MINUTE ITEM
This Calendar Item No. C11 was approved as Minute Item No. 11 by the California State Lands Commission by a vote of 3 to 0 at its 2-21-03 meeting.

CALENDAR ITEM
C11

A 26 | 02/21/03
PRC 2856 | WP 2856.1
S 5 | L. Burks

APPROVAL OF ASSIGNMENT AND AMENDMENT OF GENERAL LEASE – COMMERCIAL USE NO. PRC 2856.1

LESSEE/ASSIGNOR:
Nova N. Neuner

ASSIGNEE:
John C. Bresciani

AREA, LAND TYPE, AND LOCATION:
18.05 acres, more or less, of tide and submerged lands in the San Joaquin River at Vulcan Island, near the city of Stockton, San Joaquin County.

AUTHORIZED USE:
Continued use and maintenance of 26 covered berths, a floating dock with space for five berths, walkways, pilings, 55 recreational vehicle spaces with hook ups, two buildings for sanitary and laundry facilities, two mobile home sites, a maintenance building, two bulkheads along the deep water channel and access roads.

LEASE TERM:

Original Lease:	25 years, beginning January 1, 1993 ending December 31, 2017.
Proposed Amendment:	Extension of lease to terminate December 31, 2034

PROPOSED AMENDMENT:
The Amendment will extend the lease term to terminate on December 31, 2034, and change the Minimum Annual Rent. All other terms and conditions of the lease shall remain in effect without amendment.

CONSIDERATION:

Original Lease:

A Minimum Annual Rent of $3,000 against five percent (5%) of the Gross Income derived from rental of boat berthing and mooring spaces, five percent (5%) of the Gross Income derived from rental of the recreational vehicle spaces, and ten percent (10%) of the Gross Income from all other sources, such as coin operated machines, in the lease area.

OTHER PERTINENT INFORMATION:

1. Assignee owns the uplands adjoining the lease premises.

2. On March 8, 1994, the Commission authorized issuance to Larry A. and Nova N. Neuner (dba Windmill Cove Marina and R.V. Park) a 25 year General Lease – Commercial Use No. PRC 2856.1, beginning January 1, 1993, for the existing authorized improvements. The rent was based on a Minimum Annual Rent of $3,000 against five percent (5%) of Gross Income derived from boat berthing and mooring spaces, five percent (5%) of Gross Income derived from the recreational vehicle spaces and 10 percent (10%) of Gross Income from all other sources, such as coin operated machines, in the lease area. The Lessees have paid their Minimum Annual Rent of $3,000 beginning January 1, 1993, but have failed to neither remit their Reports of Gross Income nor submit any monies owing from these reports since 1993.

   In December, 2002, John Bresciani, the proposed Assignee, met with staff to advise that the Lessee, Nova Neuner, was selling the marina and RV park facilities and that he was purchasing the property. The sale is being handled through an IRS 1031 Exchange. The deadline for finalizing the exchange is March 2, 2003.

   The Lessee has submitted all Reports of Gross Income due from 1993 through 2003. After negotiations, the parties reached a negotiated settlement that provides for the payment of $49,913 in back rent, including any penalty and interest, bringing the rent current to March 1, 2003. In addition, Section 4 of the lease provides that modification of the rent can be performed on every fifth anniversary of the beginning date of this lease, therefore, staff has conducted a rent review to change the new Minimum Annual Rent.

3. Upon Commission approval of this assignment, the Assignee, John C. Bresciani, agrees to the following:

   The new Minimum Annual Rent effective, January 1, 2004, shall be $5,285 against five percent (5%) of Gross Income derived from boat berthing and mooring spaces, five percent (5%) of Gross Income derived from the recreational vehicle spaces and 10 percent (10%) of Gross Income from all other sources, such as coin operated machines, in the lease area.

4. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities, Title 2, California Code of Regulations, section 2905(a)(2).

   Authority: Public Resources Code section 21084 and Title 14, California Code of Regulations, section 15300 and Title 2, California Code of Regulations, section 2905.

5. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 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.

EXHIBIT:

A. Location Map

PERMIT STREAMLINING ACT DEADLINE:

N/A

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

FIND THAT THE ACTIVITY IS NOT SUBJECT TO THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A

CATEGORICALLY EXEMPT PROJECT, CLASS 1, EXISTING FACILITIES, TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTION 2905(a)(2).

