

MINUTE ITEM
This Calendar Item No. 12
was approved as Minute Item
No. 12 by the State Lands
Commission by a vote of 3
to 0 at its 2/17/87
meeting.

MINUTE ITEM

12

02/17/87
WP 6427
Maricle

AMENDMENT OF COMMERCIAL USE
RIVERBANK HOLDING COMPANY

During consideration of Calendar Item 12, attached, Executive Officer Dadrick outlined some changes in the agreement which were not contained in the Calendar Item before the Commission.

Mr. Gordon Gojkovich, representing Riverbank Holding Company, appeared stating the applicant's acceptance of the agreement.

Upon motion duly made by Commission-Alternate Orday, the following resolution was approved, as amended, by a vote of 3-0:

THE COMMISSION:

1. FINDS THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. ADM. CODE 15061 AS A CATEGORICAL EXEMPT PROJECT, CLASS 1, EXISTING FACILITIES, 2 CAL. ADM. CODE 2905(a)(2).
2. FINDS THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED FOR THE LAND PURSUANT TO P.R.C. 6370, ET SEQ.
3. AUTHORIZES AN AMENDMENT OF LEASE PRC 6427 TO PROVIDE:
 - A) FOR THE DELETION OF THE CURRENT LAND DESCRIPTION CONTAINED IN SAID LEASE, AND REPLACING IT WITH THE LAND DESCRIPTION SET OUT IN EXHIBIT "A", ATTACHED AND BY REFERENCE MADE A PART HEREOF; AND
 - B) APPROVAL OF A STIPULATION, EXHIBIT "C", DATED FEBRUARY 17, 1937, WHICH STIPULATES THAT THE TERM "GROSS INCOME" REFERRED TO IN LEASE PRC 6427, CONCERNING BAR AND RESTAURANT OPERATIONS CONDUCTED THEREIN, REFERS TO AND INCLUDES ANY AND ALL GROSS INCOME ACCRUING TO THE OPERATOR(S) OF THE RESTAURANT AND BAR FROM THE OPERATION OF SAID BAR AND RESTAURANT, WITHOUT REGARD TO WHETHER THE RESTAURANT AND BAR ARE OPERATED BY LESSEE OR SUBLESSEE; AND

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- C) AGREEMENT THAT ALL OUTSIDE MOORAGE AT THE PERMITTED FACILITIES SHALL CEASE IF THERE IS A RESUMPTION OF COMMERCIAL BARGE TRAFFIC AT SUCH LOCATION, AS DETERMINED BY THE UNITED STATES ARMY CORPS OF ENGINEERS.
4. AUTHORIZES ACCEPTANCE OF \$38,112 IN SETTLEMENT OF ALL PAST RENTS, DUE THE STATE, TO BE PAID AT A RATE OF \$500 A MONTH WITH INTEREST AT THE POOLED MONEY INVESTMENT RATE, UNTIL PAID IN FULL.

Attachment: Calendar Item 12.

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02/17/87
WP 6427
Maricle

AMENDMENT OF COMMERCIAL LEASE

APPLICANT: Riverbank Holding Company
Attn: Mr. Thomas C. Westley
General Manager
1361 Garden Highway
Sacramento, California 95833

AREA, TYPE LAND AND LOCATION: (Existing Lease, PRC 6427)
A 5.272-acre parcel of tide and submerged land,
located in the Sacramento River, Sacramento
County.

LAND USE: Commercial marina, floating restaurant, harbor
master office, boat sales office, debris
deflector, and all appurtenant facilities
related thereto.

TERMS OF EXISTING LEASE PRC 6427:
Initial period: 20 years beginning August 1,
1984.
Surety bond: \$10,000.
Public liability insurance: Combined single
limit coverage of \$1,000,000.

CONSIDERATION: ANNUAL RENTAL:
Six percent of the gross income derived from
the rental of boat docks and moorings.
Three percent of the gross income derived from
the operation of restaurant and bar.
Twenty-five percent of the gross income derived
from the operation of coin-operated vending
and electronic game machines. A percentage of
the gross income derived from boat sales
(yacht brokerage). Ten percent of the gross

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income derived from sources exclusive of those described above. A minimum annual rental of \$4,000 for the period August 1, 1984 through July 31, 1985 and a minimum annual rental of \$15,000 thereafter.

TERMS OF PROPOSED AMENDMENT:

- a) Increase land area in Lease PRC 6427 to 5.326 acres;
- b) Stipulate as to the meaning of percentage-of-gross provisions in the lease;
- c) Add a special provision concerning outside moorages at the Lessee's facilities.

