

A regular meeting of the State Lands Commission was held in Room 5102 State Capitol, Sacramento, California, on October 24, 1951, at 10.15 a.m.

Present: Honorable James S. Dean, Chairman
Honorable Thomas H. Kuchel, Member

Absent: Honorable Goodwin J. Knight, Member

Staff Members in Attendance:

Rufus W. Putnam, Executive Officer
J. Stuart Watson, Assistant Executive Officer
A. P. Ireland, Supervising Land Title Abstractor
Frank W. Porter, Accounting Officer
Julia T. Stahl, Secretary

In Attendance for Item No. 3 Only (re Crescent City Harbor):

Chester E. Brinker, Executive Officer, Crescent City Harbor Commission
William Buckner, Member of the Crescent City Harbor Commission
J. L. Frickett, Member of the Crescent City Harbor District
Jay E. Jordan, Counsel for Crescent City Harbor District
E. J. Lessard, Chairman of the Crescent City Harbor Commission
J. H. Jenkins, Representing Thomas Crowley
Robert E. Keane, Representing the Crescent City Harbor Company
A. J. O'Connor, Attorney, Representing the Crescent City Harbor Company and Thomas Crowley
Louis L. Phelps, Attorney, Representing A. K. Wilson, upland owner

1. UPON MOTION DILY MADE AND UNANIMOUSLY CARRIED, THE MINUTES OF THE MEETING OF SEPTEMBER 20, 1951, WERE APPROVED AND CONFIRMED AS SUBMITTED.

2. UPON MOTION DILY MADE AND UNANIMOUSLY CARRIED, IT WAS DECIDED TO DEFER SETTING A DATE FOR THE NEXT COMMISSION MEETING.

3. (APPROVAL OF RIVER TERMINALS COMPANY LEASE WITH CRESCENT CITY HARBOR DISTRICT, LEASE P.R.C. 502.) On February 10, 1950 (Minute Item 53, Page 1076), the State Lands Commission authorized the issuance of a lease of approximately 108 acres of tide and submerged lands in Crescent City Harbor to the Crescent City Harbor District. This lease required, among other things, that leases, permits, or easements issued by the Harbor District have the prior written approval of the State.

The Harbor District has been negotiating a lease with River Terminals Company, of Vancouver, Washington, which incorporates:

1. The Citizen's Wharf, which was built by local funds and is under the jurisdiction of the District. The lessee is to repair, extend, and operate this wharf.
2. An area extending about 600 feet along the shore on each side of the wharf and into the harbor to a distance of not to exceed

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660 feet seaward of the Ordinary High-Water Mark. This area is to be reclaimed and used as working and storage space.

3. The District agrees not to permit the erection or operation of a competitive facility as long as those furnished by the lessee serve all commerce offered.
4. The District is to receive a rental of 5% of all tariffs and other charges made by lessee.
5. Lease is to be for a term expiring December 31, 1983.

In applying for approval by the State Lands Commission of the lease with the River Terminals Company, the Harbor District has requested the Commission to amend the lease it has with the State (Lease P.R.C. 502) by deleting Sections 12 and 13 therefrom, and by amending Section 21 thereof, in order to facilitate the consummation of the lease with the River Terminals Company.

Section 12 of Lease P.R.C. 502 reads as follows:

"That the District shall not cause or permit the construction of any wharf, pier, bulkhead, jetty, sea-wall, breakwater, groin or other structure in the leased premises, seaward of the ordinary high water mark without obtaining written approval of the owner of the upland immediately adjoining such structure, or the written approval of said owner's lessee or permittee;"

Section 13 reads:

"That subject to the provisions of Section 5 hereof the District shall extend to the owner of the upland littoral to the ordinary high water mark, or to said owner's lessees or permittees, the right to lease the tide and submerged land in Crescent City Bay seaward of said upland provided such lease is for the purposes of commerce, navigation, fisheries and public recreation;"

These clauses were inserted in Lease P.R.C. 502 in order that the rights of the upland owner would continue to be protected in the same manner they would have been had the State not leased the tide and submerged lands to the District. In this case the District is not the upland owner; however, it has filed condemnation proceedings to acquire the requisite uplands. Protracted negotiations looking towards acquisition by agreement have been without result to date, and the condemnation proceedings, which had been suspended for a while, have been ordered resumed by the District.

