

MINUTE ITEM 24

WP 4157

Pelkofer

RENEWAL OF COMMERCIAL LEASE

Peter Pelkofer, Senior Staff Counsel, presented Calendar Item 24. He advised that staff has modified the recommendation that is being presented to the Commission and that staff had received additional information late Friday afternoon seeking to amend the proposed lease. He also advised that State Lands Commission is in litigation with these individuals as they filed a lawsuit against us in November of 1990. Staff recommends that the Commission put this Item over for 30 days to allow the parties to work out the term of the lease and if no agreement can be reached at the end of 30 days to authorize staff to proceed with ejection procedures.

Gail Schurze, attorney for Freeport Properties, spoke before the Commission. She stated that Freeport Marina is one of the first leases to come up for renewal and there are no guidelines set for the marina rental rates.

A Mr. Perez, attorney for the recently formed Delta Marina Owners, a group of marina owners located primarily along the Sacramento River within the jurisdiction of Sacramento and Yolo counties. He appeared before the Commission to ask them to allow Freeport Marina additional time as staff is supposed to give to their Association additional time to let them know how these rates have been calculated. In fact, the purpose of the Association organizing was to try to achieve some uniformity in the structure of lease payments.

Charles Warren advised the Commission that it is not unfair to characterize the rate structure proposed by the agency in the past as difficult to understand as they were subject to individual negotiations and the process could result in some lessees being charged more than others. This matter has been raised on several occasions during the past months. However, staff has undertaken to have a uniform rate applicable to marinas. Freeport Marina is the first instance of where the new fee structure would be applied. Staff proposes this as the fee structure that will be offered each lessee when the lease is up for rent review.

The Commission voted 3-0 to approve the staff's recommendation.

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Pelkofer

RENEWAL OF COMMERCIAL LEASE

LESSEE:

Freeport Properties, a California
limited partnership
8250 Freeport Boulevard
Sacramento, California 95832

AREA, TYPE LAND AND LOCATION:

A 3.626-acre parcel of tide and submerged land in the
Sacramento River, Freeport, Sacramento County.

LAND USE:

Commercial marina.

TERMS OF EXISTING LEASE:

Initial period:

Ten (10) years beginning November 15, 1980 and ending
November 14, 1990.

Renewal options:

One successive period of ten years.

Surety bond:

\$9,000.

Public liability insurance:

Combined single limit coverage of \$500,000.

Consideration:

\$4,550 per annum.

TERMS OF PROPOSED LEASE RENEWAL:

Period:

Ten (10) years beginning November 15, 1990.

Surety bond:

\$9,000.

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Public liability insurance:
Combined single limit coverage of \$1,000,000.

CONSIDERATION:

| <u>Period</u> | <u>Minimum Rental</u> | <u>Percentage Rental</u> |
|------------------------|---------------------------|---|
| 11/15/90 thru 11/14/91 | \$4,550 | |
| 11/15/91 thru 11/14/95 | \$9,135 | 7% of berth income and one and one- half cent (1½¢) per gallon, fuel sales, first 100,000 gallons, and two cents (2¢) per gallon, fuel sales, above 100,000 gallons |

with the State reserving the right to fix a different
rental on each fifth anniversary of the lease.

BASIS FOR CONSIDERATION:

Pursuant to 2 Cal. Code Regs. 2003.

APPLICANT STATUS:

Applicant is owner of a portion of the upland property.

PREREQUISITE CONDITIONS, FEES AND EXPENSES:

Filing fee has been received.

STATUTORY AND OTHER REFERENCES:

A. P.R.C.: Div. 6, Parts 1 and 2; Div. 13.

B. Cal. Code Regs.: Title 3, Div. 3; Title 14, Div. 6.

AB 894:

N/A

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority
and the State CEQA Guidelines (14 Cal. Code

Regs. 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, 2 Cal. Code Regs. 2905(a)(2).

Authority: P.R.C. 21084, 14 Cal. Code Regs. 15300, and 2 Cal. Code Regs. 2905.

