MINUTE ITEM

This Calendar Item No. C18 was approved as Minute Item No. 18 by the California State Lands Commission by a vote of 3 to ∅ at its 02/05/07 meeting.

CALENDAR ITEM
C18

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02/05/07
PRC2851 WP 2851.1
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ASSIGNMENT, AMENDMENT, AND APPROVAL OF AGREEMENT AND CONSENT TO ENCUMBRANCING OF LEASE

LESSEE/ASSIGNOR:

Alan and Peggy Martin, as co-tenants
1100 W. Brannan Island Road
Isleton, California 95641

ASSIGNEE:

TA & JC Properties, LLC
260 Lakewood Road
Walnut Creek, California 94598

AREA, LAND TYPE, AND LOCATION:

1.14 acres, more or less, of sovereign lands in Seven Mile Slough, near the city of Isleton, Sacramento County.

AUTHORIZED USE:

The continued use and maintenance of an existing commercial marina accommodating approximately 40 covered and uncovered berths and side ties.

LEASE TERM:

20 years, beginning December 1, 2004.

CONSIDERATION:

A minimum annual rental of $1,312 against a percentage of gross receipts for the first three years after which the Minimum Annual Rental shall be recalculated based on actual gross income at that time:

5% of gross income for berthing, mooring and launching of boats;
25% of gross income from vending and electronic game machines; and
10% of all other gross income.

SPECIFIC LEASE PROVISIONS:

Insurance:

$1,000,000 Combined Single Limit.

Bond:

$80,000 until the "Island Queen" has been removed from the Lease Premises or certified to be capable of navigation and not present a threat to the health and safety of those who might board it. Upon removal of the vessel or its certification as capable of navigation, the bond amount shall be reduced to $20,000.

PROPOSED AMENDMENT:

The Lease will be amended to include provisions that the Lessee implement the Commission's "Best Management Practices for Marina Owners/Operators" and incorporate the Commission's "Best Management Practices for Berth Holders and Boaters" into Lessee's berth rental agreements, including additional Best Management Practices (BMPs) the Commission subsequently deems appropriate for either of the above categories. All other terms and conditions of the lease shall remain in effect without amendment.

OTHER PERTINENT INFORMATION:

1. On December 9, 2004, the Commission issued a 20-year General Lease – Commercial Use, to Alan and Peggy Martin, as co-tenants. The marina consists of approximately 40 covered and uncovered berths and side ties. When the Martins purchased the marina, they also purchased a 40 foot x 100 foot vessel known as the "Island Queen", located the vessel on the Lease Premises, and then sold it to a private party. However, the purchaser of the "Island Queen" defaulted on the terms of the sales agreement and failed to remove it from the Lease Premises. The vessel was not in good repair and was incapable of being navigated. The Martins subsequently litigated with the purchaser of the "Island Queen". The lease requires, among other things, submittal of a $80,000 bond until the "Island Queen" is removed from the Lease Premises, after which the bond would be reduced to $20,000. The "Island Queen" has been removed from the Lease Premises; therefore, the current bond required under the lease is $20,000.

2. TA & JC Properties, LLC is currently in escrow to purchase the marina and has applied to the Commission for an Assignment, Amendment and approval of an Encumbrancing Agreement. TA & JC Properties, LLC is currently seeking financing for the acquisition of the marina and intends to

secure the loan with the Commission's lease. The Encumbrancing Agreement, in favor of the Diablo Valley Bank, is for an amount not to exceed $1,000,000.

3. The lease will be amended to contain provisions that will implement the Commission's "Best Management Practices for Marina Owners/Operators" and encourage implementation of the Commission's "Best Management Practices for Berth Holders and Boaters", including additional Best Management Practices (BMPs) the Commission subsequently deems appropriate for either of the above categories. The Assignee will incorporate BMP's on "Berth Holders and Boaters" into Lessee's berth rental agreement. The Assignee shall provide the Commission, on the first anniversary of the assignment and on each successive third anniversary thereafter, a report on compliance with all BMPs.

4. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

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.

EXHIBITS:

A. Site Plan
B. Location Map

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 15060(c)(3) BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY

PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.

