

MINUTE ITEM

This Calendar Item No. 15
was approved by the Lands
Committee by a vote of 2
to 0 at its 1/25/79
meeting.

CALENDAR ITEM

15.

1/79
WP 4194
Scott

GENERAL LEASE
COMMERCIAL USE

APPLICANT: Tower Park, Inc.
14900 West Highway 12
Lodi, California 95240

AREA, TYPE LAND AND LOCATION:
A 7.31 acre parcel of tide and submerged
land in the bed of Little Porato Slough
at Terminous 12 miles east of Lodi, San
Joaquin County.

LAND USE: Continued operation and maintenance of
a commercial marina and ancillary facilities
and services.

TERMS OF ORIGINAL LEASE:
Initial period: 49 years from March 1,
1969.
Surety bond: \$3,000.
Public liability insurance: \$600,000 per
per occurrence for bodily
injury and \$100,000 for
property damage.
Consideration: \$603, 5-year rent review.

TERMS OF AMENDED LEASE:
Initial period: 23 years from March 1,
1969.
Renewal options: 2 successive periods
of 10 years each.
Surety bond: \$5,000.
Public liability insurance: \$500,000/1,000,000
per occurrence for bodily
injury and \$100,000 for
property damage.

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Consideration: \$3,728.10, 5-year rent review.

TERMS OF PROPOSED LEASE:

Initial period: 20 years from January 1, 1979.

Renewal options: 2 successive periods of 10 years each.

Surety bond: \$5,000.

Public liability insurance: \$500,000/1,000,000 per occurrence for bodily injury and \$500,00 for property damage, or combined single limit coverage of \$1,000,000.

CONSIDERATION: \$7,456.20 *ps* rental for the period February 23, 1977 through December 31, 1978, beginning January 1, 1979; 5% of gross income from berthing, launching and boat rentals on State land, plus 1 cent per gallon of fuel sales up to and including 100,000 gallons, and 1½ cents per gallon over 100,000 gallons, less a \$5,000 annual minimum rental paid in advance on January 1 of each year of the lease.

BASIS FOR CONSIDERATION:

Percentage of gross income pursuant to 2 Cal. Adm. Code 2005.

PREREQUISITE TERMS, FEES AND EXPENSES:

Applicant is owner of upland.

STATUTORY AND OTHER REFERENCES:

A. P.R.C.: Div. 6, Parts 1 & 2.

B. Cal. Adm. Code: title 2, Div. 3.

OTHER PERTINENT INFORMATION:

1. This proposed lease covers an existing commercial marina complex. The annual rental was subject to review and adjustment on March 1, 1977, but the rental proposed

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was objected to by the lessee. Further processing of this rental adjustment was delayed until staff could complete the preparation of a process to set rental as a percent of gross income, during this delay, the ownership of the marina complex changed. The current owners, a corporation, are in the process of securing refinancing of the total development, including the upland and the lease area, through the Bank of America.

2. The Commission's standard lease form has been modified in order to incorporate special language necessary to implement rental based on a percentage of gross income. Also certain paragraphs, which are not relevant to this proposed lease, contained in Section 5, Standard Covenants, have been deleted.
3. Because the annual rental will be based on a percentage of gross income and not on appraised land value, the staff recommends that the standard 5-year rent review provision be waived.
4. Special provisions have been incorporated into the lease form regarding the maintenance by lessee of records and books subject to staff review in order to assure the proper reporting of gross income by lessee.
5. The only exception to gross income derived from the leased area being subject to percentage rental is fuel sales. Fuel sales will have rental calculated based on annual volume; at 1 cent per gallon for the first 100,000 gallons and 1½ cents per gallon for all fuel sold over 100,000 gallons.
6. The ownership of the existing marina has changed from an individual to a corporation. In order to correct the

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lessee's name, the staff has prepared a lease quitclaim on the State Lands Commission's standard form to be executed by our previous lessee. All documents involved in the loan transaction with the Bank of America and the State lease are proposed to be executed through an escrow being opened by the Bank of America. The escrow will be conducted without cost to the State.