The Commission's staff believes it to be unwise to depart from long-established practice in order to facilitate the consummation of a single project such as this. By making the approval of the proposed lease subject to acquisition by the District of the necessary upland ownership or rights, it will not be necessary to delete Sections 12 and 13 of Lease P.R.C. 502.

Section 21 of Lease P.R.C. 502 reads:

"That the District or the heirs and assigns of, or any successor in interest thereto, shall have the right to renew this agreement for two (2) periods of ten (10) years each upon such reasonable terms and conditions as the State, or any successor in interest thereto, might impose."

The District desires to have this amended so that the expiration date will be February 10, 1985, thus accomplishing, in effect, the two renewals of ten years each, permitted by Section 21, years in advance of when they would otherwise be negotiated. The purpose of this longer initial period is to permit a slower rate of amortization of the investments to be made by the River Terminals Company for which the latter will guarantee a minimum expenditure of \$100,000.

It is the belief of the Commission's staff that an investment of this amount would justify the granting of the request for a longer period of time than that now fixed by Section 21. However, if in so doing all of the provisions of Lease P.R.C. 502 are to be renewed now for an additional twenty years, all other terms of the lease should be reviewed to make certain that they are acceptable for that extended period. This has been done.

Section 2 of Lease P.R.C. 502 provides:

"That the District shall pay to the State as consideration for the granting of this agreement, a rental sum which shall not exceed \$1500 per year and be payable in accordance with the following schedule:

\$500 on the date of execution of the lease and on or before the 10th day of February of each year during the term hereof a sum of \$500 plus 50 per cent of the gross income to the District from sub-leases of bare lands in the demised premises, said 50 per cent to apply only to gross income in excess of \$1,000.00 per year."

Questions have arisen as to whether certain operations of the District have constituted "sub-leases of bare lands". In the proposed lease with River Terminals Company, the same questions are expected to arise. In the opinion of the staff, the District will be earning sufficient funds to be able to afford to pay the ceiling rate of \$1500 per year from now on. Accounting procedures will be negligible if a flat rate is used. It is therefore proposed that the District pay the State a flat rental of \$1500 a year beginning with the next anniversary date of the lease.

A recommendation was made that the Commission authorize the Executive Officer to approve the lease filed with the Commission on October 23, 1951, by and between the Crescent City Harbor District and the River Terminals Company, subject to the condition that the Crescent City Harbor District acquire the necessary upland ownership or rights or otherwise satisfy the requirements of Section 12 of Lease P.R.C. 502.

the approval to be subject to all other conditions of said lease; it was further recommended that the Executive Officer be authorized to execute amendments to Lease P.R.C. 502 so that Section 2 shall provide for a rental of \$1500 per year, payable in advance beginning February 10, 1952, and so that Sections 1 and 21 shall provide for a termination date of February 10, 1958.

The following persons appeared before the State Lands Commission and gave their arguments for and against approval by the Commission of the granting of a lease by the Crescent City Harbor Commission to the River Terminals Company:

Charles E. Brinker, Executive Officer of the Crescent City Harbor Commission, requested approval of the lease, stating that the District, as representatives of the taxpayers, do not feel that they are able to put in an expensive installation at this time; that the increasing number of mills and increased mining, as well as the rapid development of the county, make the need for low-cost water transportation urgent; that the lease with the River Terminals Company has the approval of the overwhelming preponderance of citizens of Del Norte County; that the lease would provide a public utility open to all on equal terms.

Mr. A. J. O'Connor, Attorney, representing the Crescent City Harbor Company, Robert E. Keane, and Thomas Crowley, opposed approval of the lease on the grounds that it is in direct violation of a contractual agreement of March 23, 1951, between the Crescent City Harbor Commission and the Crescent City Harbor Company, in which the Commission agreed not to condemn the uplands contiguous to the property covered by the lease being considered. Mr. O'Connor stated that if the lease with the River Terminals Company is approved, the Crescent City Harbor Commission would not be able to carry out the terms of its contractual agreement with the Crescent City Harbor Company. During the presentation of his arguments, the various properties in question were pointed out on a map by Mr. O'Connor.

