

CALENDAR ITEM
C20

MINUTE ITEM
This Calendar Item No. C20
was approved as Minute Item
No. 20 by the State Lands
Commission by a vote of 3
to 0 at its 10/17/95
meeting.

A 15

S 7

PRC 7852

10/17/95

W 21157

Jones

**APPROVAL OF GENERAL LEASE - COMMERCIAL USE AND
APPROVAL OF "AGREEMENT AND CONSENT TO ENCUMBRANCING LEASE"**

APPLICANT:

Robert R. and Jean Butler
aka Willow West Harbor
P. O. Box 1623
Bethel Island, California 94511

LOCATION:

A parcel of tide and submerged land in Piper Slough at Bethel Island, Contra Costa County.

LAND USE:

Construction, operation and maintenance of a 25 berth commercial marina.

PROPOSED LEASE TERMS:

Lease period:

25 years, beginning July 1, 1995.

Surety Bond:

\$20,000.

Liability Insurance:

\$1,000,000 Combined Single Limit.

CONSIDERATION:

\$3,447 minimum annual rental or a percentage of gross income, whichever is greater, with the State reserving the right to fix a different rental on each fifth anniversary of the lease.

BASIS OF CONSIDERATION:

Pursuant to 2 Cal. Code Regs. 2003.

CALENDAR ITEM NO. C20 (CONT'D)

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. Code Regs.: Title 3, Div. 3; Title 14, Div. 6.

AB 884:

Incomplete.

OTHER PERTINENT INFORMATION:

1. A Negative Declaration (SCH 95043012) was prepared for this project by the County of Contra Costa.
2. In June of 1995, the Zoning Administrator of the County of Contra Costa approved a Land Use Permit for a 25 berth marina; however, adjacent property owners appealed the Land Use Permit to the Planning Commission and to the County Board of Supervisors primarily over issues concerning the access road. On August 7, 1995, the East County Regional Planning Commission, and on September 26, 1995, the Board of Supervisors both denied the appeal, approved the Use Permit, and adopted and certified the Negative Declaration. The State Lands Commission's staff has reviewed the document.
3. The adjacent property owner to the north, Mr. Loren Voll, filed a written objection to the County asserting that the northernmost portion of the proposed marina, approximately one and one half berths, will project into the waterfrontage of his property. At this time, there are no improvements on Mr. Voll's property, but he contends that he may desire to place improvements there at some future time. Although Mr. Voll wrote to the County during the appeal process expressing his concerns, neither he nor his representative testified at any of the County hearings. Nor did the County require an amendment of the marina design to avoid the subject area.

Any improvements Mr. Voll constructs in Piper Slough will require a lease from the Commission.

CALENDAR ITEM NO. C20 (CONT'D)

The issue before the Commission is whether or not to issue a lease, and, if so, what is the appropriate lease boundary. The applicant has requested a lease parcel whose lateral boundaries are drawn normal to shore. Mr. Voll proposes that the lateral boundaries be projections of the lateral boundaries of the upland parcels. These alternative lines are shown on the attached Exhibit "C" and are explained in more detail below.

The Commission generally issues leases to littoral upland owners. The Commission's regulations provide that:

Leases or permits for tide or submerged lands shall generally only be issued to riparian or littoral upland owners or use right holders, provided however that such lease or permits may be granted to the best qualified applicant irrespective of riparian or littoral status [2 Cal Code Regs 2000(c)].

Staff has determined that the proposed lease, as described by the applicant, will not in any way interfere with Mr. Voll's access to and from his property.

"Normal to Shore Method:

The most commonly used practice in California to project lines into a water body from the shoreline is what will be referred to as the "normal to shore" method:

"The rule for the division of flats (submerged land) is to run perpendicularly to the shore line from the point of division at high water mark to low water mark. . . The direction of the side lines of the flats is not governed by that of the side lines of the upland. Where there is no cove or headland, a straight line is to be drawn according to the general course of the shore at high water and the side lines of the lots are to be extended at right angles with the shoreline." (Wattles, Writing Legal Descriptions, (1976) pg. 6.11).

Simply stated, it is a line drawn perpendicularly into the waterbody from the intersection of the side property lines with the high water mark. This is the method used by the applicant to describe the proposed lease premises.

