

MINUTE ITEM
This Calendar Item No. 39
was approved as Minute Item
No. 39 by the State Lands
Commission by a vote of 3
to 0 at its 10/23/86
meeting.

MINUTE ITEM

39

10/23/86
PRC 5167 PRC 6427
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CONSIDERATION OF A COMMERCIAL SUBLEASE
PORTION OF LEASE PRC 5167

During consideration of Calendar Item 39 attached, Ms. Laurie Patching and Mr. Dave Durrett, Attorney, representing Laurie Patching, appeared to request that the Commission approve the sublease between the Virgin Sturgeon and Riverbank Holding Company.

Mr. Thomas Westley, Attorney and Principal Managing Partner of the Riverbank Holding Company, appeared to state their objection to the proposed sublease on the grounds that Riverbank felt the Commission did not have the appropriate controlling document in which to make a decision. Mr. Westley indicated that the Commission may have to reconsider the matter if the outcome of pending litigation resulted in a favorable ruling for Riverbank.

Upon motion duly made and carried, the Resolution in Calendar Item 39 was approved, as presented, by a vote of 3-0.

Attachment: Calendar Item 39.

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PRC 5167

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CONSIDERATION OF A COMMERCIAL SUBLEASE,
PORTION OF LEASE PRC 5167

LESSEE: The Virgin Sturgeon, Inc.
330 24th Street
Sacramento, California 95816
and
The Virgin Sturgeon, Inc.
1577 Garden Highway
Sacramento, California 95833

PROPOSED SUBLESSEE:
Riverbank Holding Company
1361 Garden Highway
Sacramento, California 95833

AREA, TYPE LAND AND LOCATION, TOTAL LEASE AREA:
A 1.02-acre parcel of tide and submerged land,
located in the Sacramento River,
Sacramento County.

LAND USE: Commercial marina, restaurant and bar.

AREA, TYPE LAND AND LOCATION, SUBLEASE AREA:
A portion of the 1.02-acre parcel above,
consisting of the easterly 200 feet thereof.

LAND USE: Existing commercial slips for boats.

TERMS OF CURRENT LEASE, PRC 5167: (State Lands Commission to
The Virgin Sturgeon, Inc.)

Initial period: 15 years beginning June 18,
1976.

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Renewal options: One successive period of ten years each.

Surety bond: \$2,000.

Public liability insurance: Combined single limit coverage of \$300,000.

Consideration: \$1,600 per annum; sublease consideration \$6,000 per annum; five-year rent review.

TERMS OF PROPOSED SUBLEASE: (The Virgin Sturgeon, Inc. to Riverbank Holding Company)

Initial period: Six years, seven months and 17 days, beginning November 1, 1984, and ending June 17, 1991, and extended for an additional ten years, if lease PRC 5167 is so extended, to then end on June 17, 2001.

Rental: Minimum, \$1,000 per month.

Public liability insurance: Combined single limit coverage of \$500,000, with The Virgin Sturgeon, Inc. to be specifically covered as an insured party, in certificate of insurance to be provided by Riverbank Holding Company (Riverbank).

APPLICANT STATUS:

Applicant is lessee of upland.

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: N/A.

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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. 21034, 14 Cal. Adm. Code 15300, and 2 Cal. Adm. Code 2905.

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. Riverbank, in its construction of marina docks (PRC 6427), built beyond of its own lease area and extended into unpermitted sovereign lands, and also into the sovereign lands leased to The Virgin Sturgeon, Inc. The sublease proposal presented herewith represents a purported agreement, between The Virgin Sturgeon, Inc. and Riverbank, to allow the latter party's use of the easterly 200 feet of Lease PRC 5167.

Approval of the sublease was originally requested by The Virgin Sturgeon, Inc. at the Commission's August 28, 1986 meeting. At the request of both The Virgin Sturgeon, Inc. and Riverbank, the item was not heard by the Commission at the August meeting. After the August meeting, Riverbank sued The Virgin Sturgeon, Inc. for alleged breach of contract. The complaint alleges that on October 9, 1984, Riverbank and The Virgin Sturgeon, Inc. entered into a proposed sublease which required Commission

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approval. The Virgin Sturgeon, Inc. denies the validity of this October 9, 1984 sublease and, instead, alleges that a sublease signed by the parties in July of 1986 is the appropriate sublease. It is this July 1986 document which The Virgin Sturgeon, Inc. has requested that the Commission approve. It was also the July 1986 document that would have been the subject of the August Commission meeting, had the parties not requested its removal from consideration.

On October 21, staff was advised by telephone, and by letter, that Riverbank objected to the approval of any document that would establish a landlord-subtenant relationship with The Virgin Sturgeon, Inc. until the conclusion of their lawsuit.

The following additional factors are relevant to the Commission in its decision-making process. Riverbank's lease provides for a minimum rental of \$15,000 per year due on August 1 of each year. At the end of each lease year, the lease provides that in the event the percentage of gross income, as defined in the lease, exceeds the \$15,000 minimum, then the lessee shall pay the additional rental. For the year 1985-86, Riverbank paid the minimum and, on October 3, 1986, paid an additional \$9,273.36. Staff has conducted an audit of Riverbank's books and believes that the additional rental, based on the percentage of gross, should be \$37,027. This difference is attributable to basically one account; the percentage of income to be paid to the State from the operation of the restaurant and bar.

