

MINUTE ITEM

This Calendar Item No. 64 was approved as Minute Item No. 64 by the State Lands Commission by a vote of 3 to 0 at its 3/27/90 meeting.

CALENDAR ITEM

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AD 112

03/27/90
W 23627
PRC 5441
PRC 5630
Stevenson
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Maricle

REQUEST AUTHORIZATION TO ENTER A TITLE SETTLEMENT AGREEMENT ALONG A ONE-MILE REACH OF THE SACRAMENTO RIVER IN YOLO COUNTY, INCLUDING A \$1.75 MILLION PAYMENT TO THE KAPILOFF LAND BANK FUND AND A TRUST TO BE ESTABLISHED FOR HABITAT PRESERVATION AND RECREATION; REQUEST FOR AUTHORIZATION TO ASSIGN LEASE PRC 5413 (THE RIVER GALLEY) TO LIGHTHOUSE MARINA AND RIVERBEND DEVELOPMENT, TOGETHER WITH TERMS AMENDING THAT LEASE; REQUEST FOR AUTHORIZATION TO SIGN CONSENTS TO ENCUMBER LEASES PRC 5413 (THE RIVER GALLEY) AND PRC 5441 (THE VIEW POINT MARINA); AUTHORIZATION TO ACCEPT A QUITCLAIM OF LEASE PRC 5630 (THE CHARTROOM); AUTHORIZATION TO ENTER REVEGETATION AGREEMENT, THE CITY OF WEST SACRAMENTO, YOLO COUNTY.

APPLICANT: Lighthouse Marina and Riverbend Development, a California general partnership
1450 Harbor Blvd., Suite A
West Sacramento, California 95691

Lighthouse Marina is a mixed residential, commercial, and recreational development on 300 acres of land in the City of West Sacramento, Yolo County. The location of the development is shown on the map attached as Exhibit "A" to this calendar item. At present, there are several owners of the property within the development: Lighthouse Marina and Riverbend Development (Lighthouse), which owns the majority; the

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Redevelopment Agency of the City of West Sacramento (City), which has purchased a 12-acre parcel with some water frontage near the Chartroom from CalTrans; and Cook Inlet, Inc., a corporation of Alaskan natives which purchased 18 acres of surplus federal property at auction (Cook Inlet). These two business entities and a government body shall be referred to collectively in this calendar item as "Record Owners."

State Lands Commission involvement with Lighthouse Marina development stems from the ownership of sovereign land in and along the Sacramento River at the site of the development. In the early stages of the Lighthouse project, Commission surveyors completed a study of the boundary through the site which was provided to Lighthouse and to all relevant government agencies. The State Lands Commission also administers three leases in this stretch of the Sacramento River: the Chartroom (lease PRC 5630), which is presently held by Lighthouse; the View Point Marina (lease PRC 5441) which is also leased to Lighthouse; and the River Galley (lease PRC 5413) which is presently leased to Lorraine Rose.

The land title analysis completed by the Commission's staff shows the following:

1. Private land title within the Lighthouse Marina project is comprised of Swamp and Overflowed Lands Survey Nos. 354, 305, and 653 (Yolo County). Each of these surveys conveyed into private hands land running to the ordinary high water mark of the Sacramento River, which is tidal at the City of West Sacramento;
2. Each of these Swamp and Overflowed Lands Surveys included meander lines of either the Sacramento River or the bank of the Sacramento River. In the main, these lines are inland of today's edge of bank through land to which Lighthouse or another of the Record Owners also asserts title. A part of the meander line of Survey No. 354 runs out into the today's River channel;
3. Artificial influences affected the location of the Sacramento River at the Lighthouse site. Among these influences were the relocation of the mouth of the American River and the settling out of hydraulic mining spoils from upstream tributaries;
4. A portion of the Lighthouse project along the Sacramento River remains subject to sovereign title interests administered in trust by the State Lands Commission;

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5. For an unknown reason, the descriptions of two adjoining Swamp and Overflowed Lands Surveys (Nos. 653 and 305) did not meet, resulting in a gap of unsold property running perpendicular to the Lighthouse development at the upstream end of the project.