SIGNIFICANT LANDS:

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

AUTHORIZATION:

1. AUTHORIZE THE FOLLOWING WITH RESPECT TO LEASE NO. PRC 2856.1, A GENERAL LEASE – COMMERCIAL USE, OF TIDE AND SUBMERGED LANDS, SAN JOAQUIN RIVER, SAN JOAQUIN COUNTY:

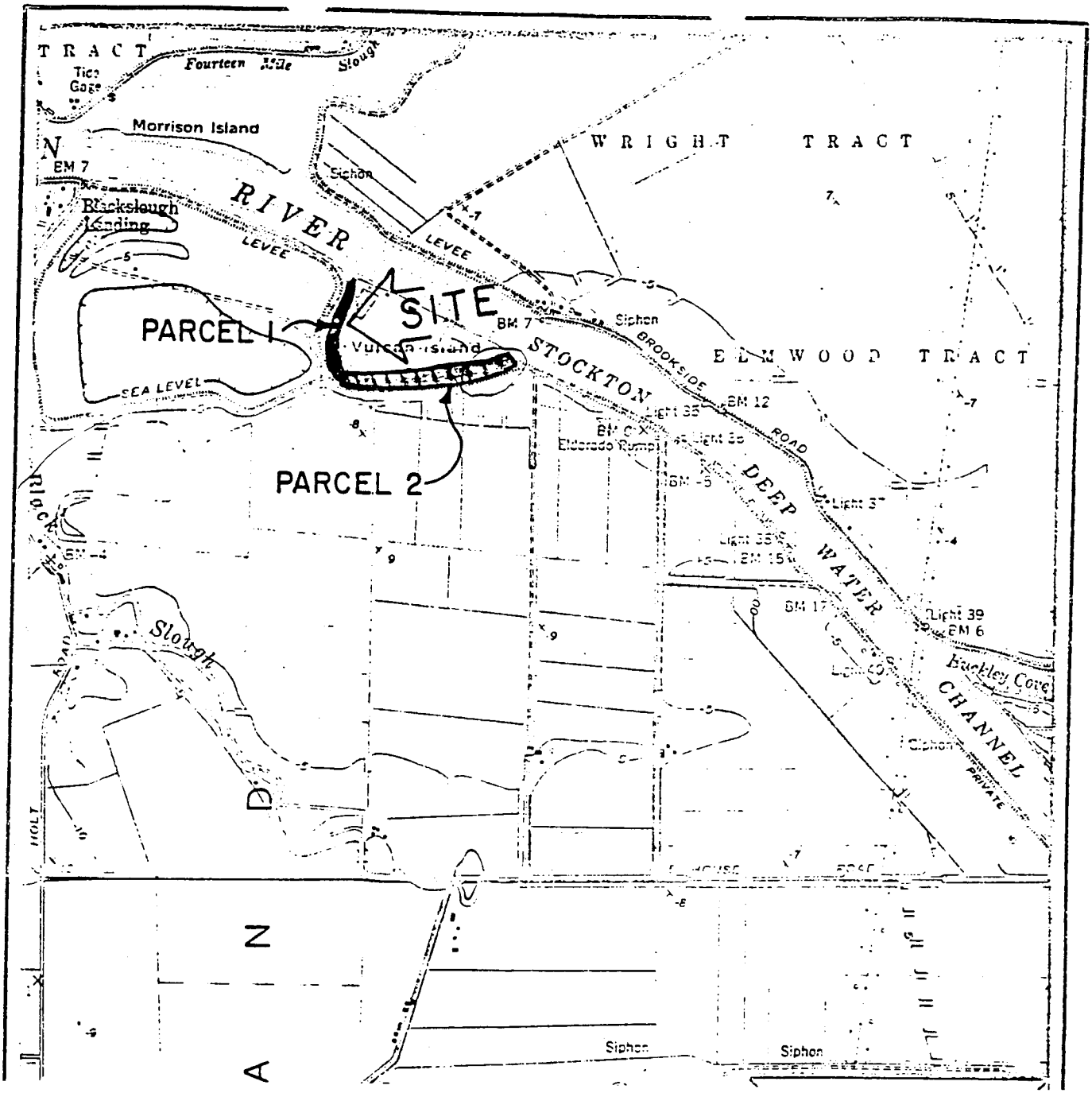
   A. ASSIGNMENT FROM NOVA N. NEUNER, DBA WINDMILL COVE MARINA AND RV PARK, TO JOHN C. BRESCIANI, EFFECTIVE MARCH 1, 2003.

   B. APPROVAL OF A NEGOTIATED SETTLEMENT THAT PROVIDES FOR THE PAYMENT OF $49,913 FOR BACK RENT, INCLUDING ANY PENALTY AND INTEREST. BRINGING THE RENT CURRENT TO MARCH 1, 2003.

   C. AMENDMENT TO EXTEND THE LEASE TERM TO TERMINATE ON DECEMBER 31, 2034.

   D. CHANGE THE MINIMUM ANNUAL RENT, EFFECTIVE JANUARY 1, 2004, TO $5,285 AGAINST FIVE PERCENT (5%) OF GROSS INCOME DERIVED FROM BOAT BERTHING AND MOORING SPACES, FIVE PERCENT (5%) OF GROSS INCOME DERIVED FROM THE RECREATIONAL VEHICLE SPACES AND 10 PERCENT (10%) OF GROSS INCOME FROM ALL OTHER SOURCES, SUCH AS COIN OPERATED MACHINES, IN THE LEASE AREA.

   ALL OTHER TERMS AND CONDITIONS OF THE LEASE WILL REMAIN IN EFFECT WITHOUT AMENDMENT.



Holt Quad

This exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by Lessee or other parties, and is not intended to be, nor shall it be construed as, a waiver or limitation of any state interest in the subject or other property.

Exhibit A
WP 2856

LMB 1/22/03