACT DEADLINE:

N/A

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

FIND THAT AN EIR WAS PREPARED AND CERTIFIED FOR THIS PROJECT BY THE SAN DIEGO UNIFIED PORT DISTRICT AND THAT

THE COMMISSION HAS REVIEWED AND CONSIDERED THE INFORMATION CONTAINED THEREIN.

ADOPT THE FINDINGS MADE IN CONFORMANCE WITH TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTIONS 15091 AND 15096(h), ON FILE IN THE SACRAMENTO OFFICE OF THE COMMISSION.

ADOPT THE MITIGATION MONITORING PROGRAM ON FILE IN THE SACRAMENTO OFFICE OF THE COMMISSION.

SIGNIFICANT LANDS INVENTORY FINDING:

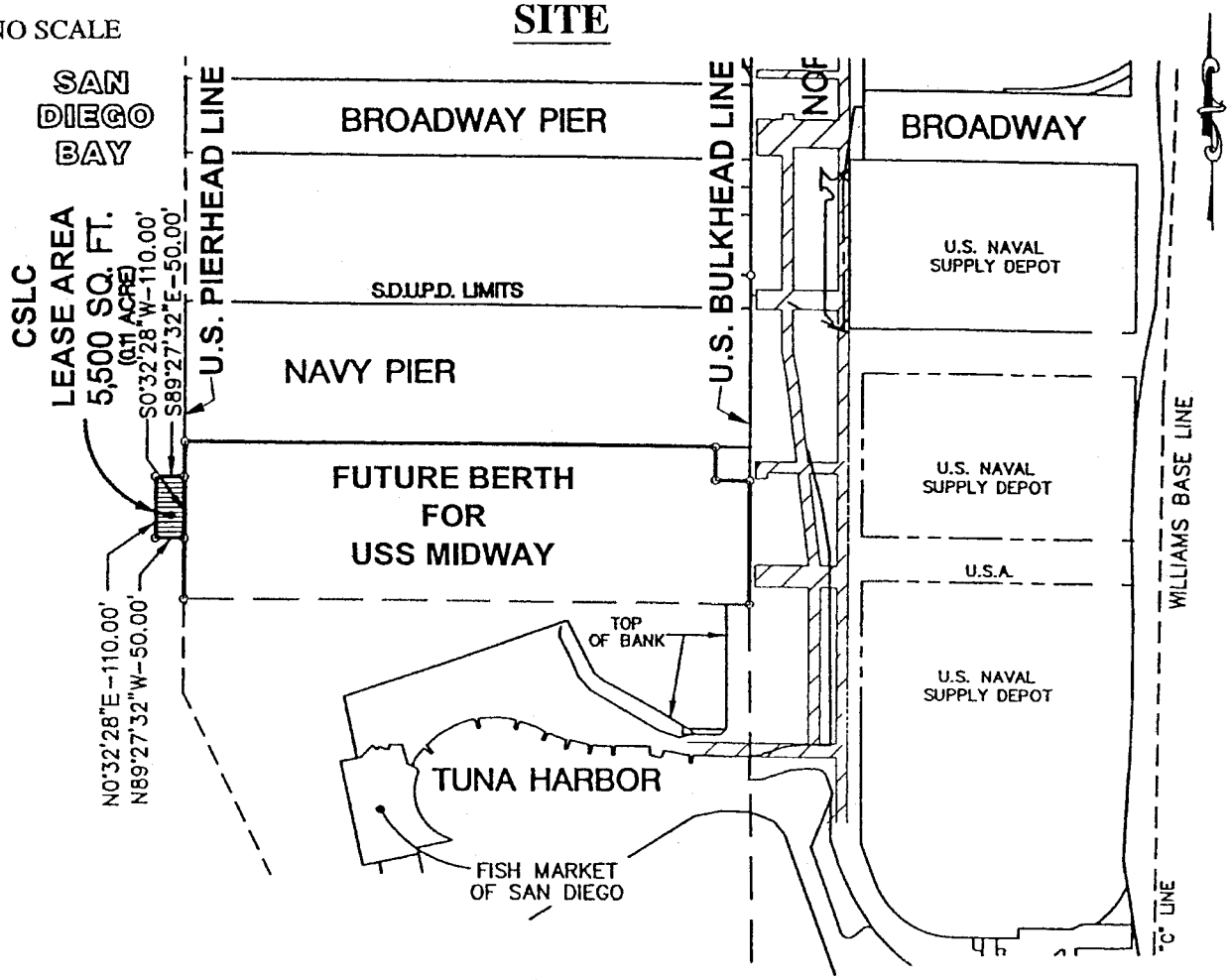
FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.