At its February 1989 meeting, the Commission authorized the assignment of the Chartroom and View Point leases to Lighthouse. These assignments were executed with specific terms requiring that the leases be operated for all authorized purposes. The View Point Marina has been in compliance with this term while the Chartroom has not been put to use. Lighthouse now seeks an assignment of a third lease, the River Galley, and requests consents to encumber the other two leases in favor of Mitsubishi Bank.

It has been the position of the staff of the State Lands Commission that these matters could not be brought before the Commission until such time as the breach of the Chartroom lease was resolved. In addition, during construction last summer, Lighthouse contractors removed vegetation and placed fill on a small area upstream of the River Galley to which the State asserts title. This, together with an unresolved boundary through the project, pointed out the need for an overall settlement before any Commission authorization of additional Lighthouse activities on sovereign lands.

The staff has negotiated an overall settlement of the boundary, lease, and revegetation issues at the project with Lighthouse Marina developers. However, there has not been a settlement of title questions with the other two record owners of the affected property, the City and Cook Inlet. Therefore, protective terms have been added to the documents referred to below to require that these two parties join in the proposed title settlement agreement. If they do not, the assignment of the River Galley lease will be void and the encumbrances of the View Point and River Galley leases will fail.

The components of the negotiated settlement are:

1. The State, Lighthouse, and other owners of record (provided they agree) will enter a boundary line and exchange agreement which will set the boundary of state sovereign fee land throughout the Lighthouse development. The boundary will be as shown on the map attached as Exhibit "B" to this calendar item. When recorded, this agreement will assure State title in a continuous strip throughout the development ranging in depth from 20 feet from the edge of today's bank to over 100 feet. Particular aspects of the settlement are:

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- a. With two exceptions, the boundary will be set along or landward of the boundary which the State Lands Commission has asserted. One exception is in an area near the Chartroom lease which is to become a peninsula between a new inland marina and the Sacramento River. The second is where state title rights exist in several planned residential lots upstream of the River Galley.
- b. The parties will exchange deeds to either side of the boundary line. This will clear the property upland of this line of any title rights based upon sovereignty or upon rights in the gap between Swamp and Overflowed lands surveys. Lighthouse or any other necessary party will convey two vertical access easements to the State for the general public to reach sovereign land through the development. Dedications of vertical access via the Subdivision Map Act will meet this requirement if those dedications are made before the boundary line and exchange agreement is recorded.
- c. The State will agree that the developer may use a 15-foot-wide strip contiguous to the boundary set by the Agreement in an area approximately 1,000 feet upstream and 700 feet downstream from the Chartroom lease as a construction easement for the building of a new levee. This easement shall be only for the duration of construction and shall be staked prior to any earth movement or vegetation destruction.
- d. The State will permit a passive six-foot-wide pedestrian only unpaved path on sovereign property at the base of the new levee in the reach indicated in the paragraph immediately above. This permit or lease for this path will be the subject of later Commission action. The area between the path and the Sacramento River will be a riparian preserve with no public access other than vertical access to the River at either end. The staff is presently negotiating with wildlife organizations to lease property secured through this Agreement.
- e. The State will permit a public pedestrian/bicycle/emergency access path up to 15 feet in width on sovereign land upstream of the River Galley and upstream to the end of the Lighthouse development.

