

# MINUTE ITEM

This Calendar Item No. 1  
 was approved as Minute Item  
 No. 1 by the State Lands  
 Commission by a vote of 2  
 to 0 at its 10/8/82  
 meeting.

## MINUTE ITEM

1

10/8/82  
 RW 22581  
 Horn

During consideration of Calendar Item 1 attached, N. Gregory Taylor, Assistant Attorney General, outlined the terms of the lease amendment requested by staff. Mr. Taylor then indicated some questions had been raised to staff recently on the definition of legal expenses. Mr. Taylor indicated the Port of Long Beach's understanding that the term "legal expenses" meant routine legal expenses and was not intended to include funding disputes which may arise because of provisions of the lease.

Mr. Henry Pollard, representing the Wrather Corporation, stated that this matter had not been raised in Wrather's negotiations with the Port, but that Wrather would have no objection to some clarifying language.

After much discussion and upon motion duly made by Commission-Alternate Ackerman and seconded by Chairman Cory, the recommendation in Calendar Item 1 was amended as follows:

### THE COMMISSION:

1. FINDS THAT APPROVAL OF THE SECOND AMENDMENT TO THE LEASE BETWEEN THE CITY OF LONG BEACH (THROUGH ITS HARBOR DEPARTMENT) AND WRATHER PORT PROPERTIES, LTD., APPROVED BY THE CITY ON OCTOBER 4, 1982, IN SO FAR AS IT RELATES TO MATTERS APPROVED AT THIS MEETING, IS NOT A PROJECT WITHIN THE MEANING OF CEQA AND THE STATE CEQA GUIDELINES AND THEREFORE DOES NOT REQUIRE THE PREPARATION OF ENVIRONMENTAL DOCUMENTS.
2. FINDS THAT THE ABOVE-DESCRIBED SECOND AMENDMENT TO THE LEASE, EXCEPT THE PROVISIONS RELATING TO PERMITTED USES AND WITH THE UNDERSTANDING THAT THE TERM "LEGAL ANALYSES" IN PARAGRAPH 9 OF THE SECOND AMENDMENT DOES NOT INCLUDE LEGAL EXPENDITURES ON BEHALF OF TENANT BY WRATHER PROPERTIES DEVELOPMENT, INC. OR WRATHER CORPORATION CONCERNING LITIGATION BETWEEN TENANT AND THE CITY OF LONG BEACH OR THE STATE LANDS COMMISSION INVOLVING THE PROVISIONS OF THIS LEASE AND ALL AMENDMENTS THERETO, IS CONSISTENT WITH ITS PREVIOUS FINDINGS REGARDING THE LEASE MADE ON NOVEMBER 17, 1980 (MINUTE ITEM 1) AND JANUARY 26, 1981 (MINUTE ITEM 19), AND THAT THE PROVISIONS OF PRC 6701 HEREBY APPLY TO SAID SECOND AMENDMENT, PROVIDED THAT NOTHING IN THESE FINDINGS SHALL APPLY TO PARAGRAPHS 10 AND 11 OF THE SECOND AMENDMENT RELATING TO PERMITTED USES.

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CALENDAR ITEM

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APPROVAL OF SECOND AMENDMENT TO LEASE  
BETWEEN THE CITY OF LONG BEACH  
(THROUGH ITS HARBOR DEPARTMENT)  
AND WRATHER PORT PROPERTIES, LTD.,  
EXCEPT AS TO PERMITTED USES

BACKGROUND:

At its meetings on November 17, 1980 and January 26, 1981 (Minute Items 1 and 19 respectively) the Commission made the findings provided for in P.R.C. Section 6701 et seq. as regarding the lease between Wrather Port Properties, Ltd. (Wrather) and the City of Long Beach (through its Harbor Department) (City). On March 23, 1982 (Minute Item No. 28) the Commission found that the First Amendment to the lease was consistent with its previous findings on the lease and determined that the provisions of PRC 6701 apply to the first Amendment as well as the basic lease.