Since 1964, the Commission has consistently used the "normal to shore" method. The Commission's position in this regard is clearly explained in a letter to then Assemblyman Jerome Waldie from Commission Chairman Hale Champion regarding potential use of water covered lands adjacent to Bethel Island, the site

CALENDAR ITEM NO. C20 (CONT'D)

of the proposed project, a copy of which is attached as Exhibit "D".

Projected Property Line

The method proposed by Mr. Voll is to project the upland lot lines straight out into the water without regard for shoreline sinuosities. In Mr. Voll's letter to the County, dated July 20, 1995, he states he bought the property with the understanding that the property lines have always extended in a straight line to a point in the water and he does not want that changed. In addition, he indicated in 1964 he had plans that were approved by the Commission extending a straight line to a point in the water. In researching our records, it appears that Mr. Voll filed an application with the Commission in 1964 for a 33 covered berth marina, but the application was withdrawn; hence the Commission has never approved his project, nor use of the projected property line to define lease premises at this location.

4. As stated in Paragraph No. 2 above, several issues were raised by property owners adjacent to Mr. Butler's property during the County deliberations, including use of the access road to his property by the berthholders and mitigation for wetland loss.

The road access issue is a County issue and was resolved by the County of Contra Costa through its Use Permit. The issue regarding wetlands loss was addressed by the U.S. Army Corps of Engineers and the State Department of Fish and Game and required that Mr. Butler contribute to an offsite mitigation bank.

Both of these issues involve upland activities, not activities involving the State's land. Furthermore, the Commission is neither the Lead Agency under CEQA nor does it have the legal or jurisdictional authority to address these issues.

EXHIBIT:

- A. Site Plan.
- B. Location Map.
- C. Graphic Showing Methods of Surveying
- D. Letter to Assemblyman Jerome Waldie
- E. Notice of Determination.

CALENDAR ITEM NO. C20 (CONT'D)

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT A NEGATIVE DECLARATION (SCH 95043012) WAS PREPARED AND ADOPTED FOR THIS PROJECT BY THE COUNTY OF CONTRA COSTA AND THAT THE COMMISSION HAS REVIEWED AND CONSIDERED THE INFORMATION CONTAINED THEREIN.
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 ISSUANCE TO ROBERT R. AND JEAN BUTLER, OF A 25-YEAR GENERAL LEASE - COMMERCIAL USE, BEGINNING JULY 1, 1995; IN CONSIDERATION OF MINIMUM ANNUAL RENTAL OF \$3,447, OR FIVE (5) PERCENT OF GROSS INCOME PER ANNUM, WHICHEVER IS GREATER, WITH THE STATE RESERVING THE RIGHT TO FIX A DIFFERENT RENTAL ON EACH FIFTH ANNIVERSARY OF THE LEASE; PROVISION OF PUBLIC LIABILITY INSURANCE FOR COMBINED SINGLE LIMIT COVERAGE OF \$1,000,000; PROVISION OF A SURETY BOND IN THE AMOUNT OF \$20,000; FOR A 25-BERTH COMMERCIAL MARINA CONSISTING OF FOUR 17' X 50' COVERED BERTHS, FIVE 16' X 45' COVERED BERTHS, FIFTEEN 14' X 40' COVERED BERTHS, AND ONE UNCOVERED 50 FOOT BERTH, WITH TWO ACCESS RAMPS AND EACH BERTH CONTAINING AN INDIVIDUAL SEWAGE PUMPOUT STATION; ON THE LAND DESCRIBED ON EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF. THE LEASE IS SUBJECT TO LESSEE'S ACQUISITION OF ALL OTHER AGENCY APPROVALS AND THE DEMONSTRATION OF LEGAL ACCESS TO THE LEASE PREMISES.
4. AUTHORIZE STAFF EXECUTION OF THE DOCUMENT ENTITLED "AGREEMENT AND CONSENT TO ENCUMBRANCING OF LEASE" ON FILE IN THE OFFICE OF THE COMMISSION IN FAVOR OF THE STATE DEPARTMENT OF BOATING AND WATERWAYS AS SECURED PARTY LENDER.

CANTON TOWNSHIP, SOCIETY.