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- f. Lighthouse will contribute a total of \$1.75 million to the Kapiloff Land Bank and to a trust established for the operation and maintenance of riparian habitat. The trust shall be established for the specific purpose of conservation, habitat and wildlife propagation, and the enjoyment of public access on sovereign land within the Lighthouse development, the Kitchilini (Amen Ranch) site upstream (see Paragraph j below), and on property which will be acquired with Kapiloff funds from the Lighthouse settlement. Revenue from the trust will be paid to the lessee of these properties. The specific amount set aside for operations and maintenance is predicted to be between \$500,000 and \$750,000. The remaining sum from \$1.75 million will be invested in the Kapiloff Land Bank Fund for the purchase of other land.
- g. Purchasers of residential property along the Sacramento River will be informed by notice in deeds and/or codes, covenants, and restrictions that an area for habitat and access adjoins their properties and that vegetation exists or will be planted which may obstruct views of the Sacramento River. Similarly, the right to apply for recreational pier permits will be waived for houses along the Sacramento River throughout the development.
- h. Separate from funds for operations and maintenance of habitat, Lighthouse will revegetate the area of State land waterward of the new levee upstream of the River Galley and within the construction easement upstream and downstream of the Chartroom. The revegetation will occur pursuant to an agreement with the State Lands Commission with sufficient bonding or other security and will be designed to maximize cover and density with a diversity of native species. These revegetation areas will also be the subject of a subsequent calendar item for lease to a wildlife management organization.
- i. Lighthouse will consent to a standing cease and desist order for any earth moving, vegetation removal, or other construction not contemplated in the terms of the agreement on land waterward on land settled in the State. Operations within the River Galley and the Viewpoint Marina leases are exceptions. This is in

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addition to a commitment not to undertake similar activities on the shaded area shown on Exhibit "B" before a title settlement agreement and revegetation agreements are signed and recorded (see Paragraph 2f below).

- j. Lighthouse will convey title to a 60-acre tract of land known as the Amen Ranch (or the Kitchilini site) which is on the Sacramento River downstream of the I-5 crossing (river mile 68.5 right). This acquisition of this property was required by the United States Army Corps of Engineers and the United States Fish and Wildlife service as partial mitigation for the project. Operations and management funds acquired through the Lighthouse title settlement may be utilized at this site. However, no aspect of this settlement will supplant commitments made as a part of the Corps permit for the overall project.
2. The State Lands Commission and Lighthouse will enter an agreement to assign the River Galley lease from Lorraine Rose to Lighthouse. Terms of that agreement will require that:
 - a. As a condition to its effectiveness, all amounts due shall be paid to the Commission for back rent, interest, and penalty. The amount due is 39, 898.89. In addition, Lighthouse shall pay \$2,428.36 due for this year's rent;
 - b. As a condition to its effectiveness, Lighthouse will quitclaim the Chartroom lease to the State and will commit to remove remaining pilings and docks at the Chartroom. The State will waive lost rent for the period for which the lease will not be operated by Lighthouse;
 - c. The River Galley lease will be amended to require that the lease premises shall be available to the general public without preference to Lighthouse Marina residents or businesses;

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- d. The Land Use or Purpose section of the River Galley lease will be amended to eliminate a bar and restaurant as authorized uses. Even though the present restaurant will be removed, the number of moorings will not increase without prior Commission action;
- e. As a condition subsequent to the Assignment Agreement and a new term of the River Galley lease, Lighthouse will agree to enter a boundary line and land exchange agreement as described above and to produce all necessary parties for the recordation of that Agreement. Recordation must occur on or before August 1, 1990 or the assignment of the lease will be void; and
- f. As a condition of the assignment and a new term of the River Galley lease and as a separate and independent agreement, Lighthouse will agree not to remove vegetation to move or place earth or other materials in the shaded areas shown on Exhibit "B" to this calendar item before the recordation of a boundary line and exchange agreement and revegetation agreements. In addition, Lighthouse will consent to restraining orders to bar those activities until those agreements are completed.
3. The State will consent to encumbrances on the River Galley and View Point Marina leases to secure construction loans in favor of Mitsubishi Bank. The encumbrances will be substantially in the form of those typically used by the Commission with the addition of terms specific to this case. Along with the terms enumerated in Paragraph 2e above, a term will be added to the consent requiring that the loans which the encumbrances secure shall be for the purpose of improving facilities at the River Galley and View Point Marina, provided that the number of berths is not increased.

The staff of the State Lands Commission and the Office of the Attorney General have evaluated the proposed settlement from environmental, legal, boundary, and appraisal viewpoints. The settlement is recommended for several reasons. It will protect in state ownership land along almost a mile of the Sacramento River with public access except in one area set aside for a wildlife preserve. A riparian corridor will be protected from

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development and funds set aside for its operation and maintenance. Property in which construction has been destroyed habitat will be restored. The contribution of between \$1 million and \$1.25 million to the Kapiloff Land Bank Fund is equal or greater than the monetary value of property which the State will relinquish by virtue of this settlement. Lastly, the amount of property obtained by this settlement is greater than that property which is relinquished.

