

**CALENDAR ITEM
C10**

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12/17/09
WP 5210.1
V. Caldwell

**TERMINATION OF A GENERAL LEASE – COMMERICAL USE,
ISSUANCE OF A GENERAL LEASE – COMMERCIAL AND PROTECTIVE
STRUCTURE USE, AND APPROVAL OF AGREEMENT AND CONSENT TO
ENCUMBRANCING OF LEASE**

LESSEE:

Equity Bancorp, Inc., a California Corporation

APPLICANT:

151 Brannan Island Road, LLC
900 Fifth Avenue, Suite 100,
San Rafael, California 94901

SECURED-PARTY LENDER:

Lighthouse Resort First Mortgage Investors LP
747 Garden Street
Santa Barbara, California 93101

AREA, LAND TYPE, AND LOCATION:

Sovereign lands in the Mokelumne River, near Andrus Island, adjacent to 151 Brannan Island Road, city of Isleton, Sacramento County.

AUTHORIZED USE:

Operation, use and maintenance of an existing commercial marina known as Lighthouse Marina consisting of covered and uncovered berths, dock, walkways, pilings, boat launch ramp, and restaurant with a bar; and retention of bank protection.

LEASE TERM:

21 years, beginning the January 1, 2010.

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CONSIDERATION:

Commercial Marina: Minimum annual rent of \$4,400, against five percent of the gross annual income derived from the berthing, docking and mooring of boats, three percent of the gross annual income derived from the restaurant and bar, and ten percent of all other gross annual 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.

Bank Protection: The public use and benefit; with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interest.

SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance of no less than \$2,000,000

Bond:

\$50,000

Other:

1. The lease contains provisions that require implementation of the Commission's "Best Management Practices for Marina Owners/Operators" and encourage implementation of the Commission's "Best Management Practices for Berth Holders and Boaters", including additional Best Management Practices (BMPs) the Commission subsequently deems appropriate for either of the above categories.

2. In order to resolve the extent of private and public ownership of the lands described in Exhibit B, the property rights of each of party will be determined within 18 months of the commencement of the Lease and both parties agree to enter into a title settlement agreement. Applicant is responsible for all Commission staff costs associated with the title settlement agreement.

OTHER PERTINENT INFORMATION:

1. Applicant owns or has the right to use the upland adjacent to the Lease Premises.

2. On November 21, 1983, the Commission authorized a 30-year, General Lease – Commercial Use, beginning August 1, 1983, to Lighthouse Marina and Resort Associates, for the operation of the Lighthouse Marina. The lease is scheduled to expire on July 31, 2013.

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3. Between 1983 and 2003, a series of assignments were authorized by the Commission. On June 2, 2003, the Commission authorized an assignment to Lighthouse Real Estate Consulting, LLC, aka LREC, LLC, (Lighthouse), and on October 6, 2004, the Commission authorized an Agreement and Consent to Encumbrancing of the Lease with Equity Bancorp, Inc. (EB), in the amount of \$5,500,000. Lighthouse subsequently defaulted on its loan from EB and foreclosure proceedings ensued. On April 14, 2009, EB acquired ownership of the uplands and assumed the interest in the lease pursuant to the terms of the encumbrancing agreement.
4. 151 Brannan Island Road, LLC (Applicant), is a company that EB recently formed. The Applicant owns and manages Lighthouse Marina and EB is the managing partner of the company. The Applicant is now requesting the termination of the existing lease and has submitted an application for a new General Lease – Commercial and Protective Structure Use. The rent is current.
5. The Applicant is also requesting that the Commission consider approving an Agreement and Consent to Encumbrancing of Lease in favor of Lighthouse Resort First Mortgage Investors LP, the Secured-Party Lender, in a loan amount not to exceed \$3,000,000. The purpose of the loan is to purchase the upland property and the commercial facilities located on the Lease Premises; and to make repairs and rebuild the infrastructure of the marina.

In approving the encumbrancing agreement, the Commission retains the right to approve any transfer from the lending institution to a prospective lessee, should any foreclosure of the loan occur.
6. In the course of negotiations for the lease, questions were raised regarding the extent of private and public ownership of the lands described in Exhibit B. Rather than wait until the questions were resolved, the Applicant wanted to execute the lease and pay rent on the lands described in Exhibit B. It was also agreed to by the parties, that additional boundary work would be required in order to understand the property rights of each party. The Applicant has agreed to fund the Commission's staff costs for this work and once the work is completed, a title settlement will be entered into by both parties, which may necessitate that the lease be amended. Any title settlement and lease amendment would require the future consideration by the Commission.

