

**MINUTE ITEM**

This Calendar Item No. 70 was approved as  
Minute Item No. 70 by the California State Lands  
Commission by a vote of 3 to 0 at its  
09-13-07 meeting.

**Minute Item  
70**

09/13/07  
PRC 3979  
B. Dugal  
E. Milstein

**SOUTH BAY YACHT CLUB  
(LESSEE)**

**Regular Item 70:** The Commission was asked to consider the termination of a lease for the South Bay Yacht Club due to various default issues associated with the lease. After listening to comments from representatives of the Yacht Club, the Commission adopted staff's recommendation with a 90-day cure period by a vote of 3-0.

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PRC 3979.1

B. Dugal

E. Milstein

**NOTIFICATION OF DEFAULT AND TERMINATION OF A GENERAL LEASE –  
COMMERCIAL USE**

**LESSEE:**

South Bay Yacht Club  
PO Box 100  
Alviso, California 95002

**AREA, LAND TYPE, AND LOCATION:**

Sovereign lands in the Guadalupe River, near the town of Alviso, Santa Clara  
County.

**AUTHORIZED USE:**

Docking and moorage facilities.

**LEASE TERM:**

20 years, beginning June 19, 1993.

**CONSIDERATION:**

\$1,068 per annum, with the State reserving the right to fix a different rent  
periodically during the lease term, as provided in the lease.

**SPECIFIC LEASE PROVISIONS:**

Insurance:

\$1,000,000 combined single limit coverage.

Bond:

\$4,000.

Other:

Public access to be provided to and through the lease area for the general  
public, including non-paying visitors.

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**OTHER PERTINENT INFORMATION:**

1. Lessee owns or has the right to use the uplands adjoining the lease premises.
2. On August 3, 1994, the Commission authorized the issuance of a General Lease – Commercial Use to the South Bay Yacht Club (Yacht Club) for the continued use and maintenance of facilities used for yacht club docking and mooring.
3. On September 22, 2005 Commission staff visited the Yacht Club. During the visit, staff noted that many of the docks and walkways were in disrepair and unsafe. Staff also noted the lack of vegetation maintenance on the upstream portion of the facility and the number of vessels that were not navigable. Additionally, several vessels appeared to have utility hookups that suggested residential use.
4. On October 14, 2005, staff wrote to the Yacht Club to express concerns with the overall condition of the Yacht Club's facilities. Staff requested that the Yacht Club provide a detailed plan and timetable for the repair and replacement of the walkways, docks and marina facilities. Staff also requested that the plan address the removal of those vessels that are no longer navigable. Since that time, only minor repairs have taken place.
5. On November 6, 2005, the Yacht Club responded to staff's letter. The response letter stated that repairs to the central walkway were underway and that repairs to the finger floats would be accelerated to take care of the most pressing needs. Repairs to the other floats would then take place when the initial repairs were completed. While the response letter acknowledged the issue of the non-navigable/abandoned vessels, it did not make a commitment to their removal; instead it pointed out the legal and physical difficulties involved in the removal of the vessels. The letter noted prior residential use (live-aboards) in the Yacht Club, but stated that such use was no longer occurring. Lastly, the response letter noted that vegetation was also a concern of the Yacht Club, but stated that the growth of the vegetation cannot be adequately controlled by cutting alone and that other measures need to be taken (e.g., removal of the root mass and/or the introduction of more salt water into the channel).
6. The Bay Conservation and Development Commission (BCDC) notified the Commission by letter dated January 11, 2006 of alleged violations at the

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Yacht Club, including seven boats believed to be incapable of navigation and possibly constituting illegal live-aboards or houseboats.

7. The San Jose Fire Department notified the Commission, the Yacht Club and the Santa Clara Valley Water District (SCVWD) by letter dated October 1, 2006, that it had determined that the overgrown vegetation adjacent to the docks and boats in the lease premises represented a dangerous hazard in the event of a fire. The Fire Department requested that the vegetation be reduced annually to a minimum of 30 feet from the perimeter of the docks and along the levee.
8. Staff conducted a site visit on April 12, 2007 and noted excessive vegetative growth adjacent to the docks. Staff also noted that while limited repairs had been made since the October 2005 staff visit, the general overall condition of the facility remained unchanged. Staff again noted evidence that suggests residential use of some of the vessels (phone and electrical lines).
9. On June 11, 2007, staff sent written notice informing the Yacht Club that it was in breach of the terms of its lease. The letter noted the health and safety issues involving the condition of the Yacht Club facilities on the lease premises, several conflicts of the use provisions contained in the lease, and the failure to obtain permits from the BCDC. Specifically, the letter cited the following breaches: 1) Failure to "comply and be bound by all ... rules, regulations, statutes, ordinances of ... any other governmental agency ...", namely failure to obtain the necessary BCDC permit to properly maintain the property in a safe condition. (Lease Section 4, Paragraphs 6 and 11), 2) Failure "to comply ...", as above, with San Jose Municipal Code Ch. 9.12 in allowing a fire hazard (overgrown and excessive vegetation) adjacent to the docks. (Lease Section 4, Paragraph 11), 3) Failure to "... keep and maintain the lease premises ... in good order and repair and in safe condition." Specifically, this includes the overgrowth of vegetation (as above), the dilapidated and unsafe condition of the docks and walkways, the abandoned and derelict vessels on the lease area, and the general state of disrepair of the facility. (Lease Section 4, Paragraph 5), 4) Failure to provide public access as required by the lease. (Lease Section 2, Paragraph 5) and, 5) Allowing residential use of the leasehold in violation of the lease. (Lease Section 4, Paragraph 4)