AB 884: N/A

OTHER PERTINENT INFORMATION:

1. 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 as a statutorily exempt project. The project is exempt because it involves the settlement of title and boundary problems.

Authority: PRC 21080.11

- EXHIBITS:
- A. Location Map.
 - B. Site Map for Reference Only.

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 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO P.R.C. SECTION 21080.11 (SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS);
2. AUTHORIZE THE EXECUTIVE OFFICER TO EXECUTE AND TO DELIVER INTO ESCROW FOR RECORDATION IN THE OFFICE OF THE YOLO COUNTY RECORDED A BOUNDARY LINE AND EXCHANGE AGREEMENT WITH THE TERMS DESCRIBED IN THIS CALENDAR ITEM;
3. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO EXECUTE AND DELIVER FOR RECORDATION TO THE YOLO COUNTY RECORDER THE ASSIGNMENT OF THE RIVER GALLEY LEASE AND CONSENTS TO ENCUMBER THE RIVER GALLEY AND VIEW POINT MARINA LEASES;
4. AUTHORIZE THE STAFF TO ENTER INTO REVEGETATION AGREEMENTS COVERING LAND AT LIGHTHOUSE MARINA DESTROYED BY CONSTRUCTION ACTIVITIES;

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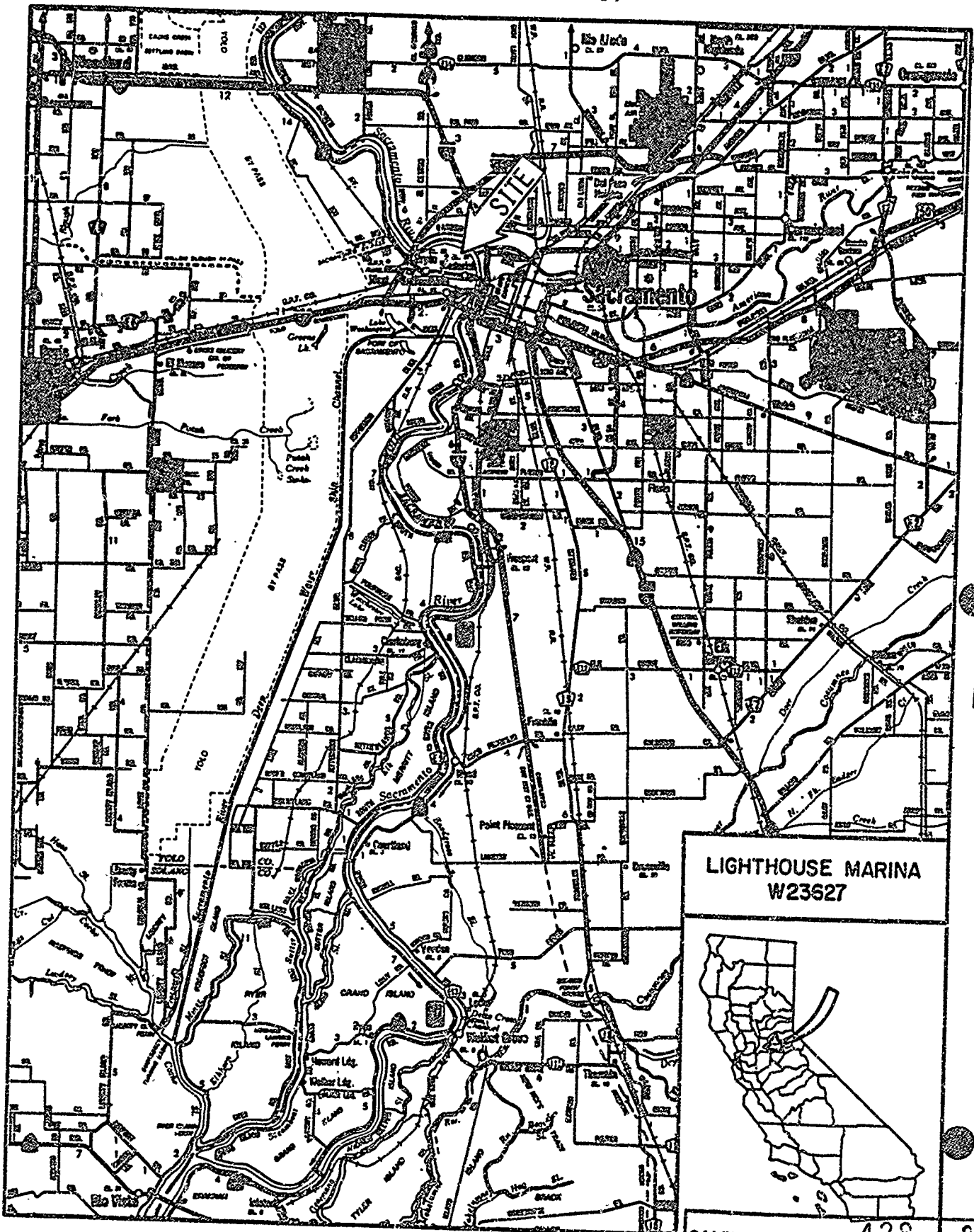
5. AUTHORIZE THE FORMATION OF A TRUST TO FUND OPERATIONS AND MANAGEMENT OF WILDLIFE AND RIPARIAN HABITAT AND PUBLIC RECREATION FACILITIES IN THE LAND TO BE SETTLED IN THE STATE BY THIS SETTLEMENT, INCLUDING PROPERTY AT THE KITCHILINI (AMEN RANCH) SITE AND ANY LAND WHICH MAY BE PURCHASED BY THE STATE WITH FUNDS RECEIVED IN THIS TITLE SETTLEMENT. THE TRUSTEE OF THE FUND SHALL BE THE STATE LANDS COMMISSION AND THE INITIAL ENDOWMENT FROM LIGHTHOUSE MARINA SHALL BE A SUM BETWEEN \$500,000 AND \$750,000, AS MAY BE DETERMINED BY STAFF;
