

MINUTE ITEM

This Calendar Item No. 13
was approved as Minute Item
No. 13 by the State Lands
Commission by a 10/2 of 3
to 0 at its 2/28/83
meeting.

CALENDAR ITEM

13 1

2/24/83
WP 6002
PRC 6002.1
Reese

AUTHORIZE EXECUTION OF A
SUPPLEMENTARY LETTER OF UNDERSTANDING

LESSEE: Thomas P. Raley

BACKGROUND: At its meeting on December 17, 1981, the Commission approved a General Lease - Commercial Use, for a commercial facility for loading and unloading passengers from river tour boats.

The lease provides that any and all tour boat agreements are subject to approval of the Commission, and the lease shall be subject to amendment to provide a percentage-of-gross based rental.

CURRENT SITUATION:

Lessee has submitted a License Agreement for approval of the Commission. Staff analysis has determined that a change of rental would not be in the State's best interest at this time. Staff recommends that the License Agreement be approved and a Supplementary Letter of Understanding, be executed, providing for the following:

- A. Lessee will report all receipts in connection with that certain document entitled License Agreement, dated December 14, 1982, and executed by Thomas P. Raley and James Muncill, to the Lessor on or before December 31, 1983. Upon the evaluation of said receipts by Lessor, the amount and method of rental payment may be re-set.

- B. If at any time during the period January 1, 1983, to December 31, 1983, further license agreements regarding tour boat operations are contemplated by Lessee and submitted to Lessor per the Special Provisions of Section 2 of PRC 6002.1, Lessee will submit a report of all receipts received in connection with that certain document entitled License Agreement, dated December 14, 1982, and executed by Thomas P. Raley and James Muncill at that time.

This activity is not a project under CEQA and does not require the preparation of environmental documents.

Authority: 14 Cal. Adm. Code, 15037 and 15060.

AB 884: N/A.

EXHIBITS: A. License Agreement
B. Supplementary Letter of Understanding.
C. Site Map.

IT IS RECOMMENDED THAT THE COMMISSION:

1. DETERMINE THAT AN EIR HAS NOT BEEN PREPARED FOR THIS ACTIVITY AS SUCH DOCUMENT IS NOT REQUIRED UNDER THE PROVISIONS OF P.R.C. 21065, 14 CAL. ADM. CODE 15037 AND 15060.
2. AUTHORIZE EXECUTION OF A SUPPLEMENTARY LETTER OF UNDERSTANDING TO THOMAS P. RALEY AS SHOWN IN EXHIBIT "B", AND APPROVE THAT CERTAIN LICENSE AGREEMENT AS SHOWN IN EXHIBIT "A". ALL OTHER TERMS AND CONDITIONS OF LEASE PRC 6002.1 REMAIN UNCHANGED.

EXHIBIT "A"

LICENSE AGREEMENT

JAMES MUNCILL, doing business as Capital City Cruises ("Muncill"), and THOMAS P. RALEY, doing business as Marina Inn ("Raley"), agree as follows:

1. Grant of License. In consideration of the covenants contained herein, Raley grants a non-exclusive License to Muncill for the use of those certain docking facilities of Raley described in Exhibit A attached, on the terms and conditions set forth below.

2. Term. This License shall commence January 1, 1983 and shall continue to and including December 31, 1985 provided however, that this License may earlier terminate in accordance with the terms and provisions hereof. Unless earlier terminated or unless written notice of intention not to renew be given by either party to the other 90 days prior to the expiration date of this License, this License shall automatically be renewed and extended for successive one-year periods upon the same terms and conditions as this initial License. This License may terminate earlier than December 31, 1985 at Raley's election upon:

- a. Breach of Muncill of any terms or covenants to be performed by him hereunder or the failure of any condition hereof;
- b. Destruction of Raley's dock facilities or damage thereto, in Raley's sole discretion is not reasonably repairable;

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c. Any act of God, regulation by governmental authority or other happening beyond Raley's control which in Raley's sole discretion renders Raley's performance hereunder impractical or unlawful; or

d. Attempted assignment of this License without the express written consent of Raley; or

e. Failure of the State Lands Commission of the State of California to approve this License Agreement or imposition upon Raley by the State Lands Commission of a "percentage-of-gross" rental method which, in Raley's sole discretion, make this License Agreement or Raley's Lease arrangement with the State Lands Commission economically impractical or onerous.

f. Ninety days written notice of termination.

