

MINUTE ITEM

This Calendar Item No. 36 was approved as
Minute Item No. 36 by the California State Lands
Commission by a vote of 3 to 0 at its
12-03-07 meeting

**Minute Item
36**

12/03/07
PRC 6382
J. McComas
J. Frey

**JEANNE C. TAYLOR
(LESSEE/APPLICANT)**

Regular Item 36: Staff made a presentation to the Commission pertaining to the authorization of holdover tenancy agreement on a lease for sovereign lands located near the town of Courtland. The Commission approved the item as presented by a vote of 3-0.

003191

MINUTE PAGE

CALENDAR ITEM

36

A 8

12/03/07

S 4

PRC 6382.1

J. McComas

J. Frey

**CONSIDER DENIAL OF THE APPLICATION FOR A GENERAL LEASE -
RECREATIONAL USE, LEASE NO. PRC 6382.1 AND AUTHORIZATION OF A
HOLDOVER TENANCY UNDER LEASE NO. PRC 6382.1 ON A MONTH TO MONTH
BASIS FOR A MAXIMUM OF SIX MONTHS WITH CONDITIONS**

LESSEE/APPLICANT:

Jeanne C. Bird/Jeanne C. Taylor

AREA, LAND TYPE, AND LOCATION:

0.09 acres, more or less, of sovereign lands in the Sacramento River, near the town of Courtland, Sacramento County.

AUTHORIZED USE:

Continued use and maintenance of a six-foot by 204-foot floating boat dock (which includes 12-foot by 20-foot and six-foot by 14-foot platform areas); three-foot by 30-foot gangway; and a six-foot by 13-foot portion of a storage cabin.

LEASE TERM:

Ten years, beginning December 1, 1997.

CONSIDERATION:

\$470 per year, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

Liability insurance with coverage of no less than \$500,000.

OTHER PERTINENT INFORMATION:

1. Lessee owns the uplands adjoining the lease premises.
2. Between 1982 and 1997, Jeanne Bird (now know as Jeanne Taylor) and Bruce Bird, now deceased, operated a small commercial marina, dba Bird's Landing, under a 15-year General Lease – Commercial Use. The

CALENDAR ITEM NO. 36 (CONT'D)

lease authorized the use and maintenance of docking and warehouse facilities including docks, a gangway, and a building (referred to as a "cabin") constructed on pilings and on the adjacent levee. The Lease contained a provision whereby it was agreed between the parties that, should the cabin authorized by the lease suffer any structural damage in excess of 60% during the term of the lease, it would not be replaced, but instead would be completely removed.

3. Between 1982 and 1997, the Birds worked with the Commission and other public agencies, having jurisdiction over marinas, on the further development of their marina as a commercial enterprise. However, none of these plans materialized and the marina closed in 1997.
4. Part of the Birds' plans for the marina was the anchoring of a floating harbor master's office and residence. In 1986, the Commission received a U.S. Army Corps of Engineers (USACE) Public Notice No. 9483 requesting comments on the proposed marina that included the construction of a floating residence. Commission staff sent several letters to the Birds requesting them to amend their lease; however these letters were not answered. In 1987, Sacramento County and the Reclamation Board permitted the structure. An application was also filed with the USACE. It is unknown whether the application was approved by the USACE. The Central Valley Regional Water Control Board and the Department of Boating and Waterways objected to the floating residence.
5. On August 30, 1990, the Commission received a USACE Public Notice No. 0109483 requesting comments on another project proposed by the Birds that included the construction of new docks and berths and to relocate an existing floating home. The proposed facility was to provide commercial berthing for private pleasure craft. The floating home was to be used as the caretaker's residence. The Birds were notified that they needed to secure a new lease from the Commission because their current lease allowed only a dock and warehouse facilities and that the change in use to a marina was a breach of the lease terms and conditions. They were also notified that the Commission's general leasing practices disallowed residential use.
6. There was no further contact from the Birds on this issue until January 27, 1992, when an application for a floating caretaker's quarters, floating utility platform, 323 lineal feet of dock, 220-foot long covered berth with 15 boat

CALENDAR ITEM NO. 36 (CONT'D)

slips and an access gangway was received by Commission staff. In discussions with the Birds, staff advised them that residential use was not allowed by the Commission and that the floating home would have to be modified so that it could be a vessel capable of navigation. The proposed project did not go forward. A letter dated November 21, 1995, from the Birds stated they were looking into selling the covered dock structure and were still working through the details of how to convert the floating home to a houseboat so that it would be acceptable.

