

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
8/17/04 meeting.

CALENDAR ITEM

C11

A 15

PRC 6855

08/17/04

S 8

WP 6855.1

D. Jones

**AUTHORIZE AMENDMENT OF LEASE OF GENERAL LEASE – COMMERCIAL USE,
AUTHORIZE AN AGREEMENT AND CONSENT TO ENCUMBRANCING LEASE,
AND APPROVAL OF A SUBLEASE**

LESSEE:

Bruno's Island Yacht Harbor, Inc.
1200 W. Brannan Island Road
Isleton, California 95641

AREA, LAND TYPE, AND LOCATION:

Existing Lease: 3.493 acres, more or less, of sovereign lands in Seven Mile
Slough, near the town of Isleton, Sacramento County.

Proposed

Amendment: 5.81 acres, more or less, of sovereign lands in Seven Mile
Slough, near the town of Isleton, Sacramento County.

AUTHORIZED USE:

The continued use and maintenance of a commercial marina accommodating
approximately 170 boats, including 148 berths and three accommodation docks,
appurtenant facilities including a bridge and a boat repair facility; and potential
dredging to allow safe navigation.

LEASE TERM:

35 years, beginning May 1, 1985.

CONSIDERATION:

Existing Lease: \$8,490 per year, with the State reserving the right to fix a
different rent periodically during the lease term, as provided
in the lease.

CALENDAR ITEM NO. C11 (CONT'D)

Proposed

Amendment: \$13,334 per year, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease to be paid semi-annually in a five year step-up payment plan, as follows.

- a. May 1, 2004 through April 30, 2005 a total amount of \$8,490; in semi-annual payments of \$4,245 each;
- b. May 1, 2005 through April 30, 2006 a total of \$9,600; in semi-annual payments of \$4,800 each;
- c. May 1, 2006 through April 30, 2007 a total of \$10,700; in semi-annual payments of \$5,350 each;
- d. May 1, 2007 through April 30, 2008 a total of \$11,800; in semi-annual payments of \$5,900 each;
- e. May 1, 2008 through April 30, 2009 a total of \$13,334; in semi-annual payments of \$6,667 each; and
- f. from May 1, 2009 and thereafter a total annual rental of \$13,334, in semi-annual payments of \$6,667 each.

Dredging: No royalty will be charged in the event dredging is approved as the project will result in a public benefit, i.e. safe navigation. Dredged material may not be sold.

SPECIFIC LEASE PROVISIONS:

Insurance:

\$1,000,000 combined single limit.

Bond:

Existing Lease: \$5,000

Proposed

Amendment: \$20,000.

PROPOSED AMENDMENT:

The proposed amendment would increase the lease acreage, increase the annual rental, increase the bond, provide for dredging and a limited number of liveboards for security purposes, and settle on back rent owed. All other terms and conditions of the lease shall remain in effect without amendment.

CALENDAR ITEM NO. C11 (CONT'D)

OTHER PERTINENT INFORMATION:

1. Applicant owns the uplands adjoining the lease premises.
2. On June 26, 1985, the Commission approved a 35-year lease to Bruno's Island Yacht Harbor, Inc. for a commercial marina and bridge approach to Owl Island. Since that time, the Lessee has disagreed with the Commission over the actual lease acreage occupied and the land values used in computing the annual rent. In addition, when the original lease was issued in 1985, the Lessee entered into a payment plan in settlement of back rent which was owed at that time. The payment plan required that monthly payments of principal and interest of a sufficient amount to amortize the back rent amount within a 90 month period be made to the Commission. A minimum monthly payment of \$300 was required to be submitted to the Commission. The Lessee only submitted the minimum monthly payment of \$300. At the end of the 90 month period, the Lessee stopped making the payments, but additional monies were still owing the State.

In settlement of the above issues, Commission staff and Lessee have agreed on the following:

- a. The lease acreage will increase from 3.493 acres to 5.18 acres in recognition of the actual area occupied by existing facilities. No new facilities are authorized under the proposed amendment.
- b. The annual rent will increase from \$8,490 to \$13,334 to be paid semi-annually in a five year step-up program of \$8,490 for the 2004-2005 lease year; \$9,600 for the 2005-2006 lease year; \$10,700 for the 2006-2007 lease year; \$11,800 for the 2007-2008 lease year, and \$13,334 for the 2008-2009 lease year and thereafter.
- c. Lessee has agreed to pay \$25,000 as full payment of back rent, including penalty and interest, if any, over a five year period.
- d. The bond will be increased from \$5,000 to \$20,000.

CALENDAR ITEM NO. C11 (CONT'D)

3. The existing lease contains a provision which authorizes the Lessee to dredge a total of 32,000 cubic yards of material provided a dredging plan was submitted to the Commission and that the plan was coordinated with the U.S. Corps of Engineers, U. S. Fish and Wildlife Service, and the Department of Fish and Game. However, this authorization terminated on February 28, 2004. Lessee never dredged during this time and is now requesting a continuing authorization to dredge.

