

**CALENDAR ITEM
C34**

A	11	02/01/10
S	7	WP 3194 N. Smith E. Milstein

**TERMINATION OF LEASE NO. PRC 3194.9, ISSUANCE OF NEW
GENERAL LEASE - COMMERCIAL USE, ENDORSEMENT OF SUBLEASES, AND
APPROVAL OF AGREEMENT AND CONSENT TO ENCUMBRANCING OF LEASE**

LESSEE/SUBLESSOR:

City of Martinez
525 Henrietta Street
Martinez, CA 94553

SUBLESSEES:

Almar Management, Inc.
28441 Highridge Road, Suite 110
Rolling Hills Estates, CA 90274-4870

Martinez Yacht Club
P.O. Box 128
Martinez, CA 94553

Gerald N. Long, General Manager
Eagle Marine
11500 Skyline Boulevard
Oakland, CA 94619

Sea Scouts
Security Owners Corporation
555 Escobar Street
Martinez, CA 94553

The Benefactors, Inc.
dba Willows Theatre Company
Andrew Holtz, Managing Director
1425 Gasoline Alley
Concord, CA 94520

SECURED-PARTY LENDER:

California Department of Boating and Waterways
2000 Evergreen Street, Suite 100
Sacramento, CA 95815-3888

BACKGROUND:

In January 1960, the city of Martinez (City) and the State, acting by and through various agencies, entered into an agreement that designated Martinez as an

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acceptable location for a