7. On February 26, 1999, Jeanne Bird submitted an application for a recreational use lease. In the application, she stated that there was no longer a marina, 14 of the berths had been removed in 1997, and the floating harbor master's residence was now a houseboat registered yearly with the California Department of Motor Vehicles. Additionally, the storage cabin was reinforced with braces to the under pilings with a retainer wall underneath, all railings and ramps were reinforced. The facilities included a storage cabin partially situated in the levee and partially on pilings, a gangway to the docks measuring 50-feet, 204-feet of dock held by three pilings and two piling dolphins.
8. On September 3, 1999, the Commission authorized a new General Lease – Recreational Use to Jeanne C. Bird, for the continued use and maintenance of an existing floating dock, which includes two platform areas, a gangway and a section of the storage cabin (six-feet by 30-feet). That Lease contains provisions that the floating boat dock would be used strictly for the mooring of personal watercraft only. It also contains the provision that should the storage cabin authorized by the Lease suffer any structural damage in excess of 60% during the term of the Lease that it would not be repaired, but instead be removed completely from the Sacramento River.
9. Commission staff advised Ms. Taylor by a letter dated February 13, 2007, that the lease was scheduled to expire on November 30, 2007. On May 17, 2007, Ms. Taylor submitted an application for a new recreational use lease. In this application, Ms. Taylor stated that the storage cabin and the houseboat remain the same as described in the 1999 application, which was described as "the houseboat is registered with the DMV and the cabin continues to be used for storage of my personal items and personal records".

CALENDAR ITEM NO. 36 (CONT'D)

10. On September 12, 2007, staff met with Ms. Taylor in order to conduct an inspection of the lease premises and the improvements placed thereon. Based on this inspection, staff determined that both the floating home and the cabin were substantially improved with new decking, siding, paint, interior home improvements and are completely dedicated to residential use. Their present condition is markedly improved from that apparent in the old photographs contained in the file. The floating home is permanently anchored to adjacent pilings and has no steering or motor for navigation.
11. Based on staff's inspections, it has been determined that the floating home and cabin are used solely for residential purposes and that portions of the cabin and its attached deck (totaling approximately 455 square feet) extend over the mean high water line of the Sacramento River and onto State-owned sovereign lands. Staff has copies of signs, advertisements, and internet listings indicating that Ms. Taylor is trying to sell the floating home and studio/cabin and they are advertised as residences. Staff subsequently contacted the real estate agent and advised her to refrain from listing the property for residential use until this matter has been resolved.
12. On September 24, 2007, Commission staff informed Ms. Taylor in a letter that, in order to cure the default, the floating residence must be removed from the dock as soon as it could reasonably be arranged and be relocated to an area where the State has no sovereign interest. With regard to the encroachment of the cabin and deck, staff directed Ms. Taylor to remove those portions of the cabin and deck encroaching over State sovereign lands.
13. On October 18, 2007, the USACE informed Jeanne Bird (Ms. Taylor) that she was not in compliance with the terms and conditions of her permits. In order to bring the project into compliance with the permits, she was directed to remove the floating home within 30 days of receipt of the letter. The USACE has since extended the deadline until 30 days after the State Lands Commission meeting on December 3, 2007 to remove the unauthorized floating home.
14. On November 9, 2007, staff received a letter from Ms. Taylor's counsel stating that Ms. Taylor objected to staff's conclusion regarding the residential nature of the improvements and requested a meeting with staff.

CALENDAR ITEM NO. 36 (CONT'D)

A second letter from Ms. Taylor's counsel stated that the realtor who listed the property for sale is no longer involved with the sale of the property.