SIGNIFICANT LANDS INVENTORY FINDING:

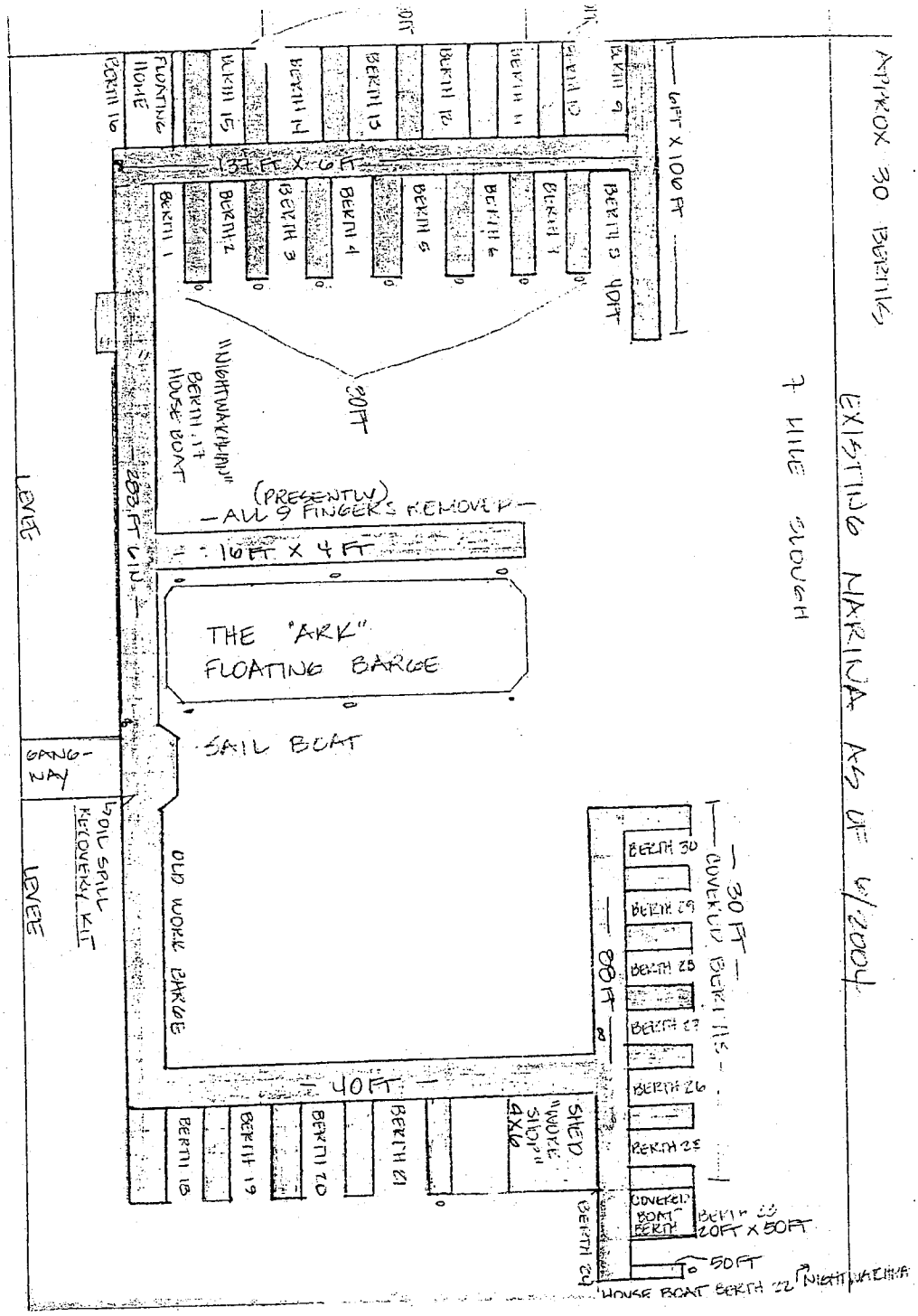
FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.

AUTHORIZATION:

1. AUTHORIZE THE ASSIGNMENT OF LEASE NO. PRC 2851.1, A GENERAL LEASE – COMMERCIAL USE, OF LANDS SHOWN ON EXHIBIT A ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF, FROM ALAN AND PEGGY MARTIN, AS CO-TENANTS, EFFECTIVE ON THE DATE OF THE CLOSE OF ESCROW OF THE SALE BETWEEN ALAN AND PEGGY MARTIN AND TA & JC PROPERTIES, LLC, BUT NO LATER THAN JUNE 30, 2007.

2. AUTHORIZE THE AMENDMENT OF LEASE NO. PRC 2851.1, A GENERAL LEASE – COMMERCIAL USE, OF LANDS SHOWN ON EXHIBIT A ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF, TO ADD BEST MANAGEMENT PROVISIONS TO SECTION 2, AS SET FORTH IN THE LEASE AMENDMENT WHICH IS ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION; ALL OTHER TERMS AND CONDITIONS OF THE LEASE WILL REMAIN IN EFFECT WITHOUT AMENDMENT.