OTHER AUTHORIZATION:

Accept past due rents, penalties and interest.

APPLICANT STATUS.

Applicant is owner of upland.

PREREQUISITE CONDITIONS, FEES AND EXPENSES:

Filing fee and processing costs have been received.

STATUTORY AND OTHER REFERENCES:

- A. P.R.C.: Div. 6, Parts 1 and 2; Div. 13.
- B. Cal. Adm. Code: Title 2, Div. 3; Title 14, Div. 6.

AB 884:

April 7, 1987.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Adm. Code 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a categorical exempt project. The project is exempt under Class 1, Existing Facilities, 2 Cal. Adm. Code 2905(a)(2).

Authority: P.R.C. 2108A, 14 Cal. Adm. Code 15300, and 2 Cal. Adm. Code 2905.

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2. This activity involves lands identified as possessing significant environmental values pursuant to P.R.C. 6370, et seq. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.
3. The Commission authorized the issuance of Lease PRC 6427 on July 12, 1984. At that time, the Commission found that an EIR was prepared and adopted for this project by the City of Sacramento Planning Department and that the Commission had reviewed and considered the information contained therein. The improvements discussed below were covered in the EIR.
4. Riverbank Holding Company's constructed facilities extend into unpermitted sovereign lands westerly adjacent to the leased property, and into lands leased to The Virgin Sturgeon, Inc., Lease PRC 5167. The proposal herein is to enlarge the description of the lands leased to Riverbank Holding Company to encompass the unpermitted area which it presently occupies.
5. On October 23, 1985, Minute Item No. 39, the Commission approved a sublease agreement between The Virgin Sturgeon, Inc. and Riverbank Holding Company, consenting to Riverbank Holding Company's use of a portion of the sovereign lands covered in lease PRC 5167.
6. In 1986, Riverbank Holding Company withheld payment of certain percentage-of-gross rentals from the Commission, pending settlement of a mutually acceptable interpretation of that part of the lease which provides that the State is entitled to three percent of the gross income earned from the bar and restaurant operations

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conducted on the leased premises. By a proposed stipulation dated February 17, 1987, the Commission and the Lessee formally stipulate and agree that the term "Gross Income: referred to in lease PRC 6427 refers to and includes any and all gross income accruing to the operator(s) of the restaurant and bar from the operation of said bar and restaurant, without regard to whether the restaurant and bar are operated by Lessee or sublessee. The stipulation is attached as Exhibit "C".

7. Staff has determined that \$43,608.80 is owed by Riverbank Holding Company, which is an aggregate sum, including all rentals, penalties, and interest due the State as of February 17, 1987, as shown on Exhibit "D". Acceptance of this amount will bring the lease current, in the opinion of the staff.
8. Lessee's current federal permit No. 8503, issued by the United States Army Corps of Engineers (Corps), prohibits moorage on the exterior side of the outside docks. On July 10, 1986, the regulatory functions branch of the Sacramento office of the Corps advised that it will allow such moorage, and that it may continue unless there is a resumption of commercial barge traffic along the river, and in that event that all outside moorage shall be again prohibited. Staff has been provided a copy of the Corps' enabling document.

APPROVALS OBTAINED:

United States Army Corps of Engineers.

FURTHER APPROVALS REQUIRED:

None.

EXHIBITS:

- A. Land Description.
- B. Location Map.
- C. Stipulation.
- D. Summary of Past Due Rentals, Penalties and Interest, As Of February 17, 1987.

CALENDAR ITEM NO. 12 (CONT'D)

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. ADM. CODE 15061 AS A CATEGORICAL EXEMPT PROJECT, CLASS 1, EXISTING FACILITIES, 2 CAL. ADM. CODE 2905(a)(2).
2. FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED FOR THE LAND PURSUANT TO P.R.C. 6370, ET SEQ.
3. AUTHORIZE AN AMENDMENT OF LEASE PRC 6427 TO PROVIDE:
 - A) FOR THE DELETION OF THE CURRENT LAND DESCRIPTION CONTAINED IN SAID LEASE, AND REPLACING IT WITH THE LAND DESCRIPTION SET OUT IN EXHIBIT "A", ATTACHED AND BY REFERENCE MADE A PART HEREOF; AND
 - B) APPROVAL OF A STIPULATION, EXHIBIT "C", DATED FEBRUARY 17, 1987, WHICH STIPULATES THAT THE TERM "GROSS INCOME" REFERRED TO IN LEASE PRC 6427, CONCERNING BAR AND RESTAURANT OPERATIONS CONDUCTED THEREIN, REFERS TO AND INCLUDES ANY AND ALL GROSS INCOME ACCRUING TO THE OPERATOR(S) OF THE RESTAURANT AND BAR FROM THE OPERATION OF SIAD BAR AND RESTAURANT, WITHOUT REGARD TO WHETHER THE RESTAURANT AND BAR ARE OPERATED BY LESSEE OR SUBLESSEE; AND
 - C) AGREEMENT THAT ALL OUTSIDE MOORAGE AT THE PERMITTED FACILITIES SHALL CEASE IF THERE IS A RESUMPTION OF COMMERCIAL BARGE TRAFFIC AT SUCH LOCATION, AS DETERMINED BY THE UNITED STATES ARMY CORPS OF ENGINEERS.
4. AUTHORIZE ACCEPTANCE OF \$43,608.80 IN SETTLEMENT OF ALL PAST RENTS, PENALTIES AND INTEREST DUE THE STATE, AS SET OUT IN EXHIBIT "D" HEREOF.

