

MINUTE ITEM
This Calendar Item No. 26
was approved as Minute Item
No. 26 by the State Lands
Commission by a vote of 3
to 0 at its 10-21-87
meeting.

CALENDAR ITEM

26

A 10
S 6

10/21/87
PRC 5110
Maricle

TERMINATION OF GENERAL LEASE - COMMERCIAL USE

LESSEES: Hugh and Carol A. Turner
139 North Valentine
Fresno, California 93706

AREA, TYPE LAND AND LOCATION:
A 1.604-acre parcel of tide and submerged land,
located on the Sacramento River, Sacramento
County.

LAND USE: Commercial Marina.

TERMS OF EXISTING LEASE: (Issued Under Authority of Minute
Item #11, Dated April 27, 1982)

Initial period: 30 years from January 1, 1982.

Surety bond: \$5,000.

Public liability insurance: Combined single
limit coverage of \$1,000,000.

Consideration:

A base annual rental in the amount of \$1,800 or
six percent of the gross income derived from
the rental of the boat docks and moorings,
three percent of the gross income derived from
the operation of the bar and restaurant,
1.5 cents per gallon of fuel sold during the
reporting period to a maximum of
100,000 gallons and two cents per gallon
thereafter, ten percent of the gross income
derived from the operation of pay telephones,
25 percent of the gross income derived from the
operation of coin operated game and vending

CALENDAR ITEM NO. 26 (CONT'D)

machines, ten percent of the gross income derived from sources exclusive of those previously mentioned, whichever is greater, with the State reserving the right to fix a different rental on each fifth anniversary of the lease.

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.

OTHER PERTINENT INFORMATION:

BACKGROUND:

1. On April 27, 1982, the State Lands Commission (Commission) approved the issuance of a General Lease - Commercial Use, covering a 1.604-acre parcel of tide and submerged land in the Sacramento River, Sacramento County, for operation and maintenance of a commercial marina, to Hugh and Carol A. Turner, as Lessees.
2. Lessees subsequently applied to Wells Fargo Bank for a loan to improve the existing facilities authorized under Lease PRC 5110. As a condition for the loan, Wells Fargo Bank requested that it be named as a secured party-lender under the subject lease and presented a financing agreement entitled "AGREEMENT AND CONSENT TO ENCUMBRANCING OF LEASE", for the review and approval of the Commission. On March 28, 1985, ITEM NO. C8, the Commission authorized staff execution of the consent agreement.
3. At the present time, the Lessee is delinquent in the payment of minimum rental and percentage-of-gross rental to which the Commission is entitled under the terms of the lease in the amount of \$40,273.35 and other rental as of August 31, 1987, as set out below:

CALENDAR ITEM NO. 26 (CONT'D)

	PRINCIPAL	DUE DATE	INTEREST DATE (AS OF)	PENALTY @ 5%	INTEREST @ 18%/ANNUM
% OF GROSS FOR 1984	\$11,212.74	01/25/85	08/31/87	\$560.64	\$5,242.03
% OF GROSS FOR 1985	\$15,815.34	01/25/86	08/31/87	\$790.77	\$4,547.02
MIN. FOR 87 (INU. S 5305)	<u>\$1,800.00</u>	01/01/87	08/31/87	<u>\$90.00</u>	<u>\$214.82</u>
TOTAL DUE	\$28,828.08			\$1,441.40	\$10,003.87
				TOTAL DUE:	\$40,273.35
				(ALONG WITH SUMS COVERED BELOW)	

4. In addition to the preceeding, the Lessee is liable for the report, calculation and payment of the percentage-of-gross rental for calendar 1986, due on or before January 25, 1987, but yet not received.

5. The Lessee had earlier requested rent relief consideration from the staff, in connection with that part of the lease which provides that the rental shall include three percent of the gross income derived from the operation of restaurant and bar facilities. The staff has reviewed its rental survey data in this regard, and believes that the terms of the lease are well supported and justified. On that account, the Staff declined to agree to any recommendation to the Commission which would support a rental reduction. The staff negotiator discussed this subject matter with the Lessee beginning on September 19, 1986, and approximately three additional times thereafter during the balance of 1986, and again on January 9, 1987. These discussions included the probability of lease termination proceedings if the rent remained unpaid.

CALENDAR ITEM NO. 26 (CONT'D)

6. By conversation of September 3, 1987, and subsequent letter dated September 4, 1987, the staff requested payment of all sums owed not later than October 2, 1987, and stated that, if payment was not received by that time, a recommendation would be prepared advocating that the Commission terminate the lease for breach, that it authorize all action necessary to collect the delinquent rental, and that it require the Lessee to remove all structures, buildings and fixtures from State property.
7. The "Agreement and Consent to Encumbrance of Lease", described in paragraph No. 2 above, provides that the Secured Party Lender may cure a breach or default of the lease, within 60 days after service of written notice of the State's intention to terminate the lease for such breach or default. The Secured-Party Lender is aware of the present breach and has been notified of today's recommendation.