94 DEC 27 AM 11:30

BETHEL HARBOUR SOCIETY

LP 2071-94



DATE: 12/27/94	BY: [Signature]	SCALE: 1" = 100'
SITE PLAN		
SHEET NO. 17		

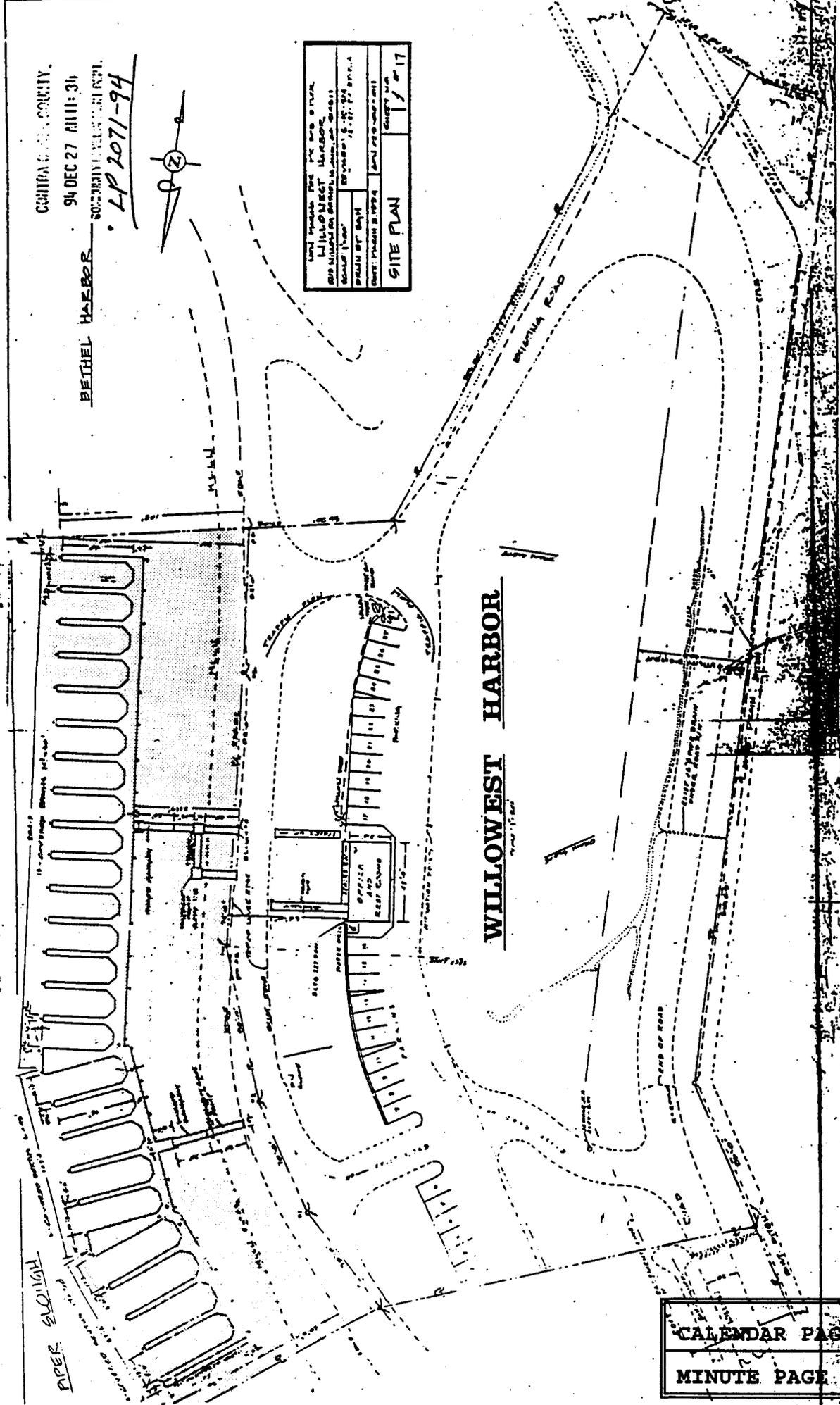


EXHIBIT "A"

PROPOSED LEASE PREMISES

W 2 57

CALENDAR PAGE	77
MINUTE PAGE	1900

Second Method described:
Prolongation of property lines
into water body from shoreline.

NORMAL TO SHORE
First Method described:
Extended property lines
perpendicular from the
shoreline into the
water body.