7. The terms of the proposed lease require the lessee to pay the initial minimum rent for Calendar 1979 upon execution of the document. The total payment due would be \$5,000. Our lessee is presently in the process of acquiring new financing and at this point in time has a problem of low cash flow. In order to ease the cash flow burden, staff recommends that the Commission allow our lessee to pay the initial deposit in 4 equal payments of \$1,250, due quarterly, beginning January 1, 1979. These quarterly payments would be in addition to any future payments required by the lease.
8. Our proposed lessee is in process of refinancing the marina complex through the Bank of America. In order to secure the proposed loan, our proposed lessee has requested that the lender be granted a security interest in the leasehold being a document entitled "Agreement and Consent to Encumbrancing of Lease". This action is necessary in order to complete the financing of the improvements on the leased property. The security interest will protect the rights of the lender, should our proposed lessee breach any part of the State lease, or fail to make loan payments to the lender. The State is protected because the Bank of America agrees to be bound

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by the provisions of the proposed lease in the event the lease is assigned to them or the Bank of America can cure any default on behalf of our lessee dealing with rental, surety bond, liability insurance or grave harm to the environment. In either case the lease would not terminate. The assignment or other transfer of the proposed lease or interest therein to any party other than the Bank of America will require prior approval and consent of the Commission.

The Commission staff recommends approval of this security interest in order to enable our proposed lessee to continue to develop and operate the existing commercial marina complex to its highest potential, which in turn will generate the greatest income for the State.

9. An EIR is not required. This transaction is within the purview of 2 Cal. Adm. Code 2907, Class 1(B), which exempts an existing structure or facility that is in an acceptable state of repair and there is not evidence of record to show injury to adjacent property, shoreline erosion, or other types of environmental degradation.
10. This project is situated on State land identified as possessing significant environmental values pursuant to P.R.C. 6370.1, and is classified in a use category, Class B, which authorizes Limited Use.

Staff review indicated that there will be no significant effect upon the identified environmental values. This is an existing facility for which no adverse comments have been received.

EXHIBITS: A. Land Description. B. Location Map.

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IT IS RECOMMENDED THAT THE COMMISSION:

1. DETERMINE THAT AN EIR HAS NOT BEEN PREPARED FOR THIS ACTIVITY AS SUCH REPORT IS NOT REQUIRED UNDER THE PROVISIONS OF P.R.C. 21085, 14 CAL. ADM. CODE 15100 ET SEQ., AND 2 CAL. ADM. CODE 2907.
2. FIND THAT GRANTING OF THE LEASE WILL HAVE NO SIGNIFICANT EFFECT UPON ENVIRONMENTAL CHARACTERISTICS IDENTIFIED PURSUANT TO SECTION 6370.1, OF THE P.R.C.
3. AUTHORIZE THE ACCEPTANCE AND RECORDATION OF A QUITCLAIM DEED FROM SIDNEY E. WALLACE, FOR THE AREA OF TIDE AND SUBMERGED LAND PRESENTLY LEASED IN AMENDMENT TO LEASE PRC 4194.1, DATED NOVEMBER 19, 1973.
4. ACCEPT AS RENT FOR THE PERIOD FEBRUARY 23, 1977 THROUGH DECEMBER 31, 1978, THE AMOUNT OF \$7,456.20 AND THE INITIAL MINIMUM ANNUAL RENTAL OF \$5,000 DUE JANUARY 1, 1979; IN 4 EQUAL QUARTERLY PAYMENTS OF \$1,250 BEGINNING JANUARY 1, 1979.
5. AUTHORIZE ISSUANCE TO TOWER PARK, INC. OF A 20-YEAR GENERAL LEASE - COMMERCIAL USE FROM JANUARY 1, 1979, WITH LESSEE'S OPTION TO RENEW FOR 2 SUCCESSIVE PERIODS OF 10 YEARS EACH; IN CONSIDERATION OF ANNUAL RENTAL BEGINNING JANUARY 1, 1979 OF 5% OF THE GROSS INCOME DERIVED FROM BERTHING, LAUNCHING AND BOAT RENTAL ON STATE LAND PLUS 1 CENT PER GALLON OF FUEL SALES UP TO AND INCLUDING 100,000 GALLONS AND 1 1/2 CENTS PER GALLON THEREAFTER LESS A \$5,000 ANNUAL MINIMUM PAID IN ADVANCE; PROVISION OF A \$5,000 SURETY BOND; PROVISION OF PUBLIC LIABILITY INSURANCE IN AMOUNTS OF \$500,000/1,000,000 PER OCCURRENCE FOR BODILY INJURY AND \$500,000 FOR PROPERTY DAMAGE, OR COMBINED SINGLE LIMIT COVERAGE OF \$1,000,000.
6. AUTHORIZE THE EXECUTION OF AN "AGREEMENT AND CONSENT TO ENCUMBRANCE OF LEASE" BEING A SECURITY INTEREST IN THE LEASEHOLD TO THE BANK OF AMERICA, IN PROPOSED LEASE PRC 4 9311, SUBJECT TO APPROPRIATE DOCUMENTATION; FOR THE CONTINUED OPERATION AND MAINTENANCE OF AN EXISTING COMMERCIAL MARINE COMPLEX ON THE LAND DESCRIBED ON EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF.