3. Fees. As partial consideration for and as a continuing condition of the within License, Muncill shall pay to Raley the following fees:

a. Dockage fees: The sum of \$200.00 per month payable on the first day of each month during the term of this License, in advance; and

b. Passenger fees: The sum of \$1.00 for each adult person and 50¢ for each child embarking, disembarking or undertaking a round trip from the licensed docking facilities upon any vessel owned or operated by Muncill. For purposes of this License an adult shall be deemed as person 13 years old or older. Passenger fees shall be

payable the first business day of each week during the term hereof; and

c. If Raley is required under any agreement or provision of law to pay to the State Lands Commission of the State of California or to any other governmental agency having jurisdiction any amounts based on or determined or measured by reference to the number of passengers embarked or disembarked from the licensed docking facilities or upon Raley's gross receipts from this License Agreement, Muncill shall promptly pay Raley, as additional license fees hereunder, an amount equal to any such amounts required to be paid by Raley.

4. Use. Muncill's use of the licensed docking facilities shall be non-exclusive and shall be shared with other vessels. Muncill shall not use the licensed docking facilities except for berthing or mooring in conjunction with embarkation and disembarkation of paying passengers or for overnight berthing unless Raley grants separate and specific prior written permission therefor.

Muncill shall use only the portion of the licensed docking facilities designated by Raley or his representative and shall at all times tie off all mooring lines to approved mooring piles and cleates provided for such purposes.

Muncill shall not use or permit the licensed docking facilities to be used, in whole or in part, for any purpose or use in violation of any applicable present or future laws, ordinances or general rules or regulations promulgated by any public or

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governmental authority but shall at all times faithfully comply with all laws, ordinances, rules and regulations pertaining thereto.

5. Maintenance and Repair. Subject to acts of God and any other events or circumstances beyond his control which, in Raley's sole discretion would render it impractical, Raley shall maintain the licensed docking facilities in a serviceable condition at his sole expense; provided, however, that Muncill shall be responsible and shall pay for any damage done to the licensed docking facilities by Muncill, his vessel, his agents, employees or passengers, other than normal wear and tear.

Muncill shall make no changes, alterations or modifications to the licensed docking facilities without the prior written consent of Raley.

Muncill shall maintain any vessel owned or operated by him and exercise this License in a clean, safe, first-class condition and shall have all licenses, certifications, permits and approvals with respect to any such vessel required by any public or governmental authority or by any insurance underwriter insuring such vessel.

6. Utilities. Muncill shall reimburse Raley the cost of any utilities supplied to vessels owned or operated by Muncill in exercising this License. Such reimbursement shall include allowance for the cost of equipment and appurtenant facilities reasonable administrative and bookkeeping charge. Nothing contained in this paragraph shall obligate Raley to actually provide

utility service to any such vessel or, if once provided, to continue to so provide it.

7. Signs and Advertisements. Muncill shall not post any signs upon the licensed docking facilities without prior express written approval from Raley to do so which approval may limit the size, composition, wording, manner of display and location of display of any such sign. Without the prior express written approval of Raley, Muncill shall not use Raley's name or any business name of Raley in any connection whatever.

Not later than 30 days following the commencement of this License, Muncill shall have not less than 15,000 brochures prepared advertising the availability of his vessels for local day cruises on the Sacramento River. In addition to distribution of such brochures, Muncill shall, within the first 180 days of the initial term of this License expend not less than \$25,000.00 for additional advertising reasonably calculated to increase the number of passengers using Muncill's vessels operating pursuant to this License.

