

4. TERMINATION OF LEASE PRC 3376, TIDE AND SUBMERGED LAND IN SUMSET BAY, ORANGE COUNTY; DECON CORPORATION - PRC 3376.

During consideration of Calendar Item 2 attached, Ms. Katherine E. Stone, Deputy Attorney General, presented a status report to the Commission on the subject matter.

Upon motion duly made and carried, the following resolution was adopted:

THE COMMISSION:

1. FINDS THAT DECON CORPORATION HAS FAILED TO COMPLY WITH THE PROVISIONS OF PARAGRAPHS 4, 5 AND 18 OF LEASE PRC 3376 AND THAT THEREFORE IS IN BREACH OF SAID LEASE.
2. AUTHORIZES THE ISSUANCE OF THE 30-DAY NOTICE TO PERFORM CONDITIONS OR QUIT IN THE FORM AND CONTENT SHOWN ON EXHIBIT "A", ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE.
3. AUTHORIZES THE RECORDING OF A WRITTEN NOTICE BY THE STATE IN ACCORDANCE WITH PARAGRAPH 16 OF SAID LEASE SHOULD DECON FAIL TO DELIVER A QUITCLAIM DEED TO THE STATE.
4. AUTHORIZES THE STAFF OF THE STATE LANDS COMMISSION AND THE ATTORNEY GENERAL TO TAKE ALL ACTIONS NECESSARY TO IMPLEMENT THE FOREGOING, INCLUDING LITIGATION.

Attachment:

Calendar Item 2 (7 pages)

CALENDAR ITEM

9/75
RCH
PRC 3376

2.

TERMINATION OF LEASE PRC 3376

LESSEE: Decon Corporation
111 Elm
San Diego, California 92101

AREA, TYPE LAND AND LOCATION:

A 0.610-acre parcel of tide and submerged land in Sunset Bay, Orange County.

INTENDED LAND USE:

The construction and maintenance of small boat slips appurtenant to the operation of a condominium situated on the adjacent upland.

BACKGROUND:

By a letter application dated May 27, 1965, Decon Corporation requested a 15-year lease with three successive renewal options of 10 years each for the purpose of the construction and maintenance of small boat slips appurtenant to the operation of a condominium situated on the adjacent upland and for a permit to remove approximately 40,000 cubic yards of material and to use 20,000 cubic yards thereof for the purpose of filling adjacent property owned by Decon. Said permit (PRC 3355) was separate and distinct from the provisions of the lease. Decon intended to complete the dredging and installation of a bulkhead on the adjacent uplands prior to commencement of the lease. Said permit was approved at the August 26, 1965, Commission meeting. Decon paid \$.05 per cubic yard royalty for the dredged materials. The Commission approved issuance of the lease on September 23, 1965.

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

A 73
S 36

CALENDAR ITEM NO. 2. (CONTD)

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

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.

The upland parcel was deeded to Ford Foundation on September 13, 1972, in settlement of a lawsuit and in lieu of foreclosure.

On February 6, 1974, the Commission rescinded items 4 and 5 noted above which had authorized hypothecation of the lease to the Ford Foundation and the assignment of lease to F-S Investment Company.

The July 24, 1975 Calendar Item No. 19 recommended termination of Decon's lease for failure to complete the construction of the boat slips.

At the request of Decon, the matter was put over in order for Decon to negotiate the matter with the present upland owner and present legal authority to the State regarding termination of said lease on the condition that such action would be without prejudice to the rights of the parties.

We are informed that there have been no negotiations between Decon and the owner of the upland parcel since 1972 when said parcel was deeded to the Ford Foundation.

CALENDAR ITEM NO. 2. (CONTD)

A memorandum of points and authorities submitted by Decon has been reviewed by staff of the State Lands Division and the Office of the Attorney General. Staff of the State Lands Division and the Office of the Attorney General have concluded that legal grounds exist to terminate said lease.

PERTINENT PROVISIONS OF THE LEASE:

Paragraph 4. "That the described land shall be used during the term hereof only for lawful commercial purposes; namely, the construction and maintenance not to exceed seventy-five (75) individual small boat slips appurtenant to the operation of a condominium situated on the adjacent upland" (as amended);

Paragraph 5. "That construction of facilities to be installed on the described land shall be started not later than August 1, 1967, and completed not later than January 1, 1974." (as amended);

Paragraph 18. "That time is the essence of each and all the terms and provisions of this agreement, and the terms and provisions of this agreement shall extend to and be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties hereto; if more than one Lessee is named herein the obligations of said parties herein contained shall be joint and several."

CURRENT SITUATION:

Presently, the adjacent upland parcel on which the condominiums were to be built is in possession of the Ford Foundation, having been deeded to the Foundation by Decon in settlement of a lawsuit and in lieu of foreclosure. Said adjacent upland parcel is unimproved; construction of the proposed condominiums has not begun. Decon has no remaining interest in the upland parcel. The dredging, the filling of the adjacent uplands and construction of the bulkhead has been completed pursuant to the separate permit. The bulkhead is situated on the upland parcel and forms the boundary line between the leased lands and the upland parcel now owned by the Ford Foundation.