Additionally, during the audit, staff discovered that Riverbank authorized the placement of a Commission-unapproved sublease. The sublease is for a deli and, to date, Riverbank has not asked the Commission for approval of that sublease.

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Several other violations of the lease terms have been identified, some of which have been corrected. In making its recommendations on this calendar item, staff does not intend that the Commission waive its right to pursue remaining breaches of the lease.

The State of California, its officers, agents and employees would be named as additional insured on certificates of coverage to be provided to the Commission by the sublessee if the sublease is approved.

APPROVALS OBTAINED:

None.

FURTHER APPROVALS REQUIRED:

None.

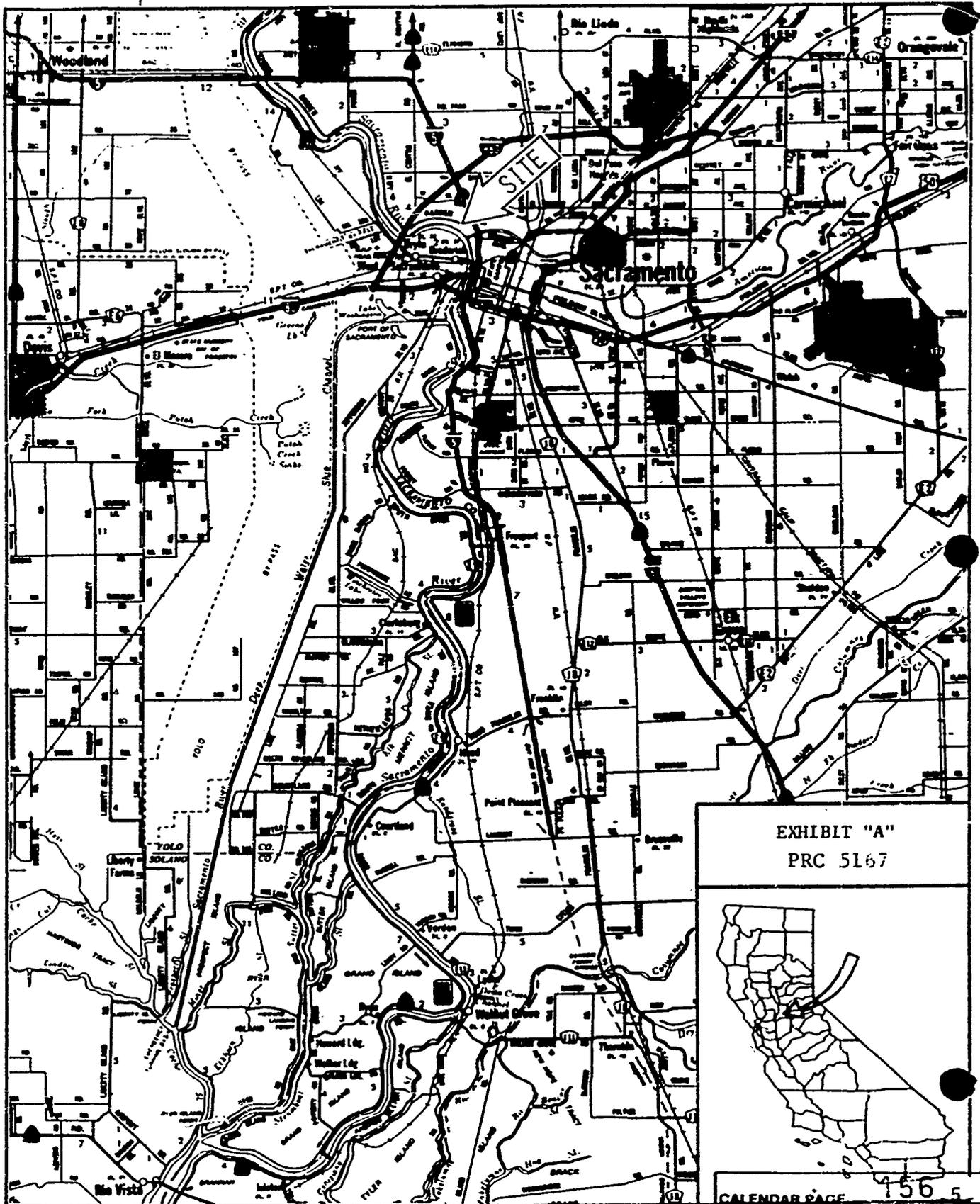
EXHIBIT:

A. Location Map.

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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. APPROVE, BY ENDORSEMENT, THE SUBLEASE AGREEMENT BETWEEN THE VIRGIN SURGEON, INC. (SUBLESSOR) AND RIVERBANK HOLDING COMPANY (SUBLESSEE), PROVIDED THAT THE STATE OF CALIFORNIA IS NAMED AS ADDITIONAL INSURED ON CERTIFICATES OF LIABILITY INSURANCE COVERAGE TO BE PROVIDED TO THE COMMISSION BY SAID SUBLESSEE.

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