8. Passenger Parking. Muncill shall not permit vehicular parking by any of his passengers or customers upon any property of Raley's except upon such areas as may be designated by Raley for such parking. Vehicular parking by Muncill's passengers or customers shall be permitted upon the property of Raley so long as deemed convenient by Raley in his sole discretion; nothing contained herein is intended or shall be construed as a grant of any license or right of use of any property of Raley other than the licensed docking facilities referred to in paragraph 1 and

described in Exhibit A attached. Raley may restrict such parking to specifically designated areas, charge reasonable parking fees for such use or prohibit and exclude all such vehicles.

9. Indemnity and Insurance. Muncill at his own cost and expense shall at all times during the term of this License, secure and maintain a broad form comprehensive coverage policy of public liability insurance issued by an insurance company licensed to do business in California, insuring Muncill's use of the licensed docking facilities in an amount not less than \$1,000,000.00 for injury to or death of one person and \$3,000,000.00 for injury to or death of two or more persons as a result of any one accident or incident and \$500,000.00 for damage to or destruction of any property of others.

Muncill shall indemnify and hold Raley and the property of Raley, including the licensed docking facilities, free and harmless from any and all liability, claims, loss, damages or expenses, including attorneys' fees and costs, arising by reason of death or injury of any person, including Muncill, and any person who is an employee or agent or customer or passenger of Muncill or by reason of damage to or destruction of any property or vessel, including property and vessels owned by Muncill or any person who is an employee or agent or customer or passenger of Muncill. Muncill hereby expressly waives all claims for damages against Raley and agrees that Raley shall not be liable for any damage or injury to Muncill's business, or any loss of income therefrom, for any loss of or destruction to property belonging to Muncill or to any other person.

10. Inspection of Licensed Facilities. Muncill acknowledges that the licensed docking facilities mentioned in paragraph 1 and described in Exhibit A attached, are in good, usable and safe condition and are suitable for the uses and purposes of Muncill. Muncill acknowledges that he has made a sufficient investigation of the condition of the licensed docking facilities and is satisfied that such facilities will safely and adequately satisfy his needs and requirements as a tour and sight seeing boat operator.

11. Miscellaneous. This License is non-transferrable without the prior express written consent of Raley. Any assignment or transfer by Muncill without such prior written consent of Raley, whether voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of Raley, terminate this License. A consent by Raley to one assignment or transfer shall not be deemed a consent to any subsequent or further assignment.

Subject to the above restriction on assignment and transfer, this License shall be binding upon and inure to the benefit of the heirs, executors, and assigns of each of the parties hereto. This License Agreement constitutes the entire agreement between the parties respecting the matters mentioned herein and no amendment or modification of this License Agreement shall be effective unless in writing and signed by each of the parties hereto.

Any of the terms or conditions of this License Agreement may be waived at any time by the party entitled to the benefit thereof, but no such waiver shall affect or impair the right of

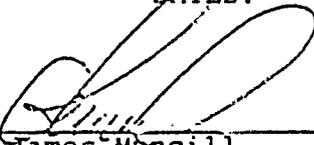
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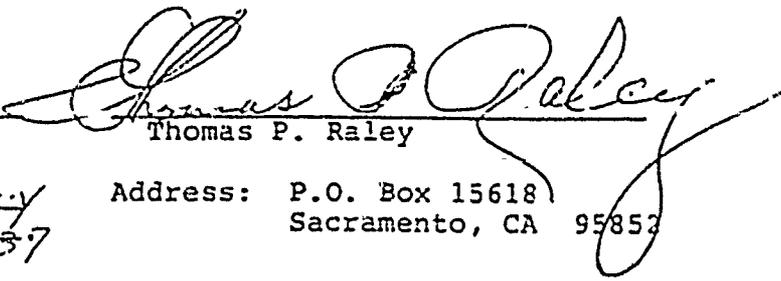
the waiving party to require observance, performance or satisfaction of any other term or condition hereof.

Any notice to either party to be given hereunder shall be in writing and delivered personally or sent by certified mail, postage prepaid, addressed to the parties at the addresses set forth below each party's signature or at such other address as each party may, from time to time, designate by notice to the other.

In the event the services of any attorney are required by either party to secure the performance hereof, or otherwise, then the prevailing party shall be entitled to reasonable attorneys' fees.