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EXHIBIT "A"

WP 4194

A parcel of tide and submerged land in the bed of Little Potato Slough, San Joaquin County, California, being a portion of Section 13, T 3 N, R 4 E, MDM, said parcel being further described as lying waterward of the ordinary high water mark immediately beneath existing and proposed structures, together with the area of necessary use and immediately adjacent to that parcel of land described in Grant Deed, recorded May 20, 1971, in Book 3529 at page 258, and more particularly described as a strip of land not to exceed 150 feet in width lying westerly of the following described line:

PHASE I

COMMENCING at a concrete monument located on the east bank of Little Potato Slough at Terminus, 25.0 feet north of the centerline of Terminus Road and 200.6 feet south and 9233.8 feet west of the northeast corner of Section 18, T 3 N, R 5 E, MDM; thence from said point of commencement S 12° 21' 30" E, 535.75 feet; thence N 67° 18' E, 199.8 feet; thence S 22° 42' E, 100 feet; thence southwesterly along a curve to the left, having a radius of 666.78 feet, an arc length of 214.0 feet to a point herein designated "A"; thence S 23° 52' E, 408.2 feet; thence N 83° 50' E, 242.51 feet; thence S 23° 42' W, 576.81 feet; thence S 41° 34' 30" W, 575.44 feet; thence S 16° 10' W, 206.79 feet; thence S 25° 41' 26" E, 205 feet to a point hereinafter designated point "B"; thence S 64° 18' 34" W, 400 feet more or less to the ordinary high water mark and the POINT OF BEGINNING of the herein described line; thence from said point of beginning running northerly along the ordinary high water mark of the east bank of Little Potato Slough 2403 feet more or less to a point from which aforesaid point "A" bears east, and the end of the herein-described line.

A strip of land not to exceed 150 feet in width lying southwesterly of the following described line:

PHASE II

COMMENCING at aforesaid point "B"; thence S 25° 41' 26" E, 624.22 feet; thence S 66° 35' E, 490.43 feet; S 80° 00' E, 235.00 feet; thence south 100 feet more or less to the ordinary high water mark and the POINT OF BEGINNING of the herein described line; thence from said point of beginning running northwesterly along the ordinary high water mark of the east bank of Little Potato Slough 1600 feet more or less to a point from which aforesaid point "B" bears N 64° 18' 34" W, and the end of the herein described line.