The Commission's findings were made with regard to the lease for the Queen Mary site and the site of the HK-1 (Spruce Goose) and specifically excluded the development of the option areas (approximately 235 acres) along Pier J and around the Queen Mary.

In accordance with the provisions of the lease, Wrather has submitted a plan of development for the 235-acre option area. The Harbor Department approved, in concept, certain elements of the plan; however, it did not approve certain uses it felt were not permitted under the lease, the Port Master Plan or City zoning. The City, Wrather, and staff of the Commission have met regarding the planned uses at the site and have not yet reached a consensus on the land use issues.

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CALENDAR ITEM NO. C 1 (CONTD)

CURRENT SITUATION:

At its meeting on October 4, 1982, the Board of Harbor Commissioners of the City of Long Beach approved the execution of a second amendment to the Wrather/City lease. The latest amendment accomplishes a number of modifications to the lease including:

- a. Lease Amendment Paragraph 3 - Option Area-Parcel IV. This amendment gives the City until December 31, 1989 to elect to use part of the option area for Thums development. This option currently expires on December 31, 1982.
- b. Paragraph 4 - Extension of Term of Option to Lease. Originally a 5-year option for Wrather to lease the option area which expired in 1985. New extension gives Wrather until December 31, 1988 to exercise option. Also provides that if Wrather exercises option on an area of 14 acres or more it waives its right to exercise its option to terminate the lease in its entirety.
- c. Paragraph 5 - Early Termination of Lease. Originally Wrather was granted an option to terminate the lease in year 5 (1985). New provisions provide that such option may be exercised any time during the period of January 1, 1986 through December 31, 1989, still subject to the conditions precedent under the original lease.
- d. Paragraph 6 - Option to Purchase Queen Mary Assets. Originally Wrather was granted an option to purchase the Queen Mary assets if it so elected upon termination of the lease. Now if it terminates for any reason during the period of January 1, 1986 through December 31, 1989 it must purchase the Queen Mary assets.

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- e. Paragraph 7 - Recoupment of Energy Cost Credit. Originally Wrather was to repay deferred excess energy cost credit (up to two million dollars) in equal installments beginning in lease year 6 through lease year 16. The recoupment period has now been set to begin at lease year 7 through 17.
- f. Paragraph 8 - Condition of Premises. Originally Wrather could retain from percentage rent payable to the City  $\frac{1}{2}$  the cost to Wrather for painting and refurbishing the Queen Mary. Repayment was to begin in lease year 6 through 16. The recoupment period has now been set to begin at lease year 7 through 17.
- g. Paragraph 9 - Rental Deferment and Recoupment. A new lease provision. It provides that Wrather may retain all rent in excess of \$50,000 annually (beginning when this amendment becomes effective and continuing through December 31, 1988 or until a year after Wrather receives rent or other income from option area development). The deferred rental is to be paid back in six annual installments beginning in 1989.

Of importance now is the credit the City is allowing Wrather to apply toward deferred rental. Wrather may credit expenditures for planning, environmental studies, permit applications and processing, economic and legal analyses, engineering, design project management and other matters relating to Wrather's plan. In addition, and of great significance, Wrather may credit amounts expended after September 30, 1982 but prior to December 31, 1988 in connection with any construction on the premises (other than on the Queen Mary) or on the option area.

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Exhibit "E" to the lease presently provides that Wrather shall pay fixed minimum rent to the City of over seven million dollars during the period of this rental deferment. In addition, Wrather is supposed to pay various percentages of gross income for activities on the lease premises as such exceed the fixed minimum rent. Both fixed minimum rental and percentage rental are subject to some deferment with repayment due in lease years 7 through 17.

As a result of the credits to be allowed Wrather in the newly added rent deferment provision, it is likely that no deferred rent will be paid to the City by Wrather.