15. Staff met with Ms. Taylor and her counsel on November 19, 2007 where Ms. Taylor requested a time extension so that she could develop a plan to convert the use of the lease premises to a non-residential use.
16. Based on Ms. Taylor's request, staff is recommending that Ms. Taylor be allowed to remain on the lease premises as a holdover tenant on a month to month basis beginning December 1, 2007 for a period not to exceed six months, pursuant to Section 4, Paragraph 14 of the lease, provided that Ms. Taylor executes a holdover agreement that contains the following provisions:
 - a. The floating home shall be removed from the lease premises by January 3, 2008, as required by the United States Army Corps of Engineers in its letter dated November 20, 2007.
 - b. Ms. Taylor shall not permit anyone to occupy the lease premises for residential purposes, including overnight stays.
 - c. No later than June 30, 2008, Ms. Taylor shall submit a new lease application and a final plan for non-residential uses of the lease premises in compliance with State Lands Commission's regulations and standard leasing policies and practices.
 - d. Ms. Taylor shall not sell, attempt to sell, sublease, assign, mortgage or encumber any portion of the leases premises during the holdover period, and shall immediately terminate any and all listing agreements with realtors.
 - e. Ms. Taylor acknowledges and agrees that rent shall be payable monthly, in advance, while in holdover status in the amount of \$48.95 per month.
 - f. In the event Ms. Taylor fails to comply with the terms and conditions of the holdover agreement, the month to month tenancy shall immediately terminate and Ms. Taylor shall be considered to be in trespass and shall restore the lease

CALENDAR ITEM NO. 36 (CONT'D)

premises to the condition existing prior to the placement of the improvements within 90 days of the termination. Unless otherwise authorized all improvements shall be removed within 90 days of the expiration of the holdover period. However, if necessitated by the US Army Corps of Engineers or the U. S. Fish and Wildlife Service construction windows, Ms. Taylor shall have until October 31, 2008 to remove the pilings and other structures requiring in-water work.

- g. The State Lands Commission and Ms. Taylor agree that any applicable statute of limitations period is tolled as of November 30, 2007 through June 30, 2008, or sooner upon the termination of the holdover agreement as outlined above, and that all legal rights and remedies existing on November 30, 2007 are preserved as of that date.

- 17. **Denial of Application and Authorization of Holdover Status:** 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.

- 18. **Removal of the Floating Home and Cabin with Decking Encroaching Over State Sovereign Land:** Pursuant to the Commission's delegation of authority and the State CEQA Guideline (Title 14, California Code of Regulations, section 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 Title 14, California Code of Regulations, section 15301 (I)(1).

Authority: Public Resources Code section 21084 and Title 14, California Code of Regulations, section 15300.

- 19. **Removal of Dock, Pilings, and All Other Improvements:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines

CALENDAR ITEM NO. 36 (CONT'D)

(Title 14, California Code of Regulations, section 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; Title 14, California Code of Regulations, section 15301 (I)(4).

Authority: Public Resources Code section 21084 and Title 14, California Code of Regulations, section 15300.

20. 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 nomination such lands and through the CEQA process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

- A. Site and Location Map
- B. United States Army Corps of Engineers Letter dated November 20, 2007

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

DENIAL OF APPLICATION AND AUTHORIZATION OF HOLDOVER TENANCY: 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.

REMOVAL OF THE FLOATING HOME AND CABIN WITH DECKING ENCROACHING OVER STATE SOVEREIGN LANDS: FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 1, EXISTING FACILITIES; TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15301(I)(1).

CALENDAR ITEM NO. 36 (CONT'D)

REMOVAL OF DOCK, PILINGS, AND ALL OTHER IMPROVEMENTS:
FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 1, EXISTING FACILITIES; TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15301 (I)(4).