2. Lessee holds the existing lease through an assignment authorized by the Commission on November 20, 1986, Minute Item 18. On the same date, Minute item 19, the Commission authorized a minor amendment of the lease, relative to a realignment of existing dockage for better protection from flood waters.
3. On March 1, 1990, Freeport Properties submitted its application to exercise its option to renew the existing lease for ten (10) years. It requested that two additional optional periods of ten (10) years be granted. Negotiations were conducted over the rental rates and other terms and conditions and in November 1990, the Lessee, dissatisfied with the negotiations, filed a suit against the Commission in Superior Court asking for Declaratory and Injunctive Relief. The suit is pending.

Subsequent negotiations were held and the Lessee and the staff arrived at a tentative agreement on lease terms and a settlement of the suit. A lease was drafted incorporating the terms of the settlement and it was presented to Lessee. Initially, Lessee refused to respond and subsequently has refused to take any action. Staff has recommended that a response to the suit be made and that the Commission should approve Lessee's initial request to exercise the option to renew the lease and set reasonable rental rates.

4. If Lessee refuses to sign within 30 days of this authorization, a lease under the terms approved by the Commission, or the lease previously agreed upon by the Lessee with staff and presented to him for signature in May 1991, staff recommends that the response to the pending litigation include an action for eviction.

CALENDAR ITEM NO.: 24 (CONT'D)

EXHIBITS:

- A. Land Description
- B. Location Map

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 1, EXISTING FACILITIES, 2 CAL. CODE REGS. 2905(a)(2).
2. AUTHORIZE ISSUANCE TO FREEPORT PROPERTIES, A CALIFORNIA LIMITED PARTNERSHIP OF A TEN-YEAR RENEWAL OF LEASE PRC 4157 BEGINNING NOVEMBER 15, 1990; IN CONSIDERATION OF THE RENTS AND PERCENTAGE RENTS AS SET OUT IN THIS ITEM WITH THE STATE RESERVING THE RIGHT TO FIX A DIFFERENT RENTAL ON EACH FIFTH ANNIVERSARY OF THE LEASE; PROVISION OF A \$9,000 SURETY BOND; PROVISION OF PUBLIC LIABILITY INSURANCE FOR COMBINED SINGLE LIMIT COVERAGE OF \$1,000,000; FOR THE CONTINUED USE OF AN EXISTING COMMERCIAL MARINA ON THE LAND DESCRIBED ON EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF.
3. AUTHORIZE LEGAL STAFF AND THE OFFICE OF THE ATTORNEY GENERAL TO INCLUDE IN THE RESPONSE TO THE PENDING LITIGATION, A CAUSE OF ACTION FOR EVICTION.

EXHIBIT "A"

PRC 4157.1

LAND DESCRIPTION

A parcel of tide and submerged land in the State owned bed of the Sacramento River, immediately north of the Freeport Bridge at Freeport, Sacramento County, California, said parcel being all that land lying immediately beneath the dock and marina facilities TOGETHER WITH a 10 foot use area extending 10 feet from the extremities of said facilities more particularly described as follows:

COMMENCING at a point on the westerly right-of-way line of the Southern Pacific Railroad, Walnut Grove Branch, where said line intersects the prolongation of the Freeport Bridge centerline, said point being described as the "point of beginning" of Parcel No. 1 in the deed from Anna J. Hack to County of Sacramento, recorded in May 2, 1928 in Book 181, Page 322 of the Official Records of said county, from which U.S.C. & G.S. Triangulation Station "CONTENT" bears S 1°58' 30" E 4109.11 feet, more or less; thence along the centerline of said Freeport Bridge S 77° 55' 30" W 35.00 feet; thence N 12° 04' 30" W 65.00 feet to the POINT OF BEGINNING; thence continuing N 12°04' 30" W 1330.00 feet; thence S 77° 55' 30" W 193.99 feet; thence S 16° 04' 30" E 487.21 feet; thence S 12° 04' 30" E 843.98 feet; thence N 77° 55' 30" E 160 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of said river.