END OF DESCRIPTION

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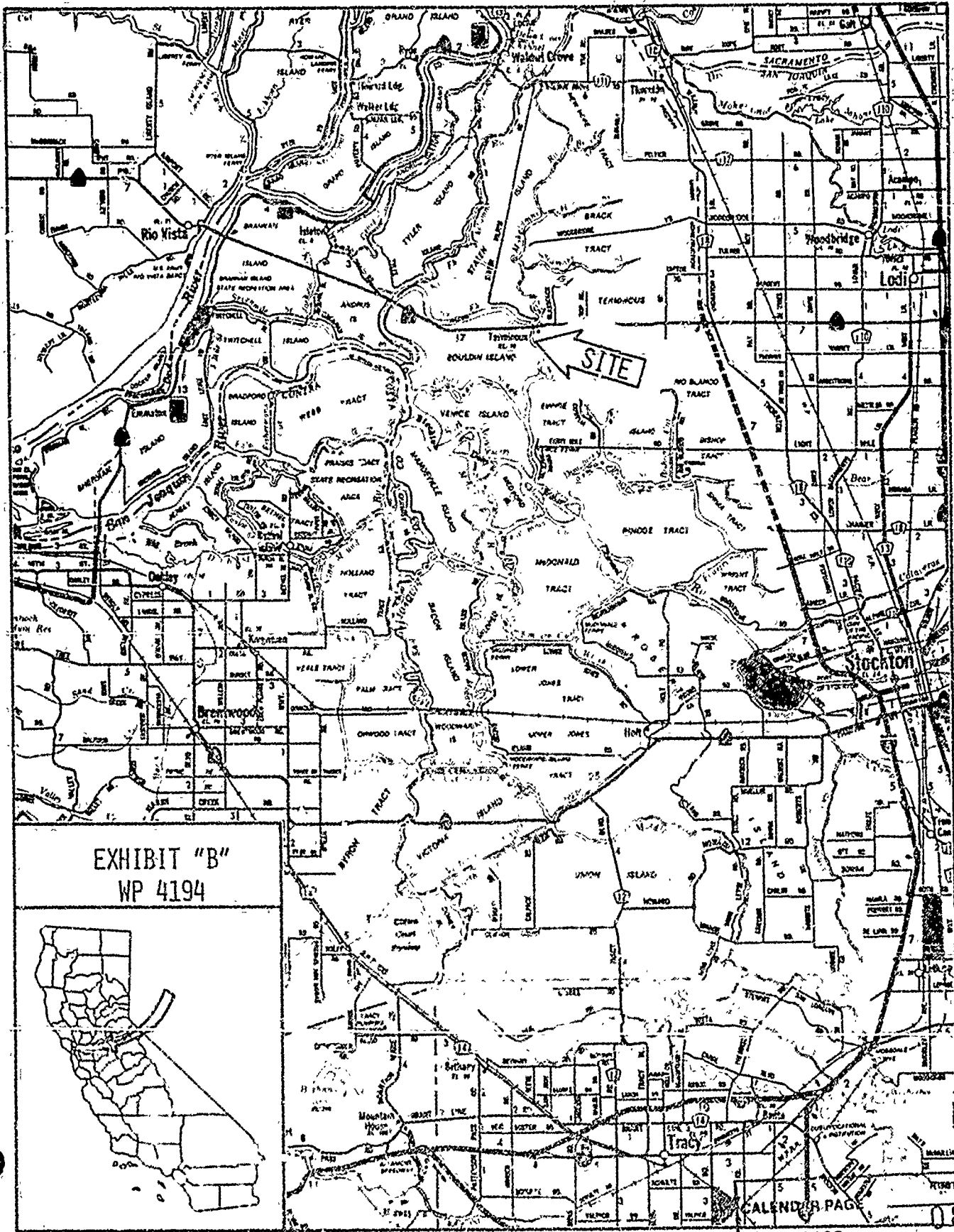


EXHIBIT "B"
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