In essence, the City is "contributing" rental of at least seven million dollars to Wrather as an inducement to assure that Wrather will continue with its efforts to develop its project and to incur the expenses related thereto. In any event, the Queen Mary will continue to show a positive cash flow to the tidelands trust fund, of \$50,000 a year during the deferment period.

- h. Paragraph 10 - Permitted Uses. A new provision. The City has approved two additional uses; (i) hotel rooms or accommodations to be developed as part of a time share project wherein the right of occupancy is not coupled with an estate in real property; and (ii) office buildings; staff is still studying these land use issues and will report its recommendations to the Commission at a later date.

4. Paragraph 11 - Conditions Precedent

This provision lists the events that must be satisfied before the "permitted uses" provisions of paragraph 10 become effective. Included are:

CALENDAR ITEM NO. 01 (CONT'D)

- i) State Lands Commission findings under PRC 6701 for permitted uses.
- ii) Coastal Commission certification of amended or updated Port Master Plan.
- iii) Adoption of new City zoning permitting the uses in the option area.
- iv) Reimbursement agreements for City and State to recover EIR costs.
- v) Certified final environmental documentation.
- vi) A new lease amendment between City/Wrather relating to rental for the permitted uses.

Staff has reviewed the various modifications and finds them, with the exception of paragraphs 10 and 11 relating to permitted uses and conditions precedent, to be consistent with generally accepted commercial lease practices. "The rental deferment with substantial credits granted by lease paragraph 9 while appearing substantial on its face is, none-the-less, reasonable in this instance. Historically, the City has lost millions of dollars on the Queen Mary venture. The advent of Wrather has turned around what was a drain on tideland trust revenues into a net positive cash flow to the tidelands trust fund. The proposed Wrather Queen's Bay development is anticipated to produce significant rental revenues to the City. In anticipation of revenues exceeding 1.4 billion dollars during the life of the lease, the offsetting rentals through amended lease paragraph 9 is reasonable." The permitted uses encompass activities not traditionally considered consistent with the general public trust. As mentioned above, Staff is continuing to research the matter and will continue to meet with Wrather and the City regarding permitted uses. The matter of conceptual approval for permitted uses will be brought to the Commission at a subsequent meeting.