AUTHORIZATION:

AUTHORIZE ISSUANCE TO THE SAN DIEGO UNIFIED PORT DISTRICT OF A GENERAL LEASE - PUBLIC AGENCY USE, BEGINNING NOVEMBER 1, 2003, FOR A TERM OF 40 YEARS; AND APPROVE THE SUBLEASE BETWEEN THE SAN DIEGO UNIFIED PORT DISTRICT AND THE SAN DIEGO AIRCRAFT CARRIER MUSEUM, A CALIFORNIA NON-PROFIT PUBLIC BENEFIT CORPORATION, FOR THE MOORING OF THE USS MIDWAY AND DEVELOPMENT AND OPERATION OF A NON-PROFIT MUSEUM OF NAVAL AVIATION HISTORY ON THE LAND DESCRIBED ON EXHIBIT B ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF; CONSIDERATION BEING THE PUBLIC USE AND BENEFIT, 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; LIABILITY INSURANCE WITH COVERAGE OF NO LESS THAN $1,000,000 TO BE MAINTAINED THROUGH A COMBINATION OF SELF-INSURANCE (FIRST $500,000) AND COMMERCIAL LIABILITY INSURANCE.

NO SCALE

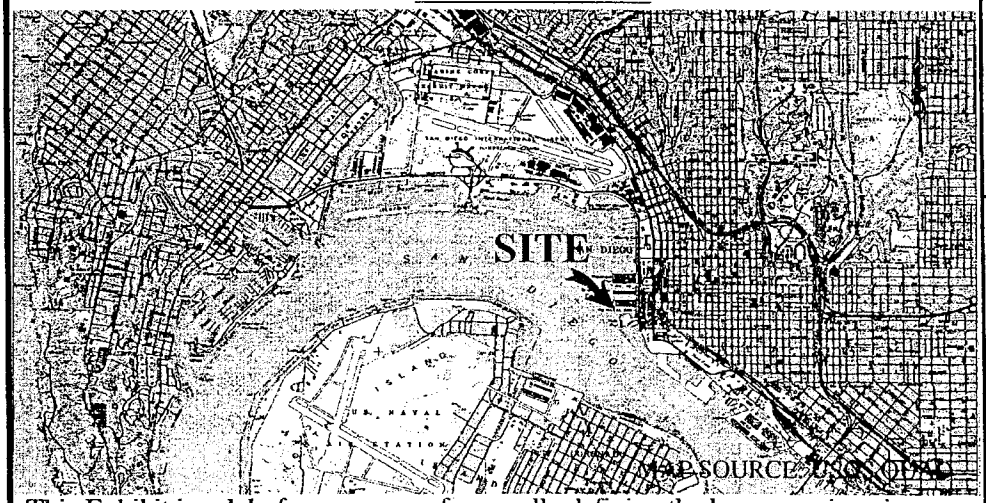
SITE



SAN DIEGO UNIFIED PORT DISTRICT
SAN DIEGO BAY, NAVY PIER

NO SCALE

LOCATION



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties 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.

Exhibit A

W 25779
GENERAL LEASE
PUBLIC AGENCY USE
SAN DIEGO BAY
SAN DIEGO COUNTY

JAK 10/03

EXHIBIT B

Legal Description for
SAN DIEGO AIRCRAFT CARRIER MUSEUM
LEASE
Parcel / Drawing No 019-092
Within Corporate Limits of San Diego

All that portion of submerged land in the bed of San Diego Bay, lying bayward of the United States Pierhead Line within the City of San Diego, State of California and more particularly described as follows:

Commencing at Station 473 on the U.S. Pierhead Line as said U.S. Pierhead line is shown on Miscellaneous Map 564 filed May 28,1976 in the Office of the County Recorder of San Diego County, California; thence along said U.S. Pierhead line North 0°32'28" East a distance 286.75 feet to the TRUE POINT OF BEGINNING of the CSLC Lease Area; thence leaving said U.S. Pierhead Line North 89°27'32" West a distance of 50.00 feet; thence North 0°32'28" East a distance of 110.00 feet; thence South 89°27'32" East a distance of 50.00 feet to a point on said U.S. Pierhead Line; thence along said U.S. Pierhead Line South 0°32'28" West a distance of 110.00 feet to the TRUE POINT OF BEGINNING, containing 5,500 square feet of water covered area.

All bearings and distances in the above legal description are grid, and based upon the California Coordinate System, Zone 6, N.A.D. 27.

Charles J. Sefkow
L.S. 7876; Expires 31 Dec. 2006
Survey Chief, Survey Section
San Diego Unified Port District

Oct 8, 2003
Date

LICENSED LAND SURVEYOR
CHARLES J. SEFKOW
PLS NO. 7876
EXP. 12/31/06
STATE OF CALIFORNIA