

MINUTE ITEM

11/78
Pinson

50. APPROVAL OF COMPROMISE LEASE AGREEMENT IN LIEU OF
LITIGATION - W 21024

Calendar Item 50, attached, was pulled prior to the meeting.

Attachment: Calendar Item 50 (4 pages)

A 11

S 7

CALENDAR ITEM

50.

11/78
W 21024
Pinson

APPROVAL OF COMPROMISE LEASE AGREEMENT
IN LIEU OF LITIGATION

PROSPECTIVE LESSEE:

The Atchison, Topeka and Santa Fe
Railway Company
121 East Sixth Street
Los Angeles, California 90014

AREA, TYPE LAND AND LOCATION:

2.952 acres, more or less, of tide and
submerged land in San Francisco Bay, Contra
Costa County, as depicted in Exhibit "A"
hereto.

BACKGROUND INFORMATION:

On September 23, 1975, The Atchison, Topeka
and Santa Fe Railway Company (Santa Fe),
applied to the Commission for a permit
to dredge on tide and submerged land adjacent
to an existing freight slip used exclusively
by Santa Fe on San Francisco Bay at Point
Richmond, Contra Costa County. The Commission
subsequently issued the permit to dredge
the said adjacent area, but on November
3, 1975, the staff informed Santa Fe that
it would be necessary for it to obtain
a lease for its exclusive occupation of
the sovereign land used for the freight
slip. Santa Fe disputed the Commission's
authority to lease and contended that it
may occupy and use the subject area without
the necessity of State Lands Commission
approval.

Santa Fe and the Commission's staff spent
considerable time in preparation, evaluation
and discussion of the respective legal
positions of both parties. Thereafter,
both agreed that a compromise lease would
be preferable to litigation. The staff
and Santa Fe thereupon negotiated the proposed
lease agreement which the staff today re-
commends that the Commission approve.

A 11

S 7

CALENDAR ITEM NO. 50 . (CONTD)

The proposed lease is on file in the offices of the Commission and contains the following noteworthy provisions:

1. The lease term is 49 years, from November 3, 1975, through November 2, 2024, with a present annual rental of \$4,160 with the right of the Commission to review the rent at 5-year intervals. The lease provides that Santa Fe shall, by December 15, 1978, pay \$16,640 to the Commission for rental for the period November 3, 1975 through November 2, 1979.
2. Exhibit "C" of the lease is a Certificate of Self-Insurance which the staff believes meets the Commission's general requirement of liability insurance. The lease does provide, however, that the Commission may from time to time review the adequacy of said certificate and thereupon request additional insurance from Santa Fe should the certificate be then found to be inadequate.
3. The staff, in recognition of Santa Fe's status as a major corporate landholder, has concluded that a surety bond for performance need not be required for this lease.
4. The proposed lease provides that neither the facts nor the contents of the lease shall in any way be construed to prejudice the legal position of either the State or Santa Fe.
5. The proposed lease provides that, the lease notwithstanding, each party retains the right to, at any time, litigate the underlying legal questions at its respective option.
6. The proposed lease provides that in the event of litigation or in the event of termination or expiration of the lease the State may not force Santa Fe to abandon the leased area unless and until such abandonment has been

CALENDAR ITEM NO. 50. (CONTD)

authorized by the Interstate Commerce Commission. The proposed lease additionally provides that any judgement of the I.C.C. is appealable to any appropriate court.

7. The subject freight slip has been in existence for many years, is maintained in an acceptable state of repair and there is no evidence of record to show environmental degradation. The issuance of the lease falls within the purview of 2 Cal. Adm. Code 2907, Class 1(b), which exempts such facilities from the EIR requirements of CEQA.
8. The freight slip is situated on lands that have been identified as possessing significant environmental values pursuant to P.R.C. 6370.1, and is classified in a use category, Class C, which authorizes Multiple Use. Staff review indicates that there will be no significant effect upon the identified environmental values.

EXHIBIT: A. Location Map.

IT IS RECOMMENDED THAT THE COMMISSION:

1. DETERMINE THAT AN EIR HAS NOT BEEN PREPARED FOR THIS ACTIVITY AS SUCH REPORT IS NOT REQUIRED UNDER THE PROVISIONS OF P.R.C. 21085, 14 CAL. ADM. CODE 15100 ET SEQ., AND 2 CAL. ADM. CODE 2907.
2. FIND THAT GRANTING OF THE LEASE WILL HAVE NO SIGNIFICANT EFFECT UPON ENVIRONMENTAL CHARACTERISTICS IDENTIFIED PURSUANT TO SECTION 6370.1, OF THE P.R.C.
3. AUTHORIZE ISSUANCE OF THE SUBJECT PROPOSED LEASE WITH THE ATCHISON, TOPEKA AND SANTA FE RAILWAY ON FILE IN THE OFFICES OF THE COMMISSION.