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The letter asked the Yacht Club to inform the Commission at its earliest opportunity as to whether it would cure the breaches of the lease provisions or vacate the premises.

10. The Yacht Club responded by letter dated June 14, 2007, to the Commission's Notice of Breach of Lease. The Yacht Club maintains that it has continued to work towards accomplishing the requirements set forth in the Commission's previous letters, citing repairs made to the facilities and removal of some abandoned vessels, but that it has been hampered due to unexpected problems obtaining the necessary permits from BCDC (revision to permit to allow docks and retention of additional unauthorized pilings) and SCVWD (encroachment permit).
11. Staff conducted a site visit of the lease premises on August 13, 2007 and found that the breaches of lease identified in the Commission's letter of June 11, 2007 had not been corrected.
12. On August 16, 2007 staff sent a letter, via certified mail, to the Yacht Club stating that their reply of June 14, 2007 was considered unresponsive because it did not adequately address the steps the Yacht Club was going to take to come into compliance with the terms of the lease. The letter reiterated the breaches of the lease and also contained a final request for either proof that the breaches have been cured or a definitive plan of action for how they will be cured. The letter stated that if a response was not received by August 23, 2007, then staff would recommend termination of the lease at the September 13, 2007 Commission meeting.
13. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

**EXHIBIT:**

- A. Location Map

**RECOMMENDED ACTION:**

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IT IS RECOMMENDED THAT THE COMMISSION:

**CEQA FINDING:**

FIND THAT THE ACTIVITY IS NOT SUBJECT TO THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060(c)(3) BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.

**SIGNIFICANT LANDS INVENTORY FINDING:**

FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.

