

MINUTE ITEM

This Calendar Item No. 37
was approved as Minute Item
No. 27 by the State Lands
Commission by a vote of 3
to 0 at its 9/29/77
meeting. CALENDAR ITEM

37.

9/77
WP 4685
WP 4686
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REQUEST FOR APPROVAL OF
COMMERCIAL SUBLEASE OF LANDS

BACKGROUND:

Under Calendar Item No. 24, and under Minute Item No. 26, dated July 6, 1972, the Commission approved Anza Pacific Boundary Settlement and Exchange Agreement No. 131 hereinafter, referred to as agreement No. 131, and the issuance of 12 State Leases.

Pursuant to said agreement, the State leased for 66 years to Anza Pacific the 46 acres confirmed in State ownership. The initial rental consideration for said leases through June 30, 1988 is \$18,626 per annum plus bond retirement, lagoon construction and the completion of site improvements on State lands. The State lease of the 46 acres for administrative convenience in subleasing was accomplished by the issuance of separate leases. The rental amount is to be received by the State through June 30, 1988 and was prorated to each lease.

Under Calendar Item No. 47, dated March 25, 1976, the Commission heard and approved an assignment of the State leases from the Anza Pacific Corporation to Anza Shareholders' Liquidating Trust. Anza Pacific was reorganized as a liquidating trust for financial reasons.

All subletting of State Lands by Anza is subject to Commission consent and the sublease described below has been recently submitted for Commission review and approval.

CURRENT SUBLEASE APPROVAL REQUEST:

Anza Shareholders' Liquidating Trust to Flowers-Gefaell and Associates, Inc; a 5.3 acre site at Burlingame; San Mateo County. Existing rent of \$2625 per annum to the State, to continue until June 30, 1988, after which time, the rental to the State

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will be one-half of the net income to Anza or its successor.

This sublease covers the land described in State leases Nos. PRC 4685.1 and PRC 4686.1. The subleased premises will be used for the purpose of operating a nightclub, theater, cocktail lounge, one or more restaurants, game room, discotheque, and related purposes. The total area of the sublease premises is approximately 263,000 square feet. The aggregate land area in State leases 4685.1 and 4686.1 is 230,869 square feet; the difference, about 32,131 square feet, is property owned by Anza. It has been agreed by Anza that rental prorations to be made in 1988 shall be on the basis of square feet of property respectively owned by the State and Anza.

The general terms of the sublease are as follows:

Term: 35 years, from July 1, 1978.

Rent: \$8,800 per month, and percentage of gross sales.

Renewal options: 2 additional terms, 10 years each.

Insurance: Public liability; \$1,000,000 per person and \$3,000,000 per occurrence.

Property damage; \$500,000. It is noted herein that paragraph 7 of the sublease requires all insurance policies to name the State Lands Commission as additional insured.

Other: Sublease subject to State ground leases PRC 4685.1 and 4686.1.

The sublessee is a California Corporation whose officers are Mark Tracy Flowers, President; Robert Gefaell, Vice President; and Fran Smoker, Secretary-Treasurer.

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The terms of Agreement 131 included the adoption of a master plan as to land use of the subject State property. The uses therein were agreed to be a commercial restaurant and tourist shop. The applicant's efforts to so improve the properties have not attracted prospective lessees and the current proposal for development, as earlier described, has been offered as a financially viable alternative. The staff believes that the applicant's proposal is reasonable, and that it coincides with those provisions of Agreement No. 131 which permit a change of use upon mutual concurrence between Anza and the Commission.

A right of first refusal is included in the sublease. It provides that the sublessee may purchase the leasehold interests of Anza, under certain conditions. Any such sale should be referred to the Commission for approval.

Environmental concerns on the proposed development have been handled by the City of Burlingame as lead agency. The applicant has provided a Negative Declaration and Notice of Determination on the project as issued by the City.

OTHER PERTINENT INFORMATION:

According to the applicant, this project requires approval only from the State Lands Commission and from the City of Burlingame. The applicant states that the proposed work is exempt from the approval of other agencies.

Anza's request for this sublease approval has been reviewed and considered acceptable. The terms of the proposal appear to be consistent with the provisions of Agreement No. 131 and State Leases PRG 4685.1 and PRG 4686.1;

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In 1969, the State Lands Division and the Office of the Attorney General became aware of filling and reclamation activity in a 146-acre parcel in Burlingame on the west side of San Francisco Bay. The State Lands Commission and the Office of the Attorney General took action to halt the filling operations and began negotiations to perfect its title within the 146-acre parcel.