Mr. O'Connor also stated that the Crescent City Harbor Company feels that it is able to go ahead with developing the property in question, that there is no need for bringing in an outside company to do so, but that it has met with opposition that has prevented it from making any developments.

Mr. O'Connor requested and was given permission to file written opposition to the approval of the lease.

Messrs. Dean and Kuebel advised that Mr. O'Connor's protest was based on a question of legality over which the State Lands Commission has no jurisdiction, and that it should be referred to the District Attorney or the Attorney General.

Mr. Louis L. Phelps, Attorney, representing A. K. Wilson, an upland owner, endorsed what Mr. O'Connor had said, stated that Mr. Wilson still owns Block 6 of the tract that will be affected by the lease, and that he understands that the River Terminals Company is not qualified to do business in California. He requested an opportunity to go over the lease as amended, on behalf of his client, so that he can more fully present objections as to its merits. Permission to file objections on the merits was given.

Mr. Jay E. Jordan, Counsel for the Crescent City Harbor District, stated that the proposed lease covers only State tidelands, and not any uplands; that he had been in consultation with the office of the Attorney General in San Francisco in connection with the lease, and that that office had not raised any objections to it.

Mr. Robert E. Keane, appearing on behalf of the Crescent City Harbor Company, opposed approval of the lease, stating that the District has thrown up a series of "straw men" to cloud the issue and to prevent any action or development by the Crescent City Harbor Company.

Mr. J. H. Jenkins, representing Thomas Crowley, objected to approval of the lease to the River Terminals Company on the basis that it would not be a true public utility, and that 35 years is too long a period for a lease of this type.

During the course of these discussions, it was pointed out that there is a question as to agreement on the Commission's location of the ordinary high-water mark which has to be agreed to by the upland owners. The upland owners have not agreed because of les pendens of the condemnation. Both parties have dodged this issue in order to maintain position in the controversy. Also, there is a possibility that the uplands are actually artificially accreted lands, and if so ownership is in the State and the State may therefore be the upland owner.

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, A RESOLUTION WAS ADOPTED DEFERRING ACTION AT THIS TIME, AND REQUESTING THE STAFF TO REVIEW THE ARGUMENTS PRESENTED PRO AND CON, OBTAIN NECESSARY LEGAL ADVICE FROM THE ATTORNEY GENERAL, AND PRESENT ANY CHANGES IN ITS RECOMMENDATIONS TO THE COMMISSION AT ITS NEXT MEETING. IT WAS PARTICULARLY STRESSED THAT AN UNDERSTANDING SHOULD BE HAD WITH THE ATTORNEY GENERAL'S OFFICE OF WHAT THE WORD "APPROVE" MEANS, AND WHAT THE RESPONSIBILITY OF THE COMMISSION WOULD BE IF IT APPROVED A LEASE BETWEEN THE CRESCENT CITY HARBOR DISTRICT AND THE RIVER TERMINALS COMPANY.

4. (APPLICATION FOR LEASE, TIDE AND SUBMERGED LAND, SACRAMENTO RIVER AT RIO VISTA, SOLANO COUNTY, UNION OIL COMPANY OF CALIFORNIA - W.O. 1159, P.R.C. 655.)

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, A RESOLUTION WAS ADOPTED AUTHORIZING THE EXECUTIVE OFFICER TO ISSUE TO UNION OIL COMPANY OF CALIFORNIA A LEASE OF A FRACTION OF AN ACRE OF TIDE AND SUBMERGED LAND IN SACRAMENTO RIVER AT RIO VISTA, SOLANO COUNTY, FOR THE MAINTENANCE AND USE OF AN EXISTING WHARF, FOR A PERIOD OF FIFTEEN YEARS, AT AN ANNUAL RENTAL OF \$50, WITH RIGHT OF RENEWAL FOR TWO ADDITIONAL PERIODS OF TEN YEARS EACH AT SUCH TERMS AS MAY BE DETERMINED PRIOR TO EACH RENEWAL DATE, PERFORMANCE BOND IN THE AMOUNT OF \$1000 TO BE FURNISHED.

The area applied for is of such small extent that the annual rental will be the minimum at the established rental rate of 9.9 percent of the appraised value, which is required in purpresture situations. Filing fee and expense deposit have been paid.