The Agreement and Consent document also provides that the Secured-Party lender may, under specified conditions, pursue a transfer of the lease and possession of the lease premises to another party acceptable to the Lessor. Should the Secured-Party Lender cure the breach and nominate a new operator of the lease premises, such will be presented to the Commission for approval.

As additional pertinent information, the Commission is advised that Paragraph No. 13 of the general provisions of Lease PRC 5110, provides that upon expiration or sooner termination of the lease, the Lessor (State) may accept all or any portion of the improvements on State property, or require their removal at the Lessee's expense. In the event that neither the Lessee nor Wells Fargo Bank cures the present breach, the staff believes that the Executive Officer should be vested with the authority to find and determine whether the improvements should be removed, or to accept them, in whole or in part, in the name of the Commission.

CALENDAR ITEM NO. 26 (CONT'D)

8. 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 because the activity is not a "project" as defined by CEQA and the State CEQA Guidelines.

Authority: P.R.C. 21065 and 14 Cal. Adm. Code 15378.

EXHIBITS: A. Summary of Sums Due the State.
 B. Location Map.

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 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY P.R.C. 21065 AND 14 CAL. ADM. CODE 15378.
2. AUTHORIZE STAFF TO ISSUE TO ALL APPROPRIATE PARTIES A NOTICE OF INTENTION TO TERMINATE LEASE PRC 5110, FOR LESSEE FAILURE TO RENDER PAYMENT OF RENTAL INCLUDING PENALTY AND INTEREST, AS SET OUT IN EXHIBIT "A", SAID NOTICE TO SPECIFICALLY PROVIDE FOR:
 - A) AN EFFECTIVE TERMINATION DATE OF JANUARY 1, 1988.
 - B) APPROVAL FOR STAFF TO USE ALL AVAILABLE LEGAL MEANS TO COLLECT THE MONETARY SUMS SET OUT IN SAID EXHIBIT "A"; INCLUDING ANY PENALTY AND INTEREST ACCRUING THERETO.
 - C) FIND, IN THE EVENT THAT NEITHER THE LESSEE NOR THE SECURED-PARTY LENDER CURES THE AFORE-DESCRIBED BREACH, THAT THE EXECUTIVE OFFICER IS AUTHORIZED TO DETERMINE WHETHER THE IMPROVEMENTS OCCUPYING SOVEREIGN LANDS SHOULD BE REMOVED OR TO ACCEPT SUCH IMPROVEMENTS, IN WHOLE OR IN PART, IN THE NAME OF THE COMMISSION.
3. FIND THAT SUCH TERMINATION OF SAID LEASE SHALL NOT BE EFFECTIVE, AND THE AFORESAID BREACH FULLY CURED, IF THE SUMS SET OUT IN EXHIBIT "A", INCLUDING ALL PENALTIES AND INTEREST LAWFULLY ACCRUING THEREUPON TO THE DATE OF PAYMENT, ARE PAID TO THE STATE BY THE LESSEE WITHIN THE PERIOD ALLOWED IN PARAGRAPH NO. 11 OF THE GENERAL PROVISIONS OF SAID LEASE.

CALENDAR ITEM NO. 26 (CONT'D)

4. FIND, ADDITIONALLY, THAT SUCH TERMINATION SHALL NOT BE EFFECTIVE IF THE SECURED-PARTY LENDER SHALL CURE, WITHIN SIXTY (60) DAYS AFTER SERVICE OF WRITTEN NOTICE ON THE SECURED-PARTY LENDER, OF LESSOR'S INTENTION TO TERMINATE THE LEASE FOR SUCH DEFAULT OR BREACH, BY FULL PAYMENT TO THE STATE OF ALL THE RENTALS, PENALTIES, AND INTEREST TO WHICH IT IS ENTITLED: AND THAT IN TENDERING SUCH PAYMENT, THE SECURED-PARTY LENDER SHALL SUCCEED TO THE RIGHTS AND DUTIES SPECIFIED IN THE "AGREEMENT AND CONSENT TO ENCUMBRANCING OF LEASE" APPROVED BY THE STATE LANDS COMMISSION ON MARCH 28, 1985.

CALENDAR PAGE	214
MINUTE PAGE	3673

EXHIBIT "A"

REPORT OF SUMS DUE THE STATE

I.