In the course of the development, Anza Pacific had already successfully petitioned the Burlingame City Council for the formation of Reclamation District 2097. The Reclamation District had issued bonds in the amount of \$1,964,000. The total bond service charge was \$2,598,968. These bonds were scheduled for complete retirement in 1983. Two additional series of bonds had been authorized and substantially issued. The first was in the amount of \$1,207,627 of 1915 improvements bonds. An additional \$94,500 was outstanding in 1911 improvement act bonds. The two bond issues were scheduled to be repaid completely by 1988. In addition to the bonded indebtedness, there were trust deeds against the property in the amount of \$2,910,000. In the event of default by Anza Pacific Corporation, it was the opinion of the Attorney General that the State would be liable for the indebtedness against the property. As a part of the final settlement agreement which was approved by the State Lands Commission in June of 1972, the Anza Pacific Corporation and Transamerica Title Company agreed to take full responsibility and retire all the bonded indebtedness and trust deed liens. Thus the two corporations assumed full responsibility for \$6,811,095 in debts that could have become liens against the State property.

In addition to the agreement to retire the bonded indebtedness and trust deed liens, the State gained clear title to 46 acres within the 146-acre site. Anza additionally dedicated a 25"-wide strip around the perimeter of the 146-acre parcel for public use. Anza at its sole expense, created a 12-acre lagoon within the property

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which passed to the State. Anza and the County of San Mateo also established a small fishing park on the southeasterly corner of the area.

The sublease for the Commission covers two of the parcels received by the State in the 1972 transaction. It is only the second sublease which Anza has been able to provide for the properties. Anza, without benefit of income from the properties, has been retiring the bonded indebtedness and the trust deed liens on the entire property.

EXHIBITS: A. Land Description. B. Location Map.
 C. Negative Declaration.

IT IS RECOMMENDED THAT THE COMMISSION:

1. DETERMINE THAT AN ENVIRONMENTAL IMPACT REPORT HAS NOT BEEN PREPARED FOR THIS PROJECT BUT THAT A NEGATIVE DECLARATION HAS BEEN PREPARED BY THE CITY OF BURLINGAME, ON SEPTEMBER 20, 1977.
2. CERTIFY THAT THE COMMISSION HAS REVIEWED AND CONSIDERED THE INFORMATION CONTAINED IN THE NEGATIVE DECLARATION.
3. DETERMINE THAT THE PROJECT WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT.
4. APPROVE, BY ENDORSEMENT, THE 35-YEAR SUBLEASE TO FLOWERS-GEFAELL AND ASSOCIATES, INC., IN CONSIDERATION OF THE STATE BEING NAMED AS ADDITIONAL INSURED IN PUBLIC LIABILITY INSURANCE IN THE AMOUNTS OF \$1,000,000 PER PERSON AND \$3,000,000 PER OCCURRENCE FOR PERSONAL INJURY AND \$500,000 FOR PROPERTY DAMAGE; STATE REVIEW OF ANY SALE OF THE SUBLESSOR'S LEASEHOLD INTEREST, AND OTHERWISE SUBJECT TO THE TERMS AND CONDITIONS OF STATE LEASES PRC 4685.1 AND PRC 4686.1; FOR A NIGHTCLUB, THEATER, COCKTAIL LOUNGE, ONE OR MORE RESTAURANTS, GAME ROOM, DISCOTHEQUE, AND RELATED PURPOSES, ON THE LAND DESCRIBED IN EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF.
5. AUTHORIZE THE EXECUTION OF ALL DOCUMENTS NECESSARY TO EFFECTUATE THESE DETERMINATIONS, CERTIFICATIONS AND APPROVALS.

Attachment: Exhibit "A"

EXHIBIT "A"

WP 4685
WP 4686

Two parcels of land in San Mateo County, California, said parcels being situated in projected Section 18, T4S, R4W, 122A, more particularly described as follows:

PARCEL NO. 1

BEGINNING at the most northerly corner of Lot 1 of Block 9 as said lot and block are shown on that certain map of Anza Airport Park Unit No. 6 which map was filed for record on February 27, 1970 in Volume 70 of Maps at Page 33, Records of San Mateo County, California; thence from said point of beginning along the exterior line of said Lot 1 the following courses: S 31° 29' 39" E, 206.47 feet, S 35° 56' 54" W, 278.48 feet, and along the arc of a curve to the left tangent to a line that bears N 54° 03' 06" W, having a radius of 628 feet a central angle of 10° 56' 54" and an arc length of 120.00 feet to a point in the exterior line of said Anza Airport Park Unit No. 6; thence continuing along the arc of a curve to the left tangent to a line that bears N 65° 00' 00" W, having a radius of 628 feet a central angle of 11° 34' 43", an arc length of 126.91 feet; thence N 0° 16' 59" W, 297.66 feet to the north line of said Section 18; thence along said north line N 89° 43' 01" E, 280.00 feet to the point of beginning.

BEING Lot 1, Block 9, as shown on the above mentioned map and adjoining acreage.

PARCEL NO. 2

Lots 4 and 5 in Block 9, as said Lots and Block are shown on that certain Map of Anza Airport Park Unit No. 6 which Map was filed for record on February 27, 1970 in Book 70 of Maps at Page 33, Records of San Mateo County, California,

END OF DESCRIPTION

Prepared

Fred V. Quinn

Checked

A. J. Kanner

Reviewed

D. Wittmacker

Date

9/20/77