

**CALENDAR ITEM
C26**

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06/01/09
WP 2052.1
V. Caldwell

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

LESSEE/ASSIGNOR:

Tamara R. Perry, Executor of Estate of Selden Leonard Perry aka Selden L. Perry

ASSIGNEE:

Duane M. Hines, Trustee of the June M. Woodger Trust

EXISTING AREA, LAND TYPE, AND LOCATION:

Sovereign lands in the Mokelumne River, near the town of Isleton, Sacramento County.

EXISTING AUTHORIZED USE:

Continued use and maintenance of an existing commercial marina consisting of 123 covered berths of various lengths, a 2,250 square foot dock, a 989 square foot recreational boat dock, and a 1,453 square foot recreational deck attached to a caretakers residence.

LEASE TERM:

25 years, beginning April 1, 2004.

CONSIDERATION:

A minimum annual rent of \$4,000 against the following percentages of gross receipts: five percent of the gross annual income derived from the berthing, docking, and mooring of boats; 25 percent of the gross income generated from vending and electronic game machines; and ten percent of all other gross income generated on the Lease Premises; with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

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SPECIFIC LEASE PROVISIONS:

Insurance:

Liability of no less than \$1,000,000 combined single limit coverage

Bond:

\$20,000

PROPOSED AMENDMENT:

Amend the lease as follows:

1. Replace in its entirety Section 3 (Land Description) with the attached Exhibit B.
2. Revise the authorized improvements in Section 1 to include a portion of 123 covered berths with individual electric meters, a 581 square foot marina accommodation dock, 16 pilings, fence, road, outfall, a 989 square foot recreational dock, seawall, a portion of the caretakers residence including an attached 1,453 square foot patio/deck, wood wall with six pilings, and rip rap.
3. Revise Section 2, Special Provisions, Paragraph 1B of the lease for the percentage of berths located on or over lands owned by the Commission: 9.3 percent for 40-foot covered berths; 19.8 percent for 24-foot covered berths; 94.7 percent for 30-foot covered berths; and 80.8 percent for 28-foot covered berths.
4. The Consideration in Section 1 for the Minimum Annual Rent for Marina Improvements is revised from \$4,000 to \$3,600 against a Percentage of Annual Gross Income, and annual rent for Non-Marina uses in the amount of \$6,200, effective April 1, 2009.
5. Add provisions for a timetable to complete repairs to the facilities and provide evidence of permits and code compliance.
6. Add a provision 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/Lessee shall provide the Commission, on the first anniversary of

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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. Lessee/Assignee owns the uplands adjoining the lease premises. The upland is an Island with a primary use as a marina with appurtenant facilities and open space.
2. On April 5, 2004, the Commission authorized a General Lease – Commercial Use to Tamara R. Perry, Executor of Estate of Selden Leonard Perry aka Selden L. Perry. That lease will expire on March 31, 2029.
3. In early 2008, the upland and marina facilities were listed for sale and in February 2008, staff conducted a site inspection of the facility. Staff noted individual electrical meters for each covered berth had been installed without prior Commission authorization and that the authorized improvements were in a general state of disrepair with deteriorating docks and gangways.
4. On June 16, 2008, staff sent a letter requesting that Ms. Perry have the property inspected by a licensed contractor and mechanical engineer and to provide a written report of the condition of the improvements and a repair and maintenance plan to bring the improvements to a safe condition. Subsequently, staff met with the potential buyer (Assignee) and advised him of staff's concerns about the deteriorated condition of the lease premises. The Assignee expressed his intent to remedy any of the State's concerns and expressed the desire to immediately begin repairing and renovating the deteriorated facility upon the close of escrow. On November 7, 2008, upland the property ownership was transferred to Duane M. Hines, Trustee of the June M. Woodger Trust.
5. The Assignee submitted an application for the assignment of the lease and a work plan and timetable to complete the repair work. During the review of the application, staff determined that the description of the lease premises was incorrectly plotted and subsequently performed a new survey. The survey indicated that less of the covered berth area was encroaching onto State lands, however, a greater portion of other areas on the island used by the Lessee/Assignee were encroaching onto State lands. These include a portion of 123 covered berths, a 989 square foot

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recreational dock, a 1,453 square foot patio/deck attached to a caretaker's residence, and 16 pilings that were previously authorized by the Commission, as well as a 581 square foot accommodation dock, fence, road, outfall, seawall, a portion of the caretaker's residence, wood wall with six pilings, rip rap, and individual electric meters that were not previously authorized by the Commission. The 16 pilings represent the remnants of the previously authorized 2,250 square foot recreational dock. Staff is recommending that the lease be amended to reflect these changes.