SIGNIFICANT LANDS INVENTORY FINDINGS:

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

AUTHORIZATION:

1. DENY THE APPLICATION SUBMITTED BY JEANNE C. TAYLOR ON MAY 17, 2007, FOR A GENERAL LEASE – RECREATIONAL USE BECAUSE THE IMPROVEMENTS PROPOSED TO BE USED ON THE LEASE PREMISES ARE INCONSISTENT WITH THE PUBLIC TRUST AND THE COMMISSION'S STANDARD LEASE COVENANTS.
2. AUTHORIZE THE HOLDOVER TENANCY FOR SIX MONTHS BEGINNING DECEMBER 1, 2007 UPON THE EXECUTION BY JEANNE C. TAYLOR OF A HOLDOVER AGREEMENT THAT CONTAINS THE FOLLOWING CONDITIONS:
 - A. THE FLOATING HOME SHALL BE REMOVED FROM THE LEASE PREMISES BY JANUARY 3, 2008, AS REQUIRED BY THE UNITED STATES ARMY CORPS OF ENGINEERS IN ITS LETTER OF NOVEMBER 20, 2007.
 - B. JEANNE C. TAYLOR SHALL NOT PERMIT ANYONE TO OCCUPY THE LEASE PREMISES FOR RESIDENTIAL PURPOSES, INCLUDING OVERNIGHT STAYS.
 - C. NO LATER THAN JUNE 30, 2008, JEANNE C. TAYLOR SHALL SUBMIT A NEW LEASE APPLICATION AND A FINAL PLAN FOR NON- RESIDENTIAL USE OF THE LEASE PREMISES IN COMPLIANCE WITH THE STATE

CALENDAR ITEM NO. 36 (CONT'D)

LANDS COMMISSION'S REGULATIONS AND STANDARD LEASING POLICIES AND PRACTICES.

- D. JEANNE C. TAYLOR SHALL NOT SELL, ATTEMPT TO SELL, SUBLEASE, ASSIGN, MORTGAGE OR ENCUMBER ANY PORTION OF THE LEASES PREMISES DURING THE HOLDOVER PERIOD, AND SHALL IMMEDIATELY TERMINATE ANY AND ALL LISTING AGREEMENTS WITH REALTORS.
- E. JEANNE C. TAYLOR ACKNOWLEDGES AND AGREES THAT HOLDOVER RENT SHALL BE PAYABLE MONTHLY, IN ADVANCE, WHILE IN HOLDOVER STATUS IN THE AMOUNT OF \$48.95 PER MONTH.
- F. IN THE EVENT JEANNE C. TAYLOR FAILS TO COMPLY WITH THE TERMS AND CONDITIONS OF THE HOLDOVER AGREEMENT, THE MONTH TO MONTH TENANCY SHALL IMMEDIATELY TERMINATE AND JEANNE C. TAYLOR SHALL BE CONSIDERED TO BE IN TRESPASS AND SHALL REMOVE THOSE PORTIONS OF THE CABIN AND ITS SURROUNDING DECK EXTENDING WATERWARD OF THE ORDINARY HIGH WATER LINE, THE DOCKS, PILINGS, AND ALL OTHER IMPROVEMENTS LOCATED ON THE LEASE PREMISES AND SHALL RESTORE THE LEASE PREMISES TO THEIR NATURAL CONDITION PRIOR TO INSTALLATION OF THE IMPROVEMENTS PURSUANT TO SECTION 4, PARAGRAPH 12 OF THE LEASE. IF NECESSITATED BY THE UNITED STATES ARMY CORPS OF ENGINEERS OR THE UNITED STATES FISH AND WILDLIFE SERVICE CONSTRUCTION WINDOWS, JEANNE C. TAYLOR SHALL HAVE UNTIL OCTOBER 31, 2008, TO REMOVE THE PILINGS AND OTHER STRUCTURES REQUIRING IN-WATER WORK.
- G. THE STATE LANDS COMMISSION AND JEANNE C. TAYLOR AGREE THAT ANY APPLICABLE STATUTE OF LIMITATIONS PERIOD IS TOLLED AS OF NOVEMBER 30, 2007 THROUGH JUNE 30, 2008, OR SOONER UPON THE