CALCULATION OF RENT, PENALTY AND INTEREST DUE
ON MINIMUM AND REPORTED PERCENTAGE-OF-GROSS RENTALS

	PRINCIPAL	DUE DATE	INTEREST DATE (AS OF)	PENALTY @ 5%	INTEREST @ 18%/ANNUM
% OF GROSS FOR 1984	\$11,212.74	01/25/85	08/31/87	\$560.64	\$5,242.03
% OF GROSS FOR 1985	\$15,815.34	01/25/86	08/31/87	\$790.77	\$4,547.02
MIN. FOR '87 (INV. S 5305)	<u>\$1,800.00</u>	01/01/87	08/31/87	<u>\$90.00</u>	<u>\$214.82</u>
TOTAL DUE	\$21,828.08			\$1,441.40	\$10,003.87
				TOTAL DUE:	\$40,273.35

II.

Percentage-of-Gross Rental,
Year Ended December 31, 1986

Sum to be Calculated and paid by
the Lessee per Lease Terms and
Conditions.

III.

All penalties and interest due the State on unpaid rentals between
August 31, 1987, to and including the date of payment.

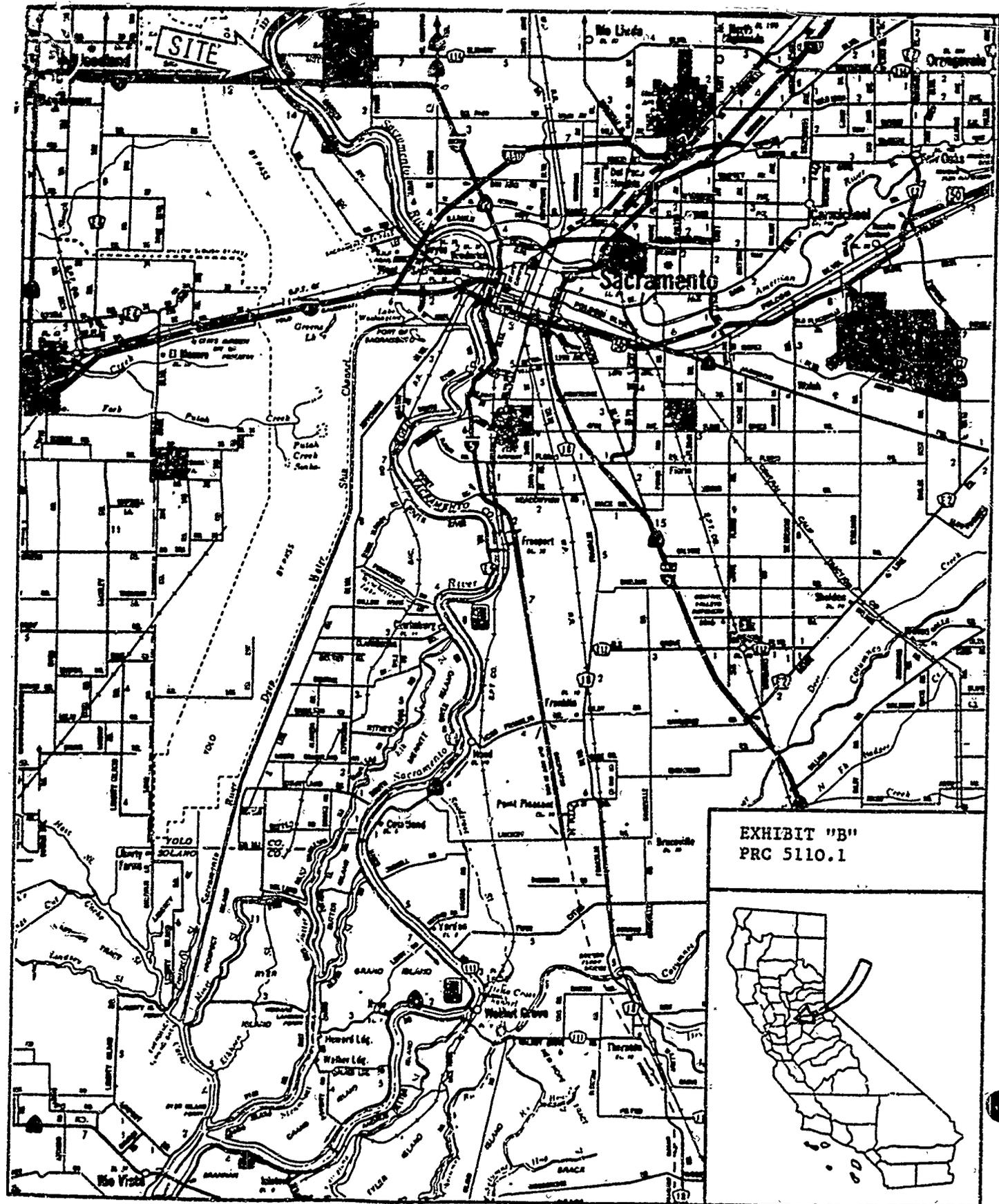


EXHIBIT "B"
PRC 5110.1