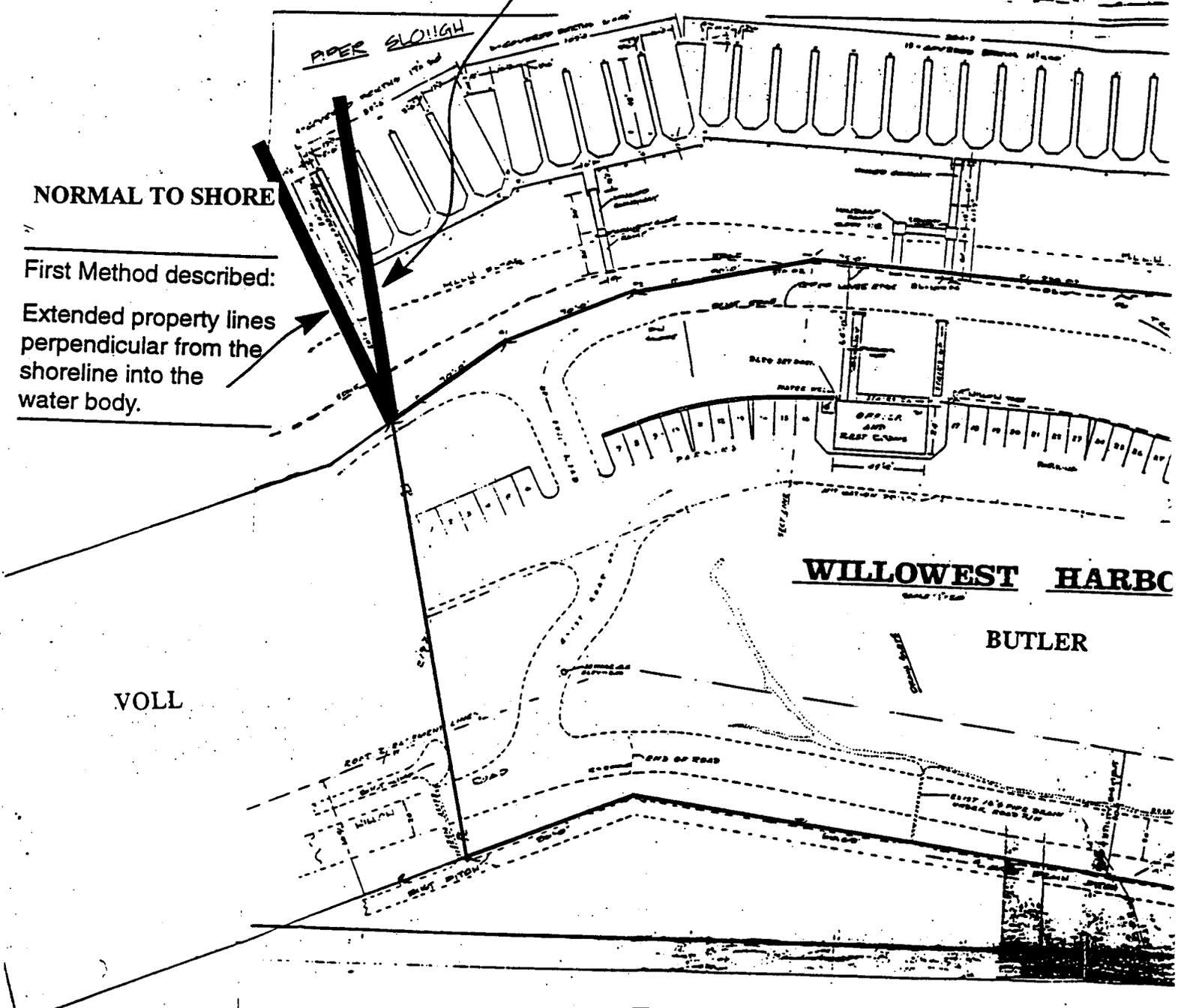


Exhibit "C"

W 21157

December 24, 1964

Honorable Jerome R. Waldie
 Assemblyman, Tenth District
 California Legislature
 113 "G" Street
 Antioch, California

Dear Jerry:

This is in further response to your inquiry of October 20, 1964, with respect to Resolution No. 44 which was passed by the Board of Directors of Bethel Island Municipal Improvement District.

