

**CALENDAR ITEM
C31**

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03/25/08
WP 2856.1
V. Caldwell

**ASSIGNMENT AND AMENDMENT OF A
GENERAL – LEASE COMMERCIAL USE**

LESSEE/ASSIGNOR:

John C. Bresciani
7600 Windmill Cove Road
Stockton, California 95206

ASSIGNEE:

Windmill Cove Resort and Marina, LLC
213 Judah Street
Roseville, California 95658

AREA, LAND TYPE, AND LOCATION:

18.05 acres, more or less, of filled and unfilled sovereign lands in the historic bed of the San Joaquin River, at Vulcan Island, near the city of Stockton, San Joaquin County.

AUTHORIZED USE:

Continued use and maintenance of a commercial marina and recreational vehicle park consisting of 26 covered berths, a floating dock with space for five berths, walkways, pilings, 55 recreational vehicle spaces with hook ups, two buildings for sanitary and laundry facilities, two mobile home sites, a maintenance building, two bulkheads along the deep water channel, and access roads.

LEASE TERM:

41 years, beginning January 1, 1993.

CONSIDERATION:

A Minimum Annual Rent of \$5,285 against five percent of the Gross Annual Income derived from rental of boat berthing and mooring spaces, five percent of the Gross Annual Income derived from rental of the recreational vehicle spaces, and ten percent of the Gross Annual Income from all other sources, such as coin operated machines.

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PROPOSED AMENDMENT:

Amend the lease to include the following provisions:

- 1) Assignee shall reimburse the Commission for staff costs associated with surveying the Lease Premises;
- 2) by May 1, 2008, the Assignee shall submit to the Commission the following: a) repair and renovation plan for review by Commission staff, b) a Proposal for elimination or retention of certain existing unauthorized improvements or any change in use or alteration to existing improvements or the placement of new improvements, and c) an application for consideration by the Commission to amend the lease for the items outlined in the Proposal prior to implementing any changes to the lease premises;
- 3) Assignee shall have 120 days from March 25, 2008 to effect the cure of the defaults of the lease under Section 1, Authorized Improvements, and Section 4, Paragraph 4, Maintenance and Repair and Residential Use; and
- 4) include provisions that the Assignee must implement the Commission's "Best Management Practices (BMPs) for Marina Owners/Operators", incorporate the Commission's "BMPs for Berth Holders and Boaters" into Lessee's berth rental agreements, and include the additional BMPs the Commission subsequently deems appropriate for either of the above categories. In addition to the inclusion of the BMPs for Berth Holders and Boaters into the berth rental agreements, the Lessee shall post such publication in prominent places within the lease premises. The Assignee shall provide the Commission, on the first anniversary of the lease amendment and on each successive third anniversary thereafter, a report on compliance with all BMPs.

All other terms and conditions of the lease shall remain in effect without amendment.

OTHER PERTINENT INFORMATION:

1. Assignee owns the uplands adjoining the lease premises.
2. On March 8, 1994, the Commission authorized issuance to Larry A. and Nova N. Neuner (dba Windmill Cove Marina and R.V. Park) a 25-year General Lease – Commercial Use, Lease No. PRC 2856.1, and on February 21, 2003, the Commission approved an assignment of the lease from the Neuners to John C. Bresciani. On December 7, 2007, an application was received for an assignment from John C. Bresciani to Windmill Cove Resort and Marina, LLC.
3. On January 14, 2008, staff conducted a site visit of the Marina and discovered that there were unauthorized uses (such as residential use, unauthorized RV homes, etc.) occurring on the lease premises and that the improvements hereon were in a general state of disrepair deteriorating

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docks and gangways. On February 8, 2008, staff met with the Lessee and Assignee and advised them of the unauthorized activities and expressed concerns about the general deteriorated condition of the lease premises and the improvements.

4. At the meeting, the Assignee stated his intent to remedy the unauthorized uses and further stated his desire to immediately begin repairing and renovating the deteriorated facilities and expressed ideas as to future improvements he would like to make to the lease premises in order to create a safe, clean and more attractive destination area. Staff advised the parties that defaults under the lease existed. However, since the Assignee has agreed to immediately begin curing the defaults under the lease, staff recommends approval of the assignment and amendment of the lease under the following conditions:
 - a. That the Assignee will reimburse the Commission for staff costs to conduct a survey of the Lease Premises;
 - b. That no later than May 1, 2008, the Assignee will submit to the Commission a repair and renovation plan for review and approval by Commission staff, a Proposal for the retention of certain existing unauthorized improvements, any change in use or alteration of existing improvements or the placement of new improvements and submit an application to amend the lease prior to implementation of the items outlined in the Proposal; and
 - c. That the Assignee has cured the defaults of the lease within 120 days from March 25, 2008, or by July 23, 2008.
5. The Assignee has also agreed to additional lease provisions for implementation of Best Management Practices on the Lease Premises.
6. 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.
7. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq., but such activity will not affect those significant lands.

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EXHIBIT:

- A. Location Map

PERMIT STREAMLINING ACT DEADLINE:

N/A

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

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.

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 ASSIGNMENT OF LEASE NO. PRC 2856.1, A GENERAL LEASE - COMMERCIAL USE, OF FILLED AND UNFILLED SOVEREIGN LANDS IN THE HISTORIC BED OF THE SAN JOAQUIN RIVER AS SHOWN ON EXHIBIT A ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF, FROM JOHN C. BRESCIANI TO WINDMILL COVE RESORT AND MARINA, LLC, EFFECTIVE FEBRUARY 29, 2008.
2. AUTHORIZE THE AMENDMENT OF LEASE NO. PRC 2856.1, A GENERAL LEASE – COMMERCIAL USE, OF FILLED AND UNFILLED SOVEREIGN LANDS IN THE HISTORIC BED OF THE SAN JOAQUIN RIVER AS SHOWN ON EXHIBIT A ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF, EFFECTIVE FEBRUARY 29, 2008, TO INCLUDE PROVISIONS FOR THE SURVEY OF THE LEASE PREMISES; A DEADLINE OF MAY 1, 2008, FOR THE SUBMISSION OF A REPAIR AND RENOVATION PLAN AND A PROPOSAL FOR CHANGES IN USES, ALTERATIONS TO EXISTING IMPROVEMENTS, OR PLACEMENT OF ANY NEW IMPROVEMENTS ON THE LEASE

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PREMISES AND SUBMIT AN APPLICATION TO AMEND THE LEASE FOR THE ITEMS OUTLINED IN THE PROPOSAL PRIOR IMPLEMENTATION; A DEADLINE OF 120 DAYS FROM MARCH 25, 2008, TO CURE THE DEFAULTS OF THE LEASE UNDER TO SECTION 1 AND 4 OF THE LEASE; AND TO ADD BEST MANAGEMENT PRACTICE PROVISIONS, AS SET FORTH IN THE LEASE AMENDMENT WHICH IS ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION. ALL OTHER TERMS AND CONDITIONS OF THE LEASE WILL REMAIN IN EFFECT WITHOUT AMENDMENT.