6. AUTHORIZE THE DEPOSIT OF A SUM BETWEEN \$1 MILLION AND \$1.25 MILLION TO THE KAPILOFF LAND BANK FUND IN EXCHANGE FOR THE CONVEYANCE OF A PORTION OF STATE SOVEREIGN TITLE INTERESTS WHICH EXIST WITHIN THE LIGHTHOUSE MARINA DEVELOPMENT. THE DETERMINATION OF THE PRECISE SUM SHALL DEPEND UPON THE CONTRIBUTION TO THE OPERATIONS AND MAINTENANCE FUND;
7. FIND THAT THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE RESPECTING THE BOUNDARY BETWEEN STATE AND PRIVATE TITLE INVOLVING LAND WITHIN THE LIGHTHOUSE MARINA PROJECT; THAT THE PROPOSED BOUNDARY LINE AND EXCHANGE AGREEMENT ARE A COMPROMISE CONSISTENT WITH AND AUTHORIZED BY THE REQUIREMENTS OF LAW INCLUDING PRC SECTION 6307; THAT ANY SOVEREIGN INTERESTS CONVEYED TO A PRIVATE PARTY BY THIS TRANSACTION HAVE BEEN RECLAIMED AND REMOVED FROM THE SACRAMENTO RIVER AND ARE NO LONGER USEFUL OR SUSCEPTIBLE TO USE FOR NAVIGATION AND FISHING, AND THAT, UPON RECORDATION OF THIS TITLE SETTLEMENT AGREEMENT, ARE NO LONGER LAND OF THE LEGAL CHARACTER OF TIDE AND SUBMERGED LANDS; AND FURTHER, THAT THIS SETTLEMENT ENHANCES THE CONFIGURATION OF THE SHORELINE AND HELPS TO PROTECT ITS USE FOR RECREATION, VEGETATION, AND HABITAT; AND
8. AUTHORIZE THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL NECESSARY ACTION, INCLUDING THE FILING OF QUIET TITLE LITIGATION, TO ESTABLISH THE LEGAL VALIDITY OF THIS AGREEMENT.