The proposed amendment to the lease contains a provision, which would provide a process to allow the Lessee to conduct dredging to provide for safe navigation. The exercise of this provision would require the prior written consent of the Staff of the Commission and proof of Lessee's compliance with the rules and regulations of the applicable public agencies having jurisdiction over such activity, such as the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, NOAA Fisheries, California Department of Fish and Game, State Reclamation Board, and the California Regional Water Quality Control Board, prior to the conduct of any dredging.

4. The Lessee is currently seeking to refinance its loan for the marina facilities and intends to secure the loan by the State Lands Commission's lease. The loan will be with the Bank of Stockton in an amount no greater than \$1.75 million.
5. The Lessee has a sublease with Robert Walton, Reginald Walton, Trustee under the Mary and Reginald Walton Living Trust Agreement dated December 28, 1993, and Walton's Marine Services, Inc., a California Corporation. Staff has reviewed this sublease and has concluded its lease terms are consistent with the master lease.
6. Bruno's Island Yacht Harbor is a large marina, is located in an isolated area, and has experienced vandalism, as well as other problems which require immediate action. These factors support a limited and controlled presence of occupied navigable vessels to provide onsite monitoring and security. Thirteen (13) vessels are believed to be necessary for this purpose. Such vessels will be located in strategically designated berths, with appropriate arrangements to prevent the discharge of any materials into the aquatic environment, subject to the approval of staff.

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7. 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.
8. The improvements within Bruno's Island Yacht Harbor, Inc. were constructed and installed in place prior to the Commission bringing certain facilities under lease on June 26, 1985. The proposed amendment would increase the area of the lease in recognition of the area occupied by the existing facilities. As previously stated, no new facilities are contemplated by or authorized under the proposed amendment to the original lease. Furthermore, the proposed amendment would result in the facility being subject to and governed by the provisions of the Commission's current lease document, which contains specific terms and conditions to protect the environmental, e.g., through management practices designed to prevent discharges of materials harmful to aquatic resources. These provisions specifically address: 1) the collection and management of refuse from boaters, 2) prohibition of polystyrene foam containers and packaging, 3) prohibitions against any bottom paint application or removal and engine and hull washing, 4) prevention and control of fuel spills, 5) conservation of natural resources, and 6) hazardous wastes, toxic substances or similar materials. The proposed lease also requires the installation of a sewage pump-out facility no later than December 31, 2005.
9. **Commercial Marina:**
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 under the general rule that the CEQA applies only to projects which have the potential for causing a significant effect on the environment. The staff believes, based on the information available to it, that there is no possibility that this project may have a significant effect on the environment.

Authority: Title 14, California Code of Regulations, section 15061 (b) (3).

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Encumbrancing Agreement and Sublease:

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.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

EXHIBIT:

- A. Site And Location Map

PERMIT STREAMLINING ACT DEADLINE:

N/A

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

COMMERCIAL MARINA

FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 BECAUSE THERE IS NO POSSIBILITY THAT THE ACTIVITY MAY HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT; TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 (b) (3).

ENCUMBRANCING AGREEMENT AND SUBLEASE

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.