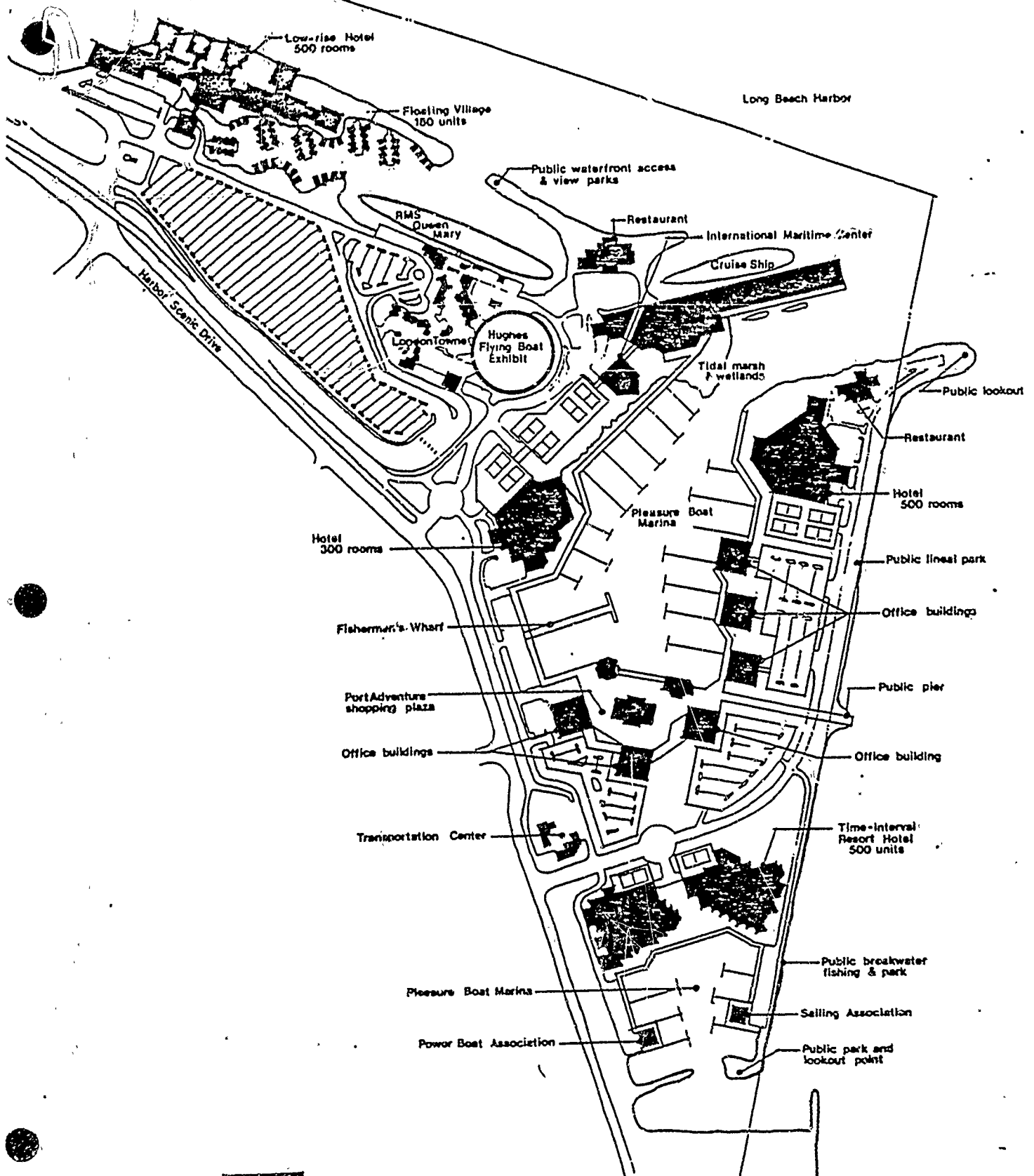
Staff is recommending that the Commission approve the second amendment to the lease, excepting from such approval the matter of permitted uses and conditions precedent.

EXHIBITS: A. Plat of Development Area (Draft)

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT APPROVAL OF THE SECOND AMENDMENT TO THE LEASE BETWEEN THE CITY OF LONG BEACH (THROUGH ITS HARBOR DEPARTMENT) AND WRATHER PORT PROPERTIES, LTD., APPROVED BY THE CITY ON OCTOBER 4, 1982, IN SO FAR AS IT RELATES TO MATTERS APPROVED AT THIS MEETING, IS NOT A PROJECT WITHIN THE MEANING OF CEQA AND THE STATE CEQA GUIDELINES AND THEREFORE DOES NOT REQUIRE THE PREPARATION OF ENVIRONMENTAL DOCUMENTS.
2. FIND THAT THE ABOVE-DESCRIBED SECOND AMENDMENT TO THE LEASE, EXCEPT THE PROVISIONS RELATING TO PERMITTED USES, IS CONSISTENT WITH ITS PREVIOUS FINDINGS REGARDING THE LEASE MADE ON NOVEMBER 17, 1980 (MINUTE ITEM 1) AND JANUARY 26, 1981 (MINUTE ITEM 19), AND THAT THE PROVISIONS OF PRC 6701 HEREBY APPLY TO SAID SECOND AMENDMENT, PROVIDED THAT NOTHING IN THESE FINDINGS SHALL APPLY TO PARAGRAPHS 10 AND 11 OF THE SECOND AMENDMENT RELATING TO PERMITTED USES.

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## EXHIBIT "A" QUEEN'S BAY

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Future development  
by THUMS