END OF DESCRIPTION

REVIEWED OCTOBER, 1990 BY LLB.

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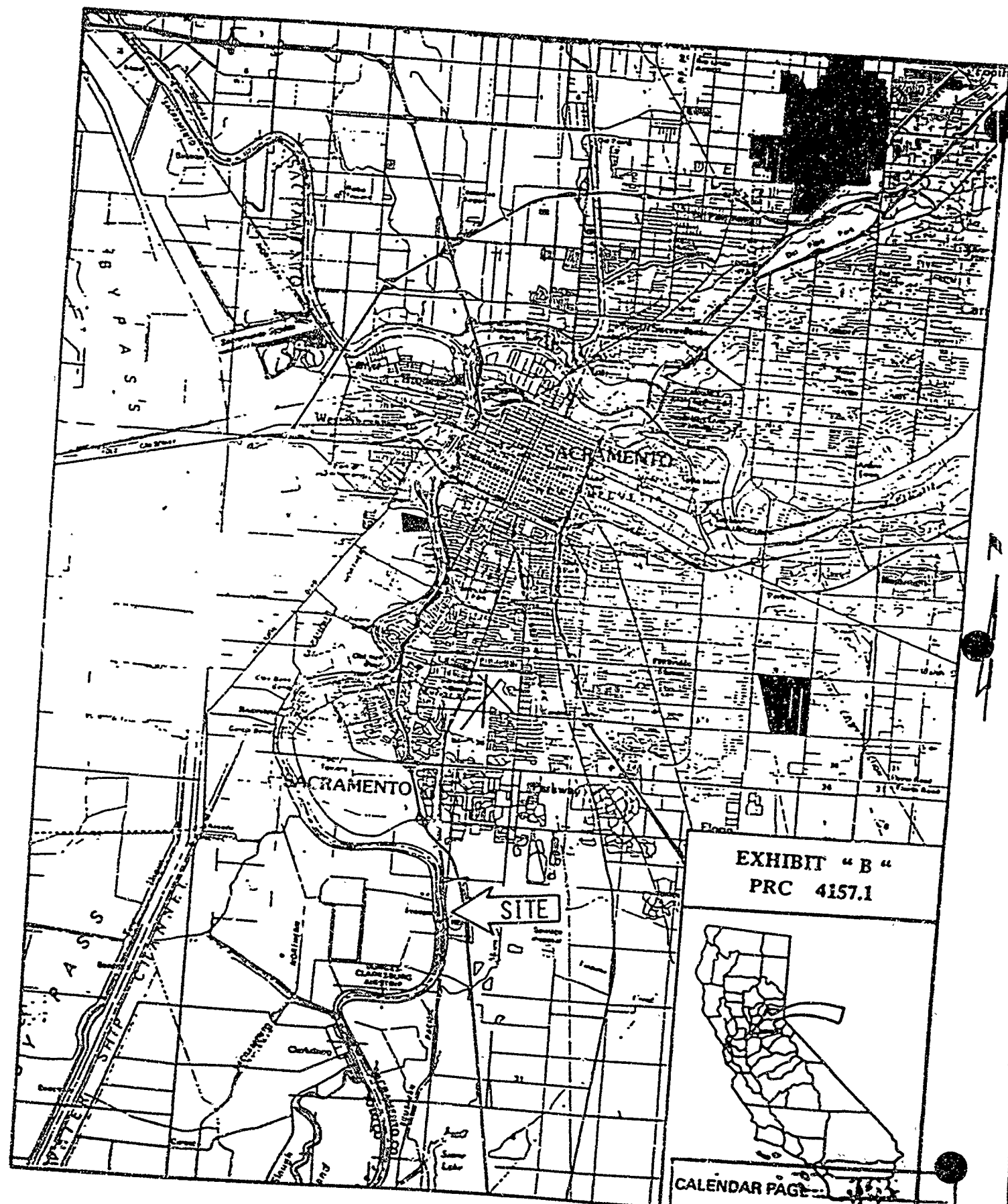


EXHIBIT "B"
PRC 4157.1



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