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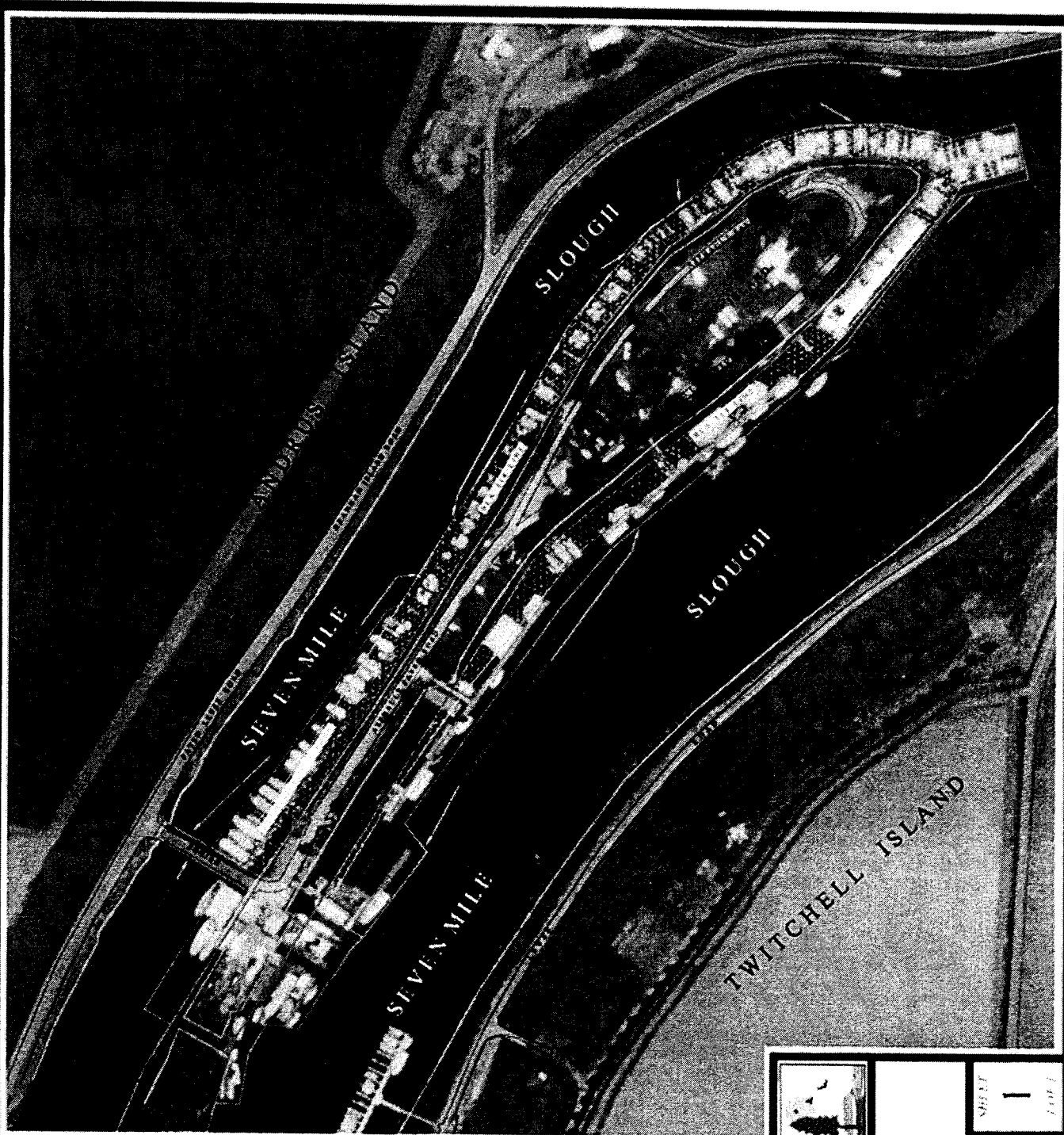
SIGNIFICANT LANDS INVENTORY FINDING:

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 AMENDMENT OF LEASE NO. PRC 6855.1, A GENERAL LEASE - COMMERCIAL USE, OF LANDS SHOWN ON EXHIBIT A ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF, EFFECTIVE AUGUST 17, 2004, TO, INCREASE THE LEASE ACREAGE, INCREASE THE ANNUAL RENTAL, INCREASE THE BOND, AUTHORIZE DREDGING, AUTHORIZE A LIMITED NUMBER OF LIVEBOARDS, AND SETTLE BACK RENT OWED; ALL OTHER TERMS AND CONDITIONS OF THE LEASE WILL REMAIN IN EFFECT WITHOUT AMENDMENT.
2. AUTHORIZE EXECUTION OF THE DOCUMENT ENTITLED "AGREEMENT AND CONSENT TO ENCUMBRANCING LEASE" IN AN AMOUNT NO GREATER THAN \$1.75 MILLION ON FILE IN THE OFFICE OF THE COMMISSION, BETWEEN THE COMMISSION AND THE BANK OF STOCKTON, EFFECTIVE UPON THE APPROVAL OF THE NEW LOAN BY THE BANK OF STOCKTON, BUT NO LATER THAN DECEMBER 31, 2004.
3. AUTHORIZE, BY ENDORSEMENT, THE SUBLEASE TO ROBERT WALTON, REGINALD WALTON, TRUSTEE UNDER THE MARY AND REGINALD WALTON LIVING TRUST AGREEMENT DATED DECEMBER 28, 1993, AND WALTON'S MARINE SERVICES, INC., A CALIFORNIA CORPORATION, SAID SUBLEASE IS ON FILE IN THE OFFICE OF THE COMMISSION AND BY REFERENCE MADE A PART HEREOF.

EXHIBIT A



NOTES

1. THIS MAP IS A COMPILATION OF RECORDS, PLANS, AND FIELD SURVEYS.
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LEGEND

- RECALLED RECORDS
- Sacramento County
- Existing Lease (see PRC 6055)
- Existing Lease (see PRC 6055)
- Proposed New Lease Area
- Black Area and Part of Red Area
- Water Table
- Field Features as Identified
- © Copyright 1994 by State of California

BASE MAP

WACORP Aerial Photo (unrectified)
original scale: 1:50,000 (David 1982/83)



CALIFORNIA STATE LANDS COMMISSION
 COMPILATION PLAN
 OWL ISLAND
 SEVEN MILE SLOUGH
 SACRAMENTO COUNTY

DATE	08/10/04	BY	RAB	PROJECT	PRC 6055	SHEET	1	TOTAL	1
SCALE	1"=100'								