The State Lands Division recently had the same resolution brought to its attention by the Bethel Island Municipal Improvement District through Maud M. Peterson. This resolution proposes establishment of a policy to extend private land-ownership lines out into the "submerged tide lands" surrounding Bethel Island, presumably for the purpose of attempting to solve the problem of structures extending "in front of" other property owners' frontage. The effect of such a proposal would be to allow an undue advantage against neighboring property owners by allowing them to consider that their "share" of the State lands in front of their property is embraced within the extensions of the side lines of their upland ownership.

For your information I am enclosing a theoretical sketch which serves to illustrate the conflict which would be created by extending upland property lines into a waterway as a basis for delimiting the use of water areas by littoral owners.

The proposed policy could be contrary to the principle of maintaining proportionate water frontage when the side lines of leased areas of sovereign lands extend from the ordinary high water mark cut toward the center line of the sloughs. To date, the State Lands Division has followed the practice of extending the side lines of leased areas normal (perpendicular), or nearly normal, to the shore of the waterway, thereby giving each littoral landowner equitable opportunity to use the State lands "in front of" his upland ownership.

CALENDAR PAGE 80

MINUTE PAGE 1903

Since the State Lands Division has no control over the establishment of the direction of the side lines of upland properties and such side lines may intersect a shore line at any possible angle, it becomes evident that the extension of such private property lines out into the sovereign lands in the beds of navigable waterways could be so manipulated by upland owners as to result in inequitable subdivisoning of the sovereign lands for the purpose of leasing.

A copy of the subject resolution has been received by the State Lands Division, but there has been no request for State Lands Commission action on the proposal. However, from the foregoing review it would appear that the Division would have to recommend that the Commission not accede to the proposal to delineate the subdivisoning of the submerged lands in the manner set forth in the resolution.

Sincerely,

HALE CHAMPION
Director

700039/rh
Enclosure

CALENDAR PAGE 81

MINUTE PAGE 1904

CALIFORNIA ENVIRONMENTAL QUALITY ACT NOTICE OF DETERMINATION

CONTRA COSTA COUNTY COMMUNITY DEVELOPMENT DEPARTMENT
851 PINE STREET 4TH FLOOR NORTH WING MARTINEZ, CALIFORNIA 94553-0095

Telephone: (415) 646-2031

Contact Person: Catherin Kutsuris

Project Description, Common Name (if any) and Location:

WES ANDERSON (Applicant), **ROBERT BUTLER** (Owner), County File # 2071-94: The applicant requests approval of a land use permit/development plan for a ~~24~~ berth boat marina with a 920 square foot office/laundry building. The subject property is a 3.98 acre site located approximately 300' from the terminus of Willow Road West and approximately 600' north of the terminus of Harbor Drive, and at mile 2.35 in Piper Slough in the Bethel Island area. ((R-B) (E-27, F-25m) (CT 3010) (APN 029-010-011))

The project was approved on September 26, 1995
Pursuant to the provisions of the California Environmental Quality Act:

SEP 28 1995

- An Environmental Impact Report was prepared and certified (SCH #)
- The Project was encompassed by an Environmental Impact Report previously prepared for (SCH #).
- ^{MITIGATED} A Negative Declaration was issued indicating that preparation of an Environmental Impact Report was not required.

Copies of the record of project approval and the Negative Declaration or the final EIR may be examined at the office of the Contra Costa County Community Development Department.

- The Project will not have a significant environmental effect: WITH APPROVED MITIGATION MEASURES
- The Project will have a significant environmental effect.
- Mitigation measures were made a condition of approval of the project.
- A statement of overriding considerations was adopted.
- Findings were adopted pursuant to Section 15091 of the State CEQA Guidelines.

Date: September 27, 1995 By: Arthur Beasford
Community Development Department Representative

AFFIDAVIT OF FILING AND POSTING

SEP 28 1995

I declare that on _____ I received and posted this notice as required by California Public Resources Code Section 21152(c). Said notice will remain posted for 30 days from the filing date.

Wes Anderson _____
Signature Title

Applicant's
Name: Wes Anderson
Address: P. O. Box 427
Bethel Island, CA 94511

Department of Fish and Game Fees Due:

<input type="checkbox"/>	EIR - \$850
<input checked="" type="checkbox"/>	Neg. Dec. - \$1,250
<input type="checkbox"/>	DeMinimis Findings - \$0
<input checked="" type="checkbox"/>	County Clerk - \$25

Total Due: \$ _____
Total Paid: \$ _____
Receipt #: G-740020

EXHIBIT "E"
W21157