(Added 2/17/87)

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EXHIBIT "A"
LAND DESCRIPTION

WP 6427

A parcel of tide and submerged land lying in the Sacramento River, adjacent to Swamp and Overflowed Survey No. 907, Sacramento County, California, more particularly described as follows:

BEGINNING at the northeasterly corner of that parcel of land described in the deed recorded April 16, 1981 in Book 81-04-16, Page 943, of the Official Records of Sacramento County; thence along the east line of said parcel and its prolongation S 00° 23' 30" W, 327.42 feet; thence leaving said line S 23° 01' 00" W, 92.38 feet; thence N 66° 59' 00" W, 291.84 feet; thence N 70° 04' 56" W, 638.52 feet; thence N 76° 10' 55" W, 634.86 feet; thence N 12° 29' 05" E, 223.76 feet to the north line of said parcel; thence along said north line S 78° 54' 49" E, 1498.29 feet to the point of beginning.

EXCEPTING THEREFROM any portion thereof lying within State Lands Commission Lease PRC 5167.1.

ALSO EXCEPTING THEREFROM any portion thereof lying landward of the ordinary high water mark of the Sacramento River.

END OF DESCRIPTION

REVISED JULY 14, 1986 BY BOUNDARY SERVICES UNIT, M. L. SHAFER, SUPERVISOR.

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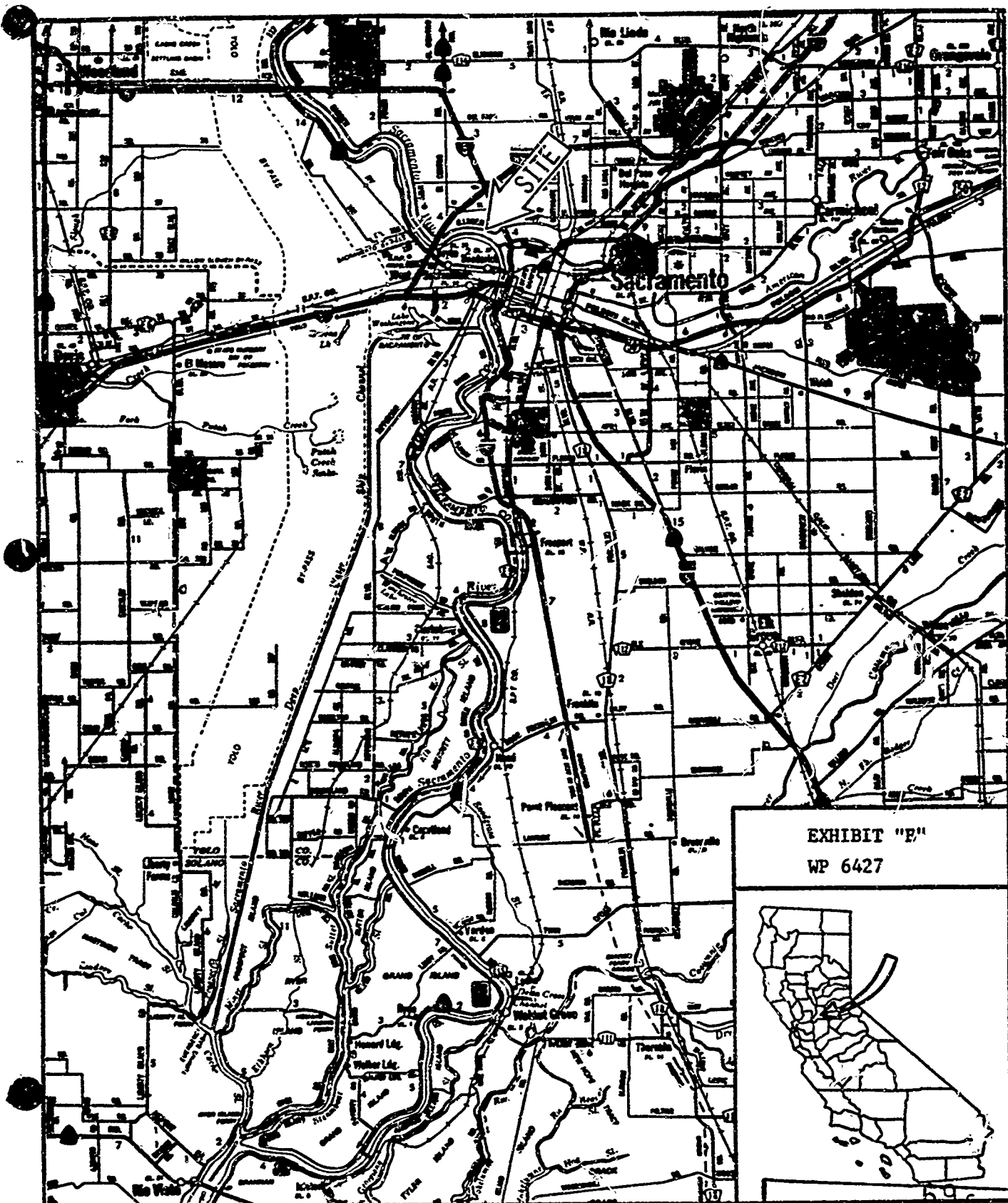