CALENDAR ITEM NO. 2. (CONTD)

Paragraph 18 of the lease provides that time is the essence of each and all the terms and provisions of the lease. Decon has been advised and has indicated recognition of the policy of the Commission requiring strict compliance with provisions requiring that work be done in a timely fashion.

Pursuant to paragraph 4 of the lease, the land may be used during the term thereof only for lawful commercial purposes; namely, the construction and maintenance of 75 small boat slips appurtenant to the operation of a condominium. The covenant to use the lands for this purpose is a continuing covenant and every day's failure to commence construction for that purpose is a new breach. Decon cannot hold the lands as open space under the lease. It has not been and it is not now the policy of the State Lands Commission to issue leases for idle land holding purposes.

Since Decon is no longer owner of the adjacent upland, it cannot comply with paragraph 4 of the lease. Decon has had since September of 1972 to make arrangements with the owner of the upland parcel. No such arrangements have been made. For the reasons that Decon has failed to comply with paragraphs 4, 5, and 18 of said lease and has not the ability to comply with said paragraphs 4 and 5 of said lease and for each of these reasons, Staff Counsel and the Office of the Attorney General have concluded that legal grounds exist to terminate the Decon lease.

EXHIBITS: A. Thirty Day Notice to Perform Conditions or Quit.
 A1. Legal Description.
 B. Location Map.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT DECON CORPORATION HAS FAILED TO COMPLY WITH THE PROVISIONS OF PARAGRAPHS 4, 5 AND 18 OF LEASE PRC 3376 AND THAT THEREFORE IS IN BREACH OF SAID LEASE.
2. AUTHORIZE THE ISSUANCE OF THE 30-DAY NOTICE TO PERFORM CONDITIONS OR QUIT IN THE FORM AND CONTENT SHOWN ON EXHIBIT "A", ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE.

CALENDAR ITEM NO. 2. (CONTD)

3. AUTHORIZE THE RECORDING OF A WRITTEN NOTICE BY THE STATE IN ACCORDANCE WITH PARAGRAPH 16 OF SAID LEASE SHOULD DECON FAIL TO DELIVER A QUITCLAIM DEED TO THE STATE.
4. AUTHORIZE THE STAFF OF THE STATE LANDS COMMISSION AND THE ATTORNEY GENERAL TO TAKE ALL ACTIONS NECESSARY TO IMPLEMENT THE FOREGOING, INCLUDING LITIGATION.

Attachments: Exhibits A and A1.

EXHIBIT "A"

THIRTY DAY'S NOTICE TO PERFORM CONDITIONS OR QUIT

Mr. Cedric Sanders, President
Decon Corporation
111 Elm
San Diego, California

Dear Mr. Sanders:

You are hereby notified that Decon Corporation is in violation of the terms of its lease PRC 3376 as amended, by which it became a tenant in possession of a 0.610-acre parcel of tide and submerged lands situated in Sunset Bay, Orange County, and more particularly described in Exhibit A1, attached hereto and made a part hereof by reference, in that Decon Corporation was required to use the described land only for lawful commercial purposes; namely the construction and maintenance of not to exceed seventy-five (75) individual small boat slips appurtenant to the operation of a condominium situated on the adjacent upland, and no such use has been made of said land after more than eight years of occupancy. This is a notice to Decon Corporation to make said use of said land within thirty (30) days of receipt of this notice or to deliver up and surrender the premises to the State Lands Commission. If said action is not taken to perform the condition required by Decon, then the State Lands Commission hereby elects to declare said lease forfeited and terminated. Copies of the Calendar Item and Minute Item authorizing this notice are attached hereto and made a part hereof by reference as Exhibits 2 & 3.

DATED: _____, 1975

STATE OF CALIFORNIA
STATE LANDS COMMISSION

By _____

Attachments (Exhibits 2 & 3)

cc: Windfield D. Wilson
445 South Figueroa Street
13th Floor
Los Angeles, California 90017

(Attachments 2 & 3 are on file in the office of the State Lands Commission and by reference made a part hereof.)

EXHIBIT "A1"

PRC 3376

Those portions of fractional section 19, T 5 S, R 11 W, and of fractional section 24, T 5 S, R 12 W, SBM, in the City of Seal Beach, County of Orange, State of California, described as follows:

BEGINNING at the most easterly corner of tideland location no. 141, as shown on a map filed in Book 3, Page 45, of Records of Surveys, Records of Orange County; thence along the northeasterly line thereof N 73° 45' 00" West 545.24 feet; thence N 16° 15' 00" East 50.00 feet to a point in a line parallel with and distant northeasterly 50.00 feet measured at right angles to said northeasterly line; thence along said parallel line S 73° 45' 00" East 518.30 feet; thence S 12° 03' 54" East 56.80 feet to the POINT OF BEGINNING.

Containing 0.610 acre.

END OF DESCRIPTION