DATED: Dec. 14, 1982.


James Muncill


Thomas P. Raley

Address: 5871 Garden Hwy
Sac Ca. 95857

Address: P.O. Box 15618
Sacramento, CA 95852

SECTION 3

LAND DESCRIPTION

WP 6002.1

A parcel of tide and submerged land in the Sacramento River lying northerly of the easterly extension of West Capitol Avenue in West Sacramento, Yolo County, California, described as follows:

COMMENCING at the point of intersection of the east line of Second Street and the north line of Lot 9, Block 4 of the Town of Washington, said point shown as being marked by a "Cut Cross in Concrete" on that certain record of Survey Map entitled "Marina Inn and Adjacent Properties Located in the Tower Tract & Town of Washington", recorded in Book 9 of Maps and Surveys at page 94, Records of the County of Yolo, State of California; thence from said point of commencement, southerly along said east line of Second Street, S 08° 31' 00" W 722.35 feet to a point on the south line of Swamp and Overflowed Land Survey No. 962; thence easterly along said south line and its projection S 81° 29' 00" E 370.56 feet; thence leaving last said line S 15° 25' 07" W 86.44 feet; thence S 20° 33' 24" W 144.00 feet to the POINT OF BEGINNING; thence the following 12 courses:

1. S 69° 26' 38" E 89.00 feet;
2. N 14° 19' 58" E 385.00 feet;
3. S 75° 40' 02" E 72.00 feet;
4. N 14° 19' 58" E 30.00 feet;
5. S 75° 40' 02" E 5.00 feet;
6. S 14° 19' 58" W 30.00 feet;
7. S 75° 40' 02" E 33.00 feet;
8. S 19° 49' 01" W 502.31 feet;
9. N 75° 40' 02" W 62.00 feet;
10. N 14° 19' 58" E 104.94 feet;
11. N 69° 26' 38" W 90.09 feet;
12. N 20° 33' 22" E 10.00 feet to the point of beginning.

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

END OF DESCRIPTION

REVISED OCTOBER 4, 1982 BY BOUNDARY AND TITLE UNIT, LEROY WEED, SUPERVISOR.

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EXHIBIT A
To
License Agreement
Raley - Muncill

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EXHIBIT "B"

STATE OF CALIFORNIA
State Lands Commission

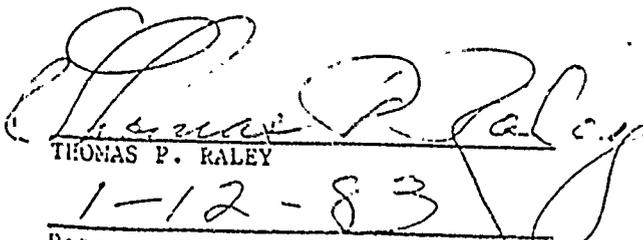
Lease No. 6002.1, Public Resources Code Series

SUPPLEMENTARY LETTER OF UNDERSTANDING

This letter shall be deemed a part of said lease as if set fully forth therein, effective upon execution on behalf of the State Lands Commission of the State of California.

Notwithstanding the Special Provisions contained in Section 2 of PRC 6002.1, in which lessee covenants that any tour boat agreements shall be subject to the approval of the Commission and that the lease shall be subject to amendment to include connecting the rental method to a percentage-of-gross basis, the following provisions are added:

- A. Lessee will submit any and all receipts in connection with that certain document entitled License Agreement, dated December 14, 1982, and executed by Thomas P. Raley and James Muncill, to the Lessor on or before December 31, 1983. Upon the evaluation of said receipts by Lessor, the amount and method of rental payment may be re-set.
- B. If at any time during the period January 1, 1983, to December 31, 1983, further license agreements regarding tour boat operations are contemplated by Lessee and submitted to Lessor per the Special Provisions of Section 2 of PRC 6002.1, Lessee will submit a listing of all receipts received in connection with that certain document entitled License Agreement, dated December 14, 1982, and executed by Thomas P. Raley and James Muncill at that time.