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7. The bank protection will mutually benefit both the public and the Applicant. The bank of the Mokelumne River will have the additional protection from wave action provided at no cost to the public.

8. **TERMINATION OF LEASE:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], staff has determined that this activity is not subject to the provisions of CEQA because it is not a "project" as defined by 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.

9. **COMMERCIAL MARINA:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), staff has determined that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; Title 2, California Code of Regulations, section 2905 (a)(2).

Authority: Public Resources Code section 21084 and Title 14, California Code of Regulations, section 15300 and Title 2, California Code of Regulations, section 2905.

10. **BANK PROTECTION:** 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 4, Minor Alterations to Land; Title 14, California Code of Regulations, section 15304.

Authority: Public Resources Code section 21084 and Title 14, California Code of Regulations, section 15300 and Title 2, California Code of Regulations, section 2905.

11. **APPROVAL OF AGREEMENT AND CONSENT TO ENCUMBERANCING OF LEASE:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], staff has determined that this activity is not subject to the provisions of CEQA because it is not a "project" as defined by 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.

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12. 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 CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

- A. Site Map
- B. Land Description

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

TERMINATION OF LEASE: FIND THAT THE ACTIVITY IS NOT SUBJECT TO THE REQUIREMENTS OF 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.

COMMERCIAL MARINA: FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 1, EXISTING FACILITIES; TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTION 2905 (a)(2).

BANK PROTECTION: 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 4, MINOR ALTERATIONS TO LAND; TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15304.

APPROVAL OF AGREEMENT AND CONSENT TO

ENCUMBERANCING OF LEASE: FIND THAT THE ACTIVITY IS NOT SUBJECT TO THE REQUIREMENTS OF 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.

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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 TERMINATION OF GENERAL LEASE – COMMERCIAL USE, LEASE NO. PRC 5210.1, EFFECTIVE DECEMBER 31, 2009.
2. AUTHORIZE ISSUANCE OF A GENERAL LEASE – COMMERCIAL AND PROTECTIVE STRUCTURE USE TO 151 BRANNAN ISLAND ROAD, LLC, BEGINNING JANUARY 1, 2010, FOR A TERM OF 21 YEARS, FOR THE OPERATION, USE, AND MAINTENANCE OF AN EXISTING COMMERCIAL MARINA AND RETENTION, USE AND MAINTENANCE OF BANK PROTECTION, AS SHOWN ON EXHIBIT A ATTACHED (FOR REFERENCE PURPOSES ONLY) AND AS DESCRIBED ON EXHIBIT B AND BY THIS REFERENCE MADE A PART HEREOF; CONSIDERATION FOR THE COMMERCIAL MARINA: MINIMUM ANNUAL RENT IN THE AMOUNT OF \$4,400 AGAINST FIVE PERCENT OF THE GROSS INCOME DERIVED FROM THE BERTHING, DOCKING AND MOORING OF BOATS, THREE PERCENT OF GROSS INCOME DERIVED FROM THE OPERATION OF THE RESTAURANT AND BAR, AND TEN PERCENT FROM ALL OTHER GROSS INCOME WITH THE STATE RESERVING THE RIGHT TO FIX A DIFFERENT RENT PERIODICALLY DURING THE LEASE TERM, AS PROVIDED IN THE LEASE; CONSIDERATION FOR THE BANK PROTECTION: THE PUBLIC USE AND BENEFIT; WITH THE STATE RESERVING THE RIGHT AT ANY TIME TO SET A MONETARY RENTAL IF THE COMMISSION FINDS SUCH ACTION TO BE IN THE STATE'S BEST INTEREST; LIABILITY INSURANCE IN THE AMOUNT OF NO LESS THAN \$2,000,000; AND A SURETY BOND IN THE AMOUNT OF \$50,000.
3. AUTHORIZE EXECUTION OF THE DOCUMENT ENTITLED "AGREEMENT AND CONSENT TO ENCUMBRANCING OF LEASE", AND CONSENT OF THE STATE LANDS COMMISSION TO THE ENCUMBRANCING OF NEW LEASE PRC 5210.1 EFFECTIVE JANUARY 1, 2010.