

MINUTE ITEM

7/24/75
ACS

21. TERMINATION OF NONCOMMERCIAL LEASE PRC 3376, TIDE AND SUBMERGED LAND IN SUNSET BAY, ORANGE COUNTY; DECON CORPORATION - WP 3376, PRC 3376.

During consideration of Calendar Item 19 attached, the matter was deferred on condition that Decon would stipulate by June 30, 1975, not to build on the subject premises pending review of this matter. In addition, the staff of the Commission and the Office of the Attorney General were instructed to further review the legal implications involved in the proposed action.

Mr. Winfield D. Wilson, attorney, Nossaman, Waters, Krueger, Marsh & Riordan, representing Decon Corporation, appeared and requested that the item be put over in order for Decon to review and further negotiate the matter with the State and the present upland owner.

M . Westcott Griswold, attorney, representing the Ford Foundation, the present upland owner, appeared and expressed the Foundation's favor in terminating the lease.

Attachment:

Calendar Item 19 (5 pages)

CALENDAR ITEM

19.

7/75
ACS
WP 3376

TERMINATION OF NONCOMMERCIAL LEASE PRC 3376

LESSEE: Decon Corporation
111 Elm
San Diego, California 92101

AREA, TYPE LAND AND LOCATION:
A 0.61-acre parcel of tide and submerged land
in Sunset Bay, Orange County.

INTENDED LAND USE:
Bulkheading and small boat slips for the use
of residents of multiple housing on adjacent
upland.

TERMS OF ORIGINAL LEASE:
Initial period: 15 years, from August 1, 1967.
Renewal options: 3 successive periods of
10 years each.
Surety bond: \$2,000.
Consideration: \$2,197.80 per annum.

BACKGROUND: By a letter application dated May 27, 1965,
Decon Corporation requested a 15-year lease
with 3 successive renewal options of 10 years
each. Decon advised that the State's land
would be used for the construction of small
boat slips, as ancillary facilities to proposed
construction of condominium-type residences
on the adjacent upland. Believing that the
applicant was acting in good faith, the staff
recommended to the Commission that a lease be
issued and it was approved on September 23,
1965.

On February 23, 1967, the above lease was further
amended to provide that the lease would commence
on start of construction of the boat slips,
but no later than August 1, 1967, and be
completed not later than August 1, 1968.

At its meeting on April 28, 1969, the Commission
approved, at the request of Decon, the assign-
ment of Decon's lease to California Federal
Savings and Loan Association.

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In the early part of 1970, Decon petitioned for:

1. reassignment of the lease to Decon;
2. an amendment to increase the number of slips;
3. an amendment to change the completion date to January 1, 1972;
4. hypothecation of the lease to the Ford Foundation; and
5. an assignment of the lease to F-S Investment Company.

The Commission, at its meeting on March 26, 1970, approved the requests of Decon.

On July 26, 1971, the Commission authorized an amendment to Decon's lease, again increasing the number of boat slips and extending the completion date of construction to January 1, 1974.

On February 6, 1974, the Commission rescinded Parts 4 and 5 of Minute Item No. 28 of its meeting of March 26, 1970, which had authorized the assignment of Decon's lease to F-S Investment Company.

CURRENT SITUATION:

Presently, the upland is in possession of the Ford Foundation, having been deeded to the Foundation by Decon in lieu of foreclosure proceedings. The facilities proposed to be constructed under the original lease were never constructed even though the lease terms were amended several times in order to allow Decon sufficient time to acquire capital for the proposed construction. Decon had completed the dredging operations and the placement of bulkheading, but they have never completed the construction of the proposed boat docking facilities nor the development proposed for the upland. The lease should now be terminated because Decon Corporation is no

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longer owner of the adjacent upland, and has failed to comply with the construction provisions and time limitations in the original lease as amended. The Ford Foundation being presently in possession of the upland is in the process of circulating a draft Environmental Impact Report for the development of a condominium complex which includes the proposed installation of floating boat docks for use of the residents. The Ford Foundation has indicated that it is desirable that a new lease between the Foundation and the State Lands Commission be negotiated. This is in the process of being done.

EXHIBITS: A. Notice of Termination. B. Location Map.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT DECON CORPORATION HAS FAILED TO COMPLY WITH THE PROVISIONS OF PARAGRAPH 5 OF NONCOMMERCIAL LEASE PRC 3376 AND THAT THEREFORE SAID LEASE IS IN BREACH.
2. TERMINATE LEASE PRC 3376, EFFECTIVE JULY 31, 1975, IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH 3 THEREOF;
3. AUTHORIZE THE ISSUANCE OF A NOTICE OF TERMINATION IN THE FORM AND CONTENT SHOWN ON EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF.
4. AUTHORIZE THE STAFF OF THE STATE LANDS DIVISION TO TAKE ALL APPROPRIATE AND NECESSARY ACTION TO TERMINATE LEASE PRC 3376.

Attachment: Exhibit "A"

EXHIBIT "A"

NOTICE OF TERMINATION BY LESSOR
Effective July 31, 1975

Recitals:

WHEREAS, the State Lands Commission of the State of California hereinafter referred to as "Lessor", and Decon Corporation hereinafter referred to as "Lessee", have entered into an Agreement executed on October 30, 1967, covering a 15-year term effective August 1, 1967 and identified as Lease No. 3376.1, Public Resources Code Series; and

WHEREAS, paragraph 5 of said Agreement as amended on August 24, 1971, provides that construction of facilities to be installed on the leased area shall be completed not later than January 1, 1974; and

WHEREAS, Lessee has failed to install facilities in accordance with the terms and conditions of Lease 3376.1, Public Resources Code Series, and that Lessee has failed in this obligation for a period exceeding one year, it has been determined that Lessee has failed to comply with the terms and conditions of the Lease; and

WHEREAS, Lessee is no longer the owner of the adjacent upland; and

WHEREAS, it has not been and is not now the policy of the Lessor to issue leases for idle landholding purposes; and

WHEREAS, paragraph 3 of said Agreement provides that failure to observe the terms, conditions, restrictions or time limitations shall be cause for repossession by Lessor.

NOW THEREFORE, be advised and notified that said Lease No. 3376.1,
Public Resources Code Series, is terminated effective July 31, 1975 because of
Lessee's failure to comply with the terms and conditions thereof.

STATE OF CALIFORNIA
STATE LANDS COMMISSION

By _____

Date _____