EXHIBIT "E"
WP 6427



(Added 2/17/87)

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STIPULATION

WHEREAS, a commercial lease Lease PRC 6427.1 ("Lease") to River Bank Holding Company ("Lessee") was approved by the State Lands Commission ("Commission") at its July 12, 1984 meeting for use of tide and submerged lands in the bed of the Sacramento River in Sacramento County; and

WHEREAS, the Lease was for twenty (20) years commencing August 1, 1984 and covered various authorized uses and improvements including a 175 berth marina, a floating bar and restaurant, Harbor Master Office, boat sales office, debris deflector and appurtenant related facilities; and

WHEREAS, the rental for the Lease was based on a percentage of income approach, as specified in Section 2 as recited below:

(1) CONSIDERATION

(a) ANNUAL RENTAL:

- (1) 6% of the Gross Income derived from the rental of boat docks and moorings.
- (2) 3% of the Gross Income derived from the operation of restaurant and bar.
- (3) 25% of the Gross Income derived from the operation of coin operated vending and electronic game machines.
- (4) 5% of the Gross Income derived from boat sales (Yacht Brokerage).
- (5) 10% of the Gross income derived from sources exclusive of those described in Paragraph 1(a)(1) through 1(a)(4).
- (6) A minimum annual rental of \$4,000 for the period August 1, 1984 through July 31, 1985 and a minimum annual rental of \$15,000 thereafter.

(Add. 2/17/87)

EXHIBIT "C"

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WHEREAS, a dispute has arisen between the Commission and Lessee as to the meaning of subparagraph (2) of paragraph (1)(a) ("Disputed Subsection") as recited below:

"(2) 3% of the Gross Income derived from the operation of the restaurant and bar"; and

WHEREAS, it is in the interest of both the Commission and the Lessee to clarify and more clearly define the meaning of the Disputed Subsection; and

NOW THEREFORE the Commission and the Lessee hereby formally stipulate and agree that the term "Gross Income" referred to in the Disputed Subsection refers to and includes any and all gross income accruing to the operator(s) of the restaurant and bar from the operation of said bar and restaurant, without regard to whether the restaurant and bar are operated by Lessee or sublessee.

Dated: FEBRUARY 11, 1987

STATE LANDS COMMISSION

for
By Lance A. Kiley
Lance Kiley, Chief
Division of Land Management
and Conservation

Dated: 2/11/87

RIVER BANK HOLDING COMPANY

By Tom Westley
Tom Westley, Managing General
Partner

EXHIBIT "C"

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SUMMARY OF RENTS, PENALTIES AND INTEREST
AS OF FEBRUARY 17, 1986

GAP - BERTHS

Principle	\$13,444.60
Less Paid	<u>497.08</u>
Net Principle	12,947.52
Interest	<u>1,821.26</u>
TOTAL	\$14,768.78

PERCENTAGE GROSS

Principle	\$25,164.65
Interest	1,823.99
5% Penalty	<u>1,851.38</u>
TOTAL	\$28,840.02
GRAND TOTAL	\$43,608.80

EXHIBIT "D"

(Added 2/17/87)

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