6. **Assignment:** 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. **Amendment of Lease:** 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 as a categorically exempt project. The project is exempt under Class 3, New Construction of Small Structures; Title 14, California Code of Regulations, section 15303(d).

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

8. 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.

EXHIBITS:

- A. Site and Location Map
- B. Land Description

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

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ASSIGNMENT: 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.

AMENDMENT OF LEASE: 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 3, NEW CONSTRUCTION OF SMALL STRUCTURES; TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15303(D).

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 2052.1, A GENERAL LEASE - COMMERCIAL USE, FROM TAMARA R. PERRY, EXECUTOR OF ESTATE OF SELDEN LEONARD PERRY AKA SELDEN L. PERRY TO DUANE M. HINES, TRUSTEE OF THE JUNE M. WOODGER TRUST; EFFECTIVE NOVEMBER 7, 2008.
2. AUTHORIZE THE AMENDMENT OF LEASE NO. PRC 2052.1, A GENERAL LEASE – COMMERCIAL USE, OF SOVEREIGN LANDS AS SHOWN ON EXHIBIT A (FOR REFERENCE PURPOSES ONLY), AND AS DESCRIBED IN EXHIBIT B, ATTACHED AND BY REFERENCE MADE A PART HEREOF, EFFECTIVE NOVEMBER 7, 2008, TO:
 - 1) DELETE AND REPLACE SECTION 3 OF THE LEASE (LAND DESCRIPTION) WITH THE LAND DESCRIBED IN EXHIBIT B;
 - 2) REVISE THE AUTHORIZED IMPROVEMENTS TO INCLUDE A PORTION OF 123 COVERED BERTHS, RECREATIONAL DOCK, A PATIO/DECK ATTACHED TO A CARETAKERS RESIDENCE AND 16 PILINGS, PREVIOUSLY AUTHORIZED BY THE COMMISSION AND THE RETENTION OF AN

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ACCOMMODATION DOCK, FENCE, ROAD, OUTFALL, SEAWALL, A PORTION OF THE CARETAKERS RESIDENCE, WOOD WALL WITH SIX PILINGS, RIP RAP AND INDIVIDUAL ELECTRICAL METERS, NOT PREVIOUSLY AUTHORIZED BY THE COMMISSION;

3) REVISE SECTION 2, SPECIAL PROVISIONS, PARAGRAPH 1B OF THE LEASE FOR THE PERCENTAGE OF BERTHS LOCATED ON OR OVER LANDS OWNED BY THE COMMISSION: 9.3 PERCENT FOR 40-FOOT COVERED BERTHS; 19.8 PERCENT FOR 24-FOOT COVERED BERTHS; 94.7 PERCENT FOR 30-FOOT COVERED BERTHS; AND 80.8 PERCENT FOR 28-FOOT COVERED BERTHS.

4) REVISE THE MINIMUM ANNUAL RENT FOR USES ASSOCIATED WITH THE MARINA FROM \$4,000 TO \$3,600 AGAINST VARIOUS PERCENTAGES OF ANNUAL GROSS INCOME DERIVED FROM THE MARINA AND ESTABLISH A ANNUAL FLAT RENT FOR NON-MARINA USES IN THE AMOUNT OF \$6,200, EFFECTIVE APRIL 1, 2009;

5) ADD PROVISIONS FOR A TIMETABLE TO COMPLETE REPAIRS TO THE FACILITIES AND PROVIDE EVIDENCE OF PERMITS AND CODE COMPLIANCE; AND

6) 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.