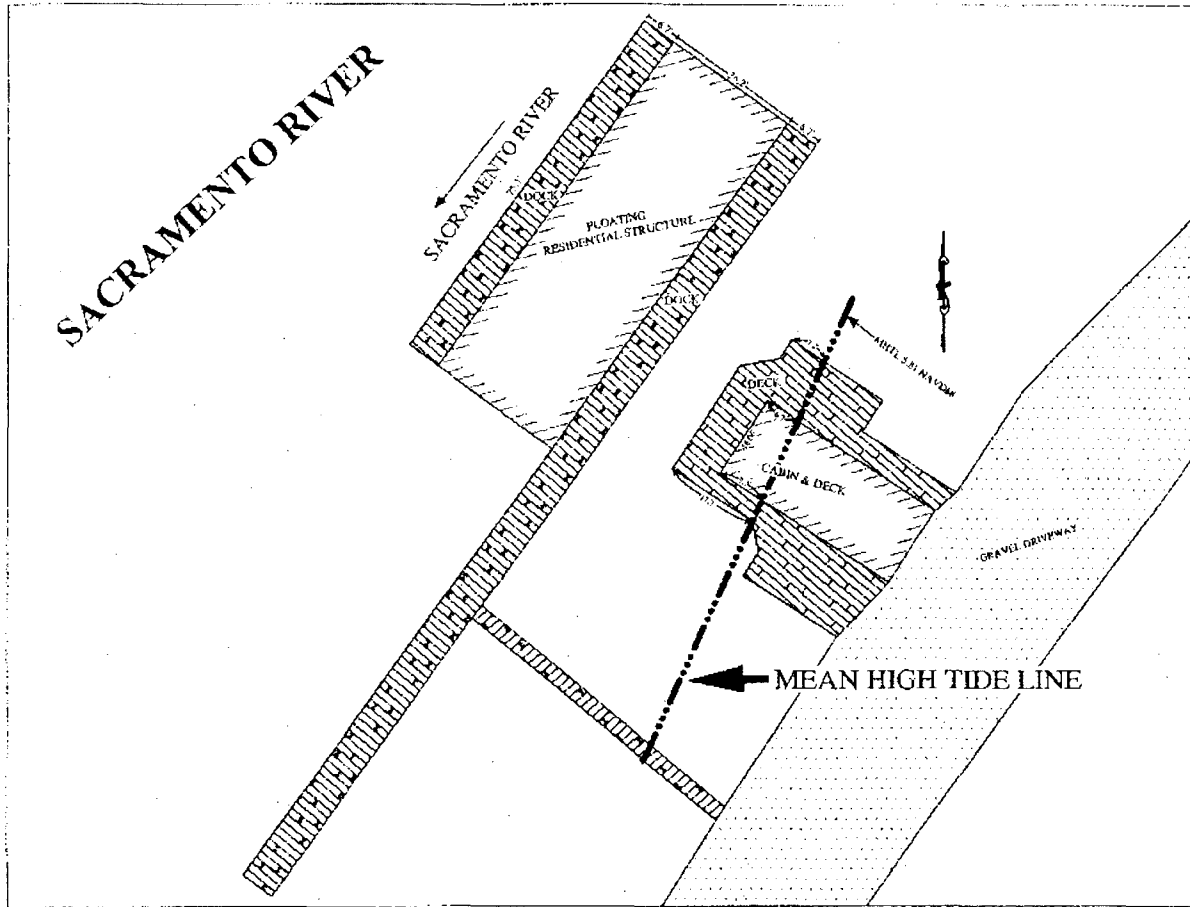
CALENDAR ITEM NO. 36 (CONT'D)

TERMINATION OF THE HOLDOVER AGREEMENT AS OUTLINED ABOVE, AND THAT ALL LEGAL RIGHTS AND REMEDIES EXISTING ON NOVEMBER 30, 2007 ARE PRESERVED AS OF THAT DATE.