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EXHIBIT 'A'

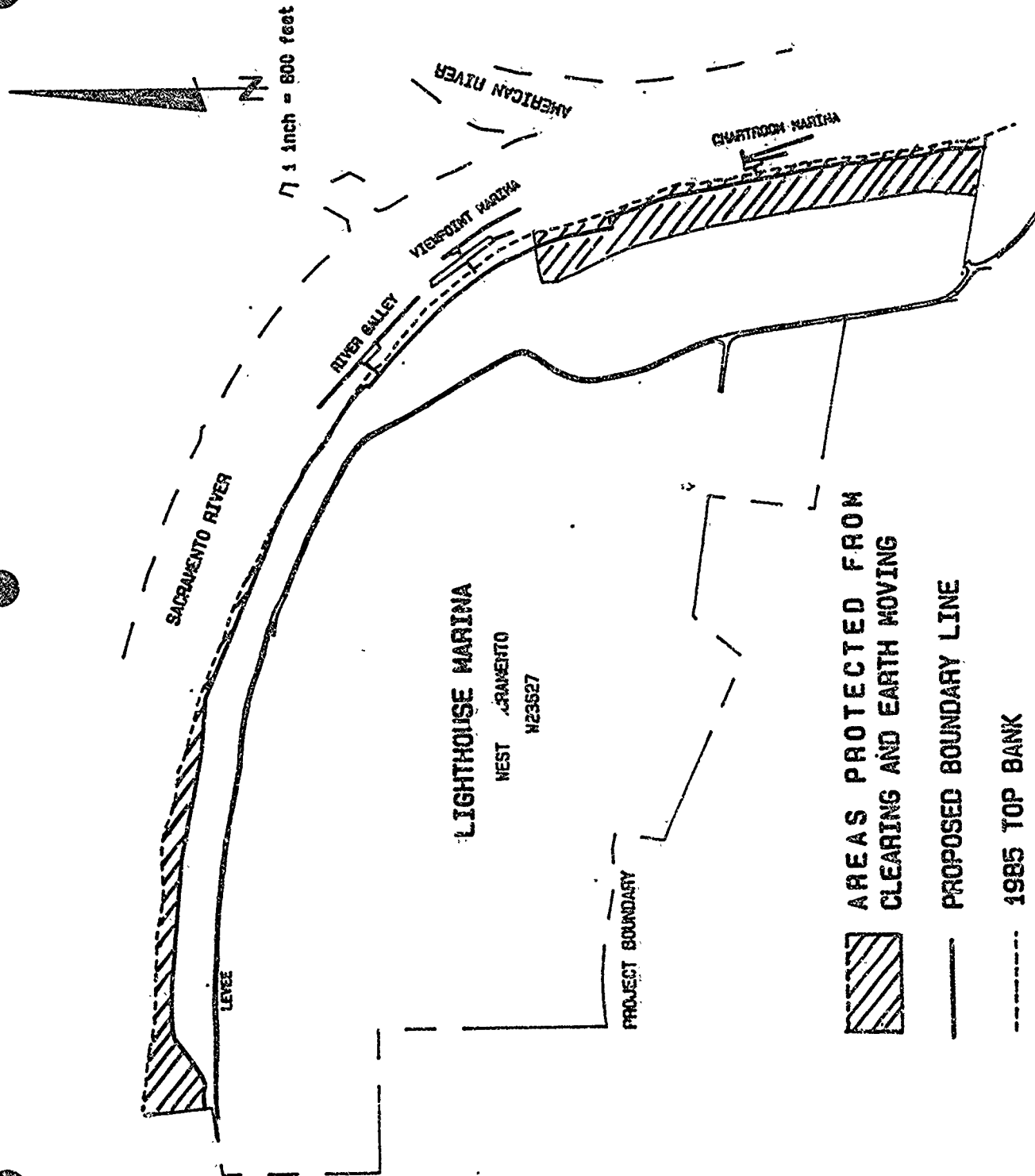


LIGHTHOUSE MARINA
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EXHIBIT 'B'



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