

MINUTE ITEM

This Calendar Item No. 25  
was presented at the meeting held on  
the 25 day of December 1978  
at its 3 meeting of 3  
to 0 at its 12/20/78  
meeting.

CALENDAR ITEM

25.

12/78  
W 21024  
Pinson  
PRC 5617

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.

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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

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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.

EXHIBIT A, SITE MAP

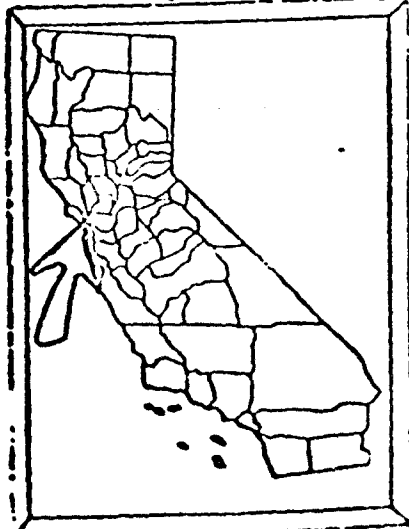
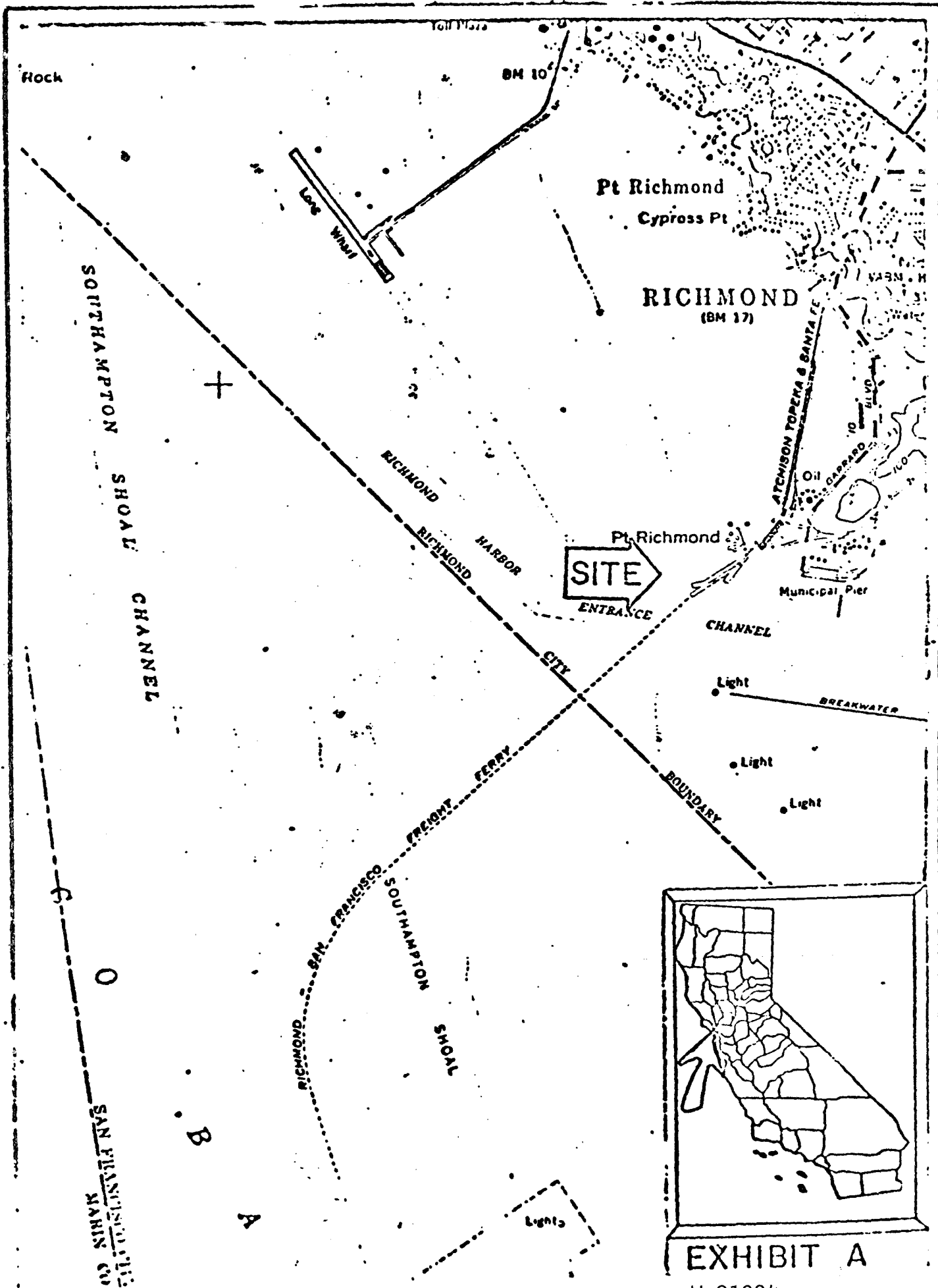


EXHIBIT A

N 21024