3. AUTHORIZE EXECUTION OF THE DOCUMENT ENTITLED "AGREEMENT AND CONSENT TO ENCUMBRANCING OF LEASE" IN THE AMOUNT NOT TO EXCEED $1,000,000 ON FILE IN THE OFFICE OF THE COMMISSION BETWEEN THE COMMISSION, TA & JC PROPERTIES, LLC, AND DIABLO VALLEY BANK EFFECTIVE UPON THE CLOSE OF ESCROW OF THE SALE BETWEEN TA & JC PROPERTIES, LLC AND ALAN AND PEGGY MARTIN, BUT NO LATER THAN JUNE 30, 2007.



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

Exhibit A
PRC 2851.1

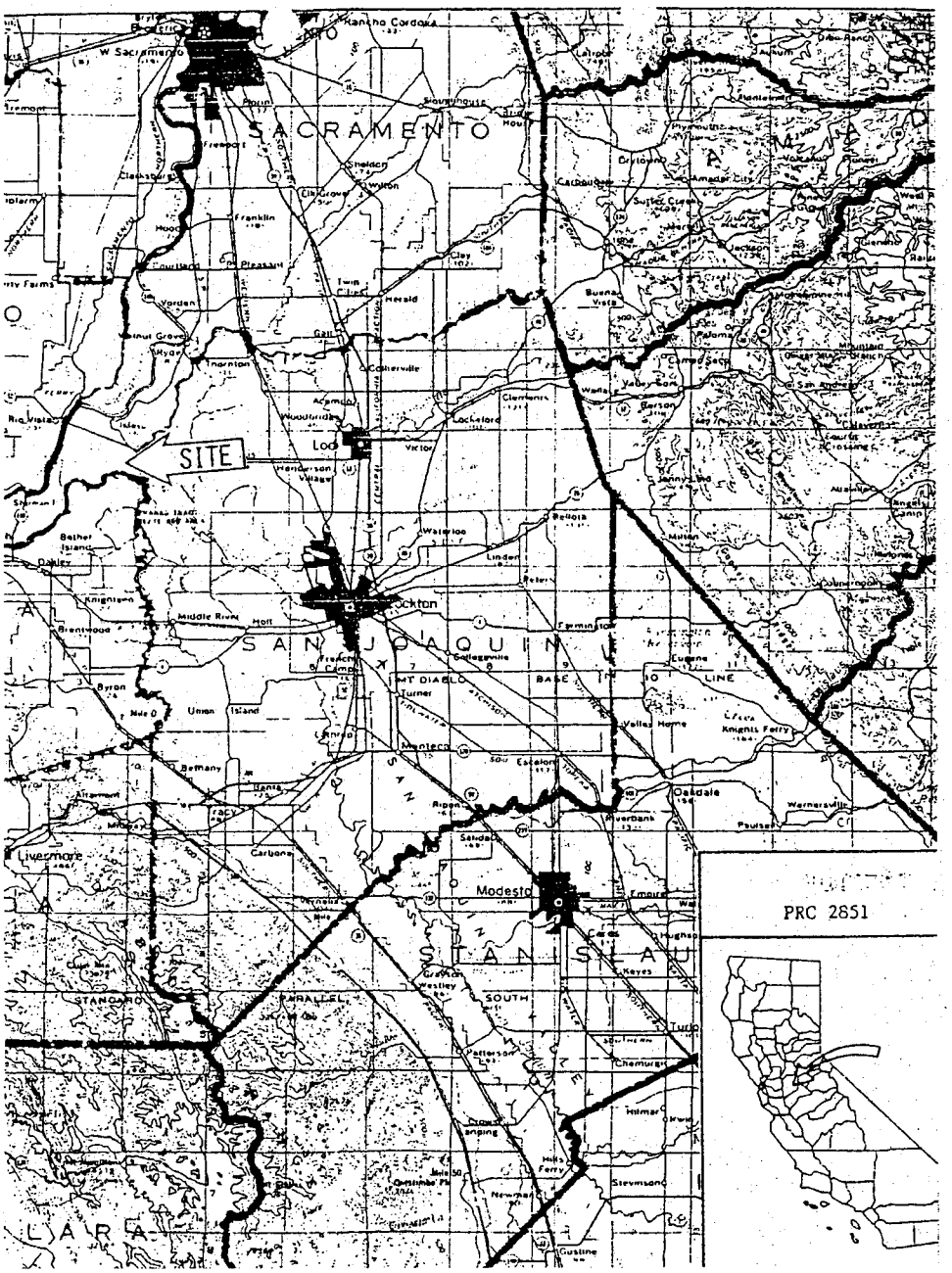


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Exhibit B
PRC 2851.1