THOMAS P. RALEY
1-12-83
Date

STATE OF CALIFORNIA
State Lands Commission

By: _____

Date: _____

Execution of this letter was authorized
by the State Lands Commission on

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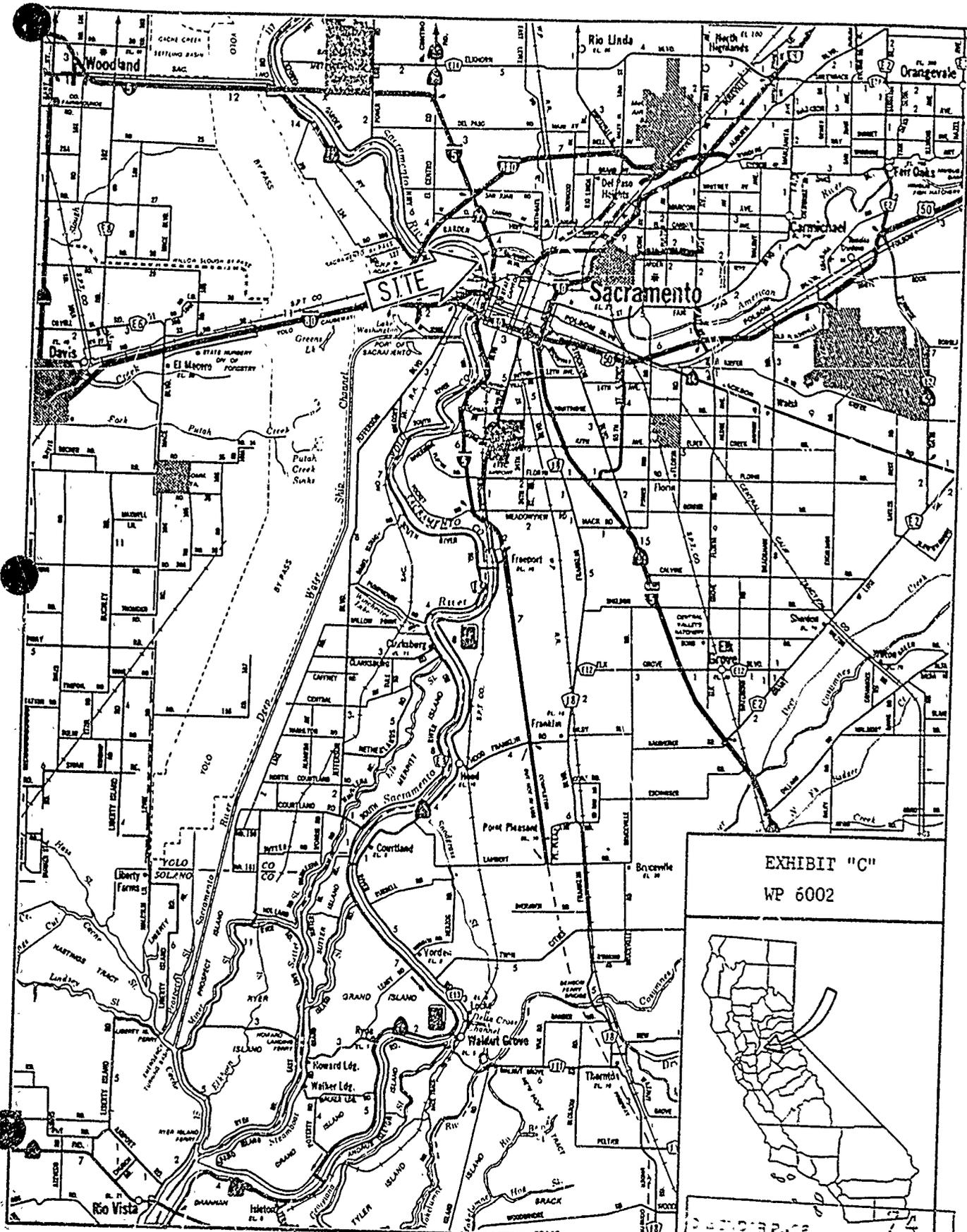


EXHIBIT "C"

WP 6002

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