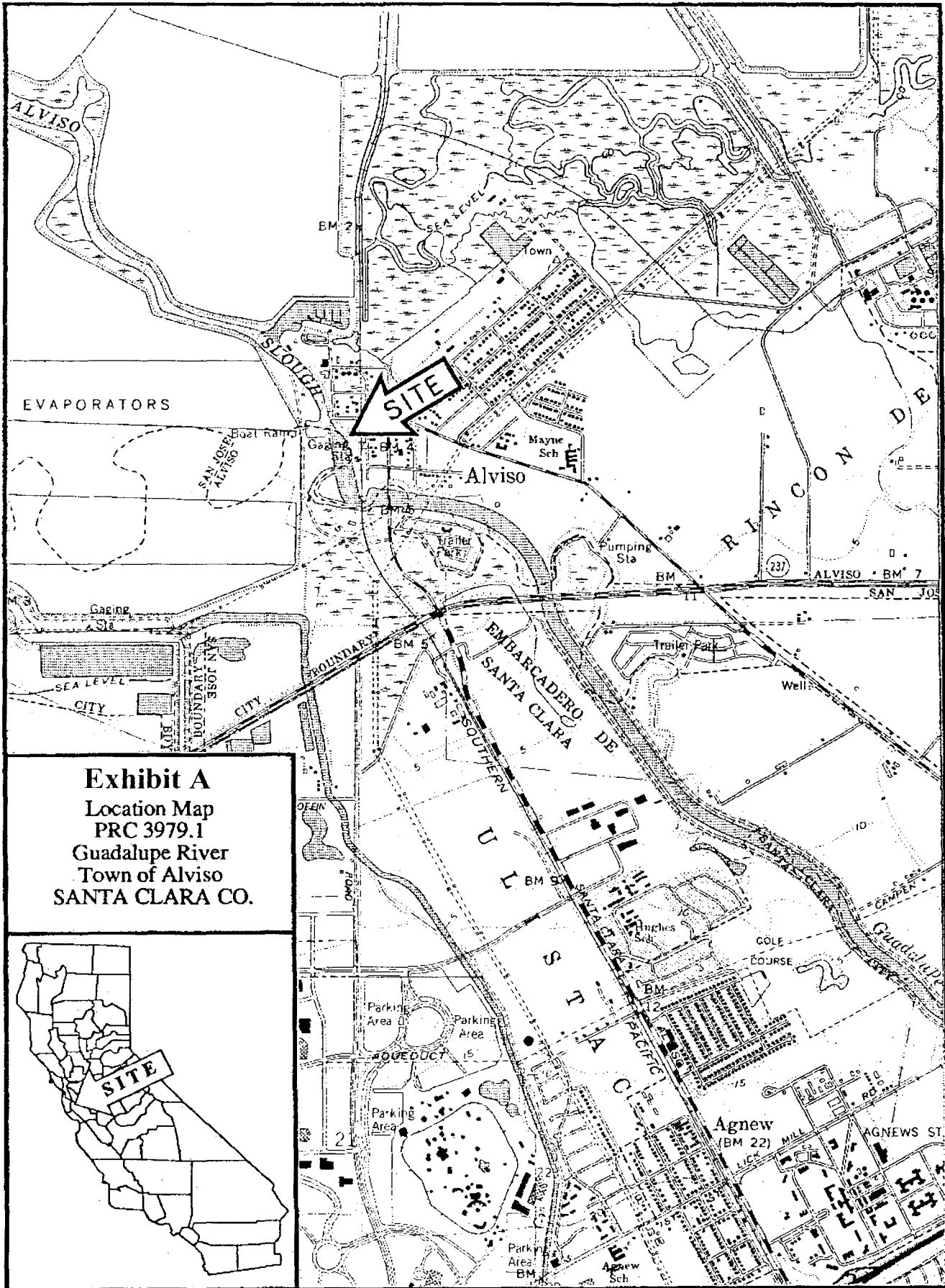
**AUTHORIZATION:**

1. RATIFY STAFF'S FINDING THAT THE SOUTH BAY YACHT CLUB, AS THE STATE'S LESSEE, IS IN DEFAULT UNDER LEASE PRC 3979.1, FOR EACH OF THE FOLLOWING:

- 1) FAILURE TO "COMPLY AND BE BOUND BY ALL ... RULES, REGULATIONS, STATUTES, ORDINANCES OF ... ANY OTHER GOVERNMENTAL AGENCY ...", NAMELY FAILURE TO OBTAIN THE NECESSARY BCDC PERMIT TO PROPERLY MAINTAIN THE PROPERTY IN A SAFE CONDITION. (LEASE SECTION 4, PARAGRAPHS 6 AND 11)
- 2) FAILURE "TO COMPLY ...", AS ABOVE, WITH SAN JOSE MUNICIPAL CODE CH. 9.12 IN ALLOWING A FIRE HAZARD (OVERGROWN AND EXCESSIVE VEGETATION) ADJACENT TO THE DOCKS. (LEASE SECTION 4, PARAGRAPH 11)
- 3) FAILURE TO "...KEEP AND MAINTAIN THE LEASE PREMISES ... IN GOOD ORDER AND REPAIR AND IN SAFE CONDITION." SPECIFICALLY, THIS INCLUDES THE OVERGROWTH OF VEGETATION (AS ABOVE), THE DILAPIDATED AND UNSAFE CONDITION OF THE DOCKS AND WALKWAYS, THE ABANDONED AND DERELICT VESSELS ON THE LEASEHOLD, AND THE GENERAL STATE OF DISREPAIR OF THE FACILITY. (LEASE SECTION 4, PARAGRAPH 5)

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- 4) FAILURE TO PROVIDE PUBLIC ACCESS AS REQUIRED BY THE LEASE. (LEASE SECTION 2, PARAGRAPH 5)
- 5) ALLOWING RESIDENTIAL USE OF THE LEASEHOLD IN VIOLATION OF THE LEASE. (LEASE SECTION 4, PARAGRAPH 4)
  
2. AUTHORIZE STAFF TO 1) ISSUE A NOTICE OF TERMINATION TO THE SOUTH BAY YACHT CLUB BECAUSE OF THE ABOVE RECITED DEFAULTS; 2) REQUIRE THE REMOVAL OF ALL IMPROVEMENTS AND THE RESTORATION OF THE LEASE PREMISES TO THEIR NATURAL CONDITION WITHIN 90 DAYS AFTER TERMINATION PURSUANT TO SECTION 4, PARAGRAPH 12 OF THE LEASE; AND 3) TERMINATE LEASE NO. PRC 3979.1 ISSUED TO THE SOUTH BAY YACHT CLUB PROVIDED THAT THE SOUTH BAY YACHT CLUB HAS NOT CURED THE DEFAULTS OF THE LEASE COVENANTS.
  
3. AUTHORIZE STAFF OF THE STATE LANDS COMMISSION AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL STEPS NECESSARY, INCLUDING LITIGATION, TO TERMINATE THE LEASE OF THE SOUTH BAY YACHT CLUB AND TO REMOVE THE IMPROVEMENTS FROM THE LEASE PREMISES.



**Exhibit A**  
 Location Map  
 PRC 3979.1  
 Guadalupe River  
 Town of Alviso  
 SANTA CLARA CO.



BL 4/93