3. AUTHORIZE THE EXECUTION OF THE HOLDOVER AGREEMENT BY THE EXECUTIVE OFFICER OR HIS DESIGNEE.
4. AUTHORIZE STAFF OF THE STATE LANDS COMMISSION AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL STEPS NECESSARY, INCLUDING LITIGATION, TO EJECT JEANNE C. TAYLOR AND TO REMOVE ALL IMPROVEMENTS LOCATED ON THE LEASE PREMISES IF JEANNE C. TAYLOR FAILS TO COMPLY WITH THE TERMS AND CONDITIONS OUTLINED IN THE HOLDOVER AGREEMENT OR IF SHE FAILS TO REMOVE ALL IMPROVEMENTS UPON EXPIRATION OF THE HOLDOVER PERIOD.

NO SCALE

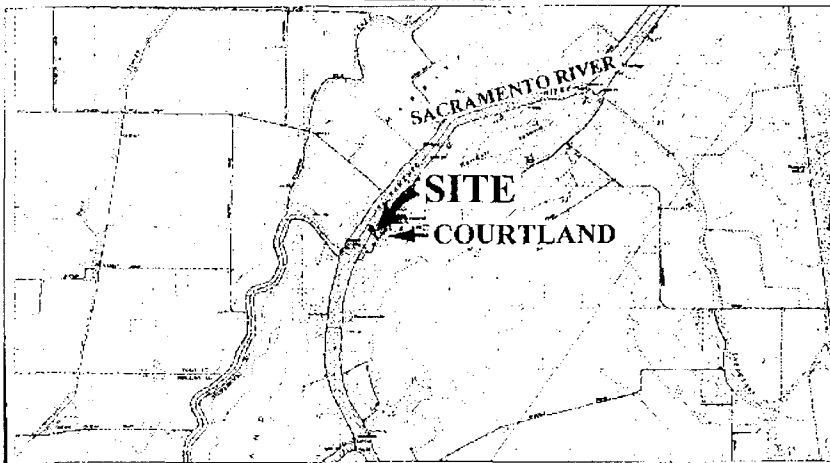
SITE



11779 HIGHWAY 160, COURTLAND, CA
SACRAMENTO COUNTY

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit A

PRC 6382.1
APN 132-0171-015
JEANNE TAYLOR
GENERAL LEASE
RECREATIONAL USE
SACRAMENTO RIVER
SACRAMENTO COUNTY



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

HUSTEAD 11-S-2007

000334

CALENDAR PAGE

000205

MINUTE PAGE



EXHIBIT B

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO CA 95814-2922

REPLY TO
ATTENTION OF

November 20, 2007

Regulatory Branch (SPK-2007-1863)

Anna Niemann
Goodman & Associates
3840 Watt Avenue, Building A
Sacramento, California 95821-2640

Dear Ms. Niemann:

We are responding to your November 13, 2007, request for additional time for the Bird Marina non-compliance. The Bird Marina is located on the Sacramento River at 11779 Highway 160, Courtland, California 95615, in Section 32, Township 6 North, Range 4 East, MDB&M, Sacramento County.

We have approved your request for a time extension in order to bring this site into compliance with the Department of the Army permits. You will have an additional 30 days after the California State Lands Commission meeting on December 3, 2007, in order to remove the unauthorized floating home.

Please refer to identification number SPK-2007-1863 in any correspondence concerning this project. If you have any questions, please contact Zachary Simmons at our Sacramento Office, 1325 J Street, Room 1480, Sacramento, California 95814-2922, email Zachary.M.Simmons@usace.army.mil, or telephone 916-557-6746. You may also use our website: www.spk.usace.army.mil/regulatory.html.

Sincerely,

Original Signed

Kathy Dadey, Ph.D
Chief, California Central Valley
South and Nevada Section

Copy furnished:

Jeanne Bird Taylor, P.O. Box 245, Courtland, California 95615-0245
/Jeslyn McComas, California State Lands Commission, 100 Howe Avenue, Suite 100 South,
Sacramento, California 95825-8282

000335

CALENDAR PAGE

000205

MINUTE PAGE