

MINUTE ITEM

This Calendar Item No. C24 was approved as Minute Item No. 24 by the California State Lands Commission by a vote of 3 to 0 at its 08/21/96 meeting.

**CALENDAR ITEM
C24**

A 17

08/21/96

PRC 4082.1 WP 4082.1

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D. Jones

**AMENDMENT AND ASSIGNMENT OF GENERAL LEASE - COMMERCIAL USE
LEASE NO. PRC 4082.1 AND AUTHORIZATION
OF AN AGREEMENT AND CONSENT TO ENCUMBRANCING AGREEMENT**

APPLICANT/LESSEE/ASSIGNOR:

Horst Hanf
834 Francisco Blvd., West
San Rafael, California 94901

ASSIGNEE:

Tiki Lagun, Ltd., a California Limited Partnership
834 Francisco Blvd., West
San Rafael, California 94901

LOCATION:

An 8-acre parcel, more or less, of tide and submerged land in Whiskey Slough,
San Joaquin County.

PROPOSED AUTHORIZED USE:

A 213 berth commercial marina, gas dock with gas pump, and ancillary facilities.

CURRENT LEASE TERMS:

Term:

Thirty-five years, beginning January 1, 1985.

Authorized Use:

Approximately 252 berths (3 covered boathouses), gas dock with gas pump, and ancillary facilities.

Surety Bond:

\$25,000.

CALENDAR ITEM NO. C24 (CONT'D)

Liability insurance:

\$1,000,000 Combined Single Limit.

Consideration:

Minimum Annual Rent of \$17,550 paid semiannually against five per cent of gross receipts, whichever is greater, plus one and one-half cents per gallon of fuel sales to 100,000 gallons and 2 cents per gallon over 100,000 gallons.

CONSIDERATION:

The annual rent shall consist of a "minimum annual rent" and "percentage rent" beginning January 1, 1996. For the period January 1, 1996, through December 31, 1996, the minimum annual rent shall be \$8,775; for the period January 1, 1997, through December 31, 1997, the minimum annual rent shall be \$5,000 for the period of January 1, 1998 through December 31, 1998, the minimum annual rent shall be \$10,000; and for the period beginning January 1, 1999 and thereafter, the minimum annual rent shall be \$20,054 against a percentage of gross receipts, whichever is greater. The minimum annual rent shall be paid on a monthly basis.

OTHER PERTINENT INFORMATION:

1. On April 1, 1996, a severe windstorm (tornado) damaged, beyond repair, two of the three existing covered boathouses within the lease premises. Prior to the wind damage, the marina consisted of approximately 252 berths in three boathouses. The damaged boathouses had a total of 150 berths which were affected. The Lessee determined that it was not economically feasible to bring the two existing boathouses up to current code standards; therefore, the Lessee is applying to construct three new boathouses (Docks A, B & C) with a total of 96 berths in these boathouses. The construction will be within approximately the same footprint as the two which were destroyed. The new boathouses will consist of fewer berths, but larger in average size.

The dock which was not damaged, known as D Dock and B & D Long Dock, contains 117 berths. After reconstruction, the marina will consist of four boathouses totaling 213 berths.

CALENDAR ITEM NO. C24 (CONT'D)

New Docks A, B & C will consist of twenty-eight (28) 36 foot x 15 foot covered berths, three (3) 36 foot side ties, forty (40) 40 foot x 16 foot covered berths, three (3) 40 foot side ties, and twenty-two (22) 50 foot x 18 foot covered berths.

The existing D Dock and B & D Long Dock consist of thirty-seven (37) 28 foot x 12 foot covered berths, three (3) 30 foot side ties, twenty-five (25) 35 foot side ties, nine (9) 36 foot x 14 foot covered berths, twenty-nine (29) 42 foot x 15 foot covered berths, one (1) 42 foot side tie, two (2) 50 foot x 15 foot covered berths, ten (10) 50' x 17' covered berths, and one (1) 50 foot side tie.

2. The Lessee has requested: 1) a reduction in the minimum annual rent for a three year period beginning January 1, 1996, during the time the marina is being reconstructed; and 2) a monthly payment plan beginning on January 1, 1999.
3. Due to the location of a gas dock facility within the Lease Premises, the Lessee shall submit a Fuel Spill Contingency Plan to Lessor by September 1, 1996.
4. The proposed Amendment would amend the lease description; amend the number of berths authorized to be located in the marina as described above; amend the consideration; and require the submittal of an Fuel Spill Contingency Plan.
5. The Lessee has also requested approval of an encumbrancing agreement in the amount of \$1.6 million in favor of the California Department of Boating and Waterways as secured party lender.

EXHIBITS:

- A. Lease Description
- B. Site Map.
- C. Location Map.

AB 884:

Incomplete.

CALENDAR ITEM NO. C24 (CONT'D)

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 2, REPLACEMENT OR RECONSTRUCTION, 14 CAL. CODE REGS. 15302 .

SIGNIFICANT LANDS INVENTORY FINDING:

FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.

AUTHORIZATION:

1. AUTHORIZE AN ASSIGNMENT OF GENERAL LEASE - COMMERCIAL USE LEASE NO. PRC 4082.1 FROM HORST HANF TO TIKI LAGUN, LTD., A CALIFORNIA LIMITED PARTNERSHIP, EFFECTIVE JULY 1, 1996.
2. AUTHORIZE AN AMENDMENT TO GENERAL LEASE - COMMERCIAL USE LEASE NO. PRC 4082.1 TO AUTHORIZE:
 - A. THE DEMOLITION OF TWO OF THE THREE EXISTING COVERED BOATHOUSES;
 - B. THE CONSTRUCTION OF THREE NEW COVERED BOATHOUSES (REFERENCED AS DOCKS A, B & C), CONSISTING TWENTY-EIGHT (28) 36 FOOT X 15 FOOT COVERED BERTHS, THREE (3) 36 FOOT SIDE TIES, FORTY (40) 40 FOOT X 16 FOOT COVERED BERTHS, THREE (3) 40 FOOT SIDE TIES, AND TWENTY-TWO (22) 50 FOOT X 18 FOOT COVERED BERTHS;
 - C. REPLACEMENT OF THE LEASE DESCRIPTION WITH EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF; AND

CALENDAR ITEM NO. C24 (CONT'D)

- D. AMENDMENT OF THE MINIMUM ANNUAL RENT AS FOLLOWS:
THE ANNUAL RENT SHALL CONSIST OF A MINIMUM ANNUAL RENT AND PERCENTAGE RENT BEGINNING JANUARY 1, 1996; FOR THE PERIOD JANUARY 1, 1996 THROUGH DECEMBER 31, 1996, THE MINIMUM ANNUAL RENT SHALL BE \$8,775; FOR THE PERIOD JANUARY 1, 1997 THROUGH DECEMBER 31, 1997, THE MINIMUM ANNUAL RENT SHALL BE \$5,000; FOR THE PERIOD OF JANUARY 1, 1998 THROUGH DECEMBER 31, 1998, THE MINIMUM ANNUAL RENT SHALL BE \$10,000; AND FOR THE PERIOD BEGINNING JANUARY 1, 1999 AND THEREAFTER, THE MINIMUM ANNUAL RENT SHALL BE \$20,054 TO BE PAID ON A MONTHLY BASIS, AGAINST A PERCENTAGE OF GROSS RECEIPTS, WHICHEVER IS GREATER, WITH THE STATE RESERVING THE RIGHT TO FIX A DIFFERENT RENT ON EACH FIFTH ANNIVERSARY OF THE LEASE; SAID AMENDMENT IS EFFECTIVE JULY 1, 1996.
3. ALL OTHER TERMS AND CONDITIONS OF SAID LEASE NO. PRC 4082.1 SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.
4. AUTHORIZE STAFF EXECUTION OF THE DOCUMENT ENTITLED "AGREEMENT AND CONSENT TO ENCUMBRANCING OF LEASE" IN THE AMOUNT OF \$1.6 MILLION IN A FORM SUBSTANTIALLY SIMILAR TO THAT ON FILE IN THE OFFICE OF THE COMMISSION, IN FAVOR OF THE CALIFORNIA DEPARTMENT OF BOATING AND WATERWAYS, AS SECURED PARTY LENDER.

LEGAL DESCRIPTION**Parcel Four
Amended Lease**

San Joaquin County, California

A portion of tide and submerged land in the bed of Whiskey Slough, situate within projected Section 31, Township 2 North, Range 5 East, Mount Diablo Base and Meridian, County of San Joaquin, State of California, located immediately adjacent to Reclamation District No. 684, commonly referred to as "Lower Roberts Island", and more particularly described as follows:

BEGINNING at the intersection of the centerline of McDonald Island Road (Road No. 610) with the ordinary high water line along the easterly bank of Whiskey Slough and the westerly boundary of said Reclamation District No. 684, described in Parcel VI (Six) of that certain Quitclaim Deed recorded as Instrument Number 88066484, on August 9, 1988, San Joaquin County Records, said point being the TRUE POINT OF BEGINNING of the herein described parcel and bearing North 69°03'23" West 529.54 feet, more or less, from the intersection of the centerline of said McDonald Island Road with the westerly corner of the 169.88 acre parcel designated as Point "D", as shown in Book 17 of Surveys, at Page 15, San Joaquin County Records; thence leaving said ordinary high water line and continuing westerly along the southerly line of said Parcel VI (Six), South 87°00'00" West 155.00 feet to a point in the bed of Whiskey Slough; thence in a general southerly direction within said bed of Whiskey Slough the following seven (7) courses:

- 1) South 169.11 feet;
- 2) thence South 60°44'28" East 408.68 feet;
- 3) thence South 41°31'15" East 31.93 feet;
- 4) thence South 1°39'28" West 213.57 feet;
- 5) thence South 39°26'37" West 338.51 feet;
- 6) thence South 17°40'40" West 167.99 feet;
- 7) thence South 72°18'27" East 144.19 feet,

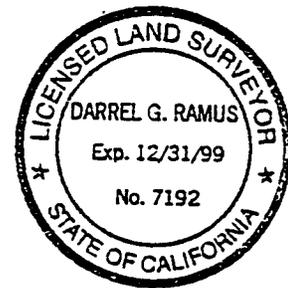
to a point on the westerly prolongation of the southerly line of Parcel III (Three), described in said Instrument Number 88066484 as the line extending from Point "E" to Point "F" as shown on said Book 17 of Surveys, at Page 15; thence easterly along said westerly prolongation of the southerly line of Parcel III (Three), North 88°56'00" East 47.33 feet, more or less, to the ordinary high water line along said easterly bank of

Whiskey Slough, said point designated as Point "F" on said Book 17 of Surveys, at Page 15, and bearing South 88°56'00" West 105.00 feet from Point "E" on said map; thence northerly along the ordinary high water line along said easterly bank of Whiskey Slough, 1400 feet, more or less, to the TRUE POINT OF BEGINNING of the herein described parcel.

Containing 5.7 acres, more or less, said acreage being determined by digitizing the edge of water as surveyed in 1985 by aerial photogrammetry.

EXCEPTING FROM above described Parcel Four any portion thereof lying landward of the ordinary high water line along said easterly bank of Whiskey Slough.

End of Description.



Darrel G. Ramus

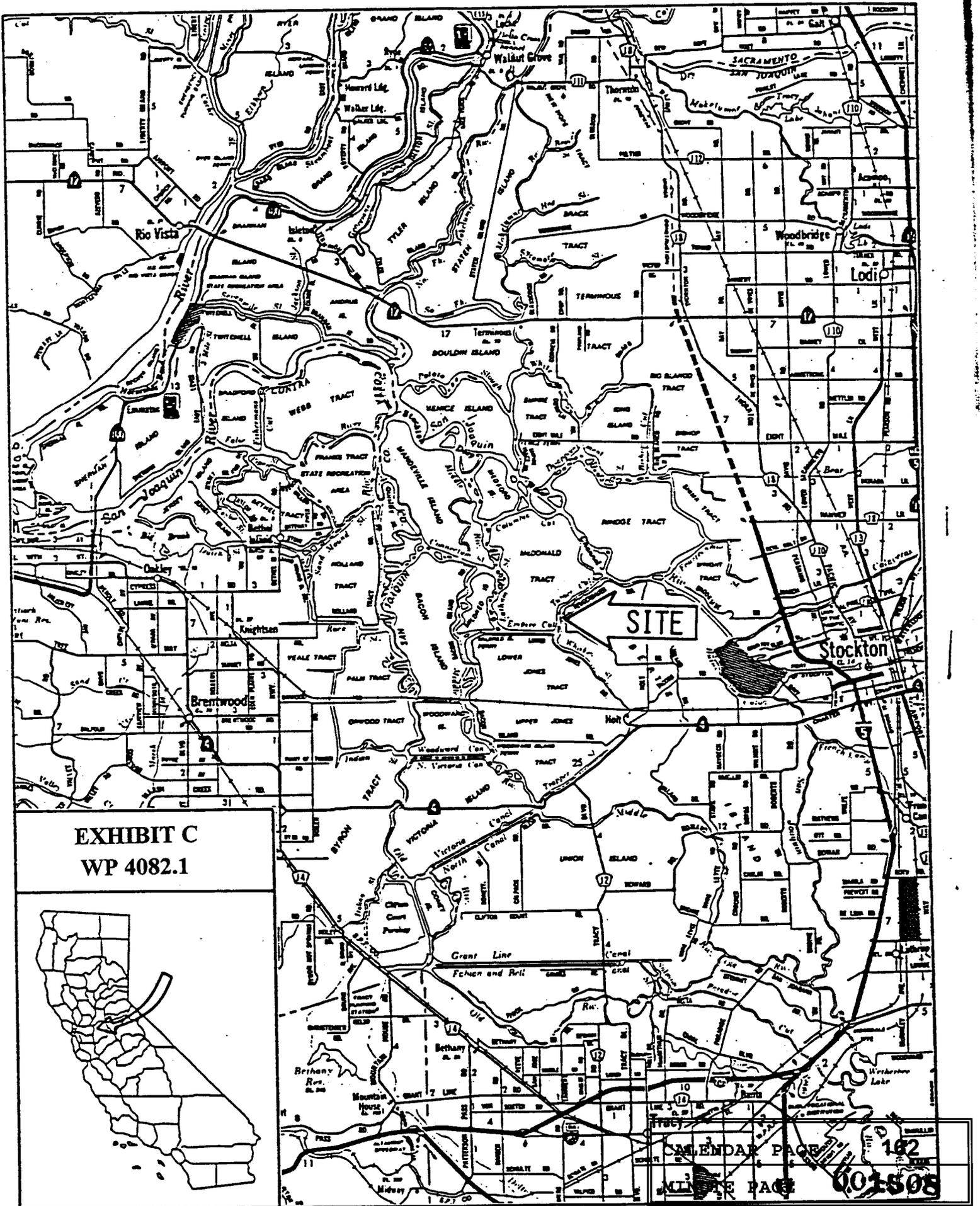


EXHIBIT C
WP 4082.1



CALENDAR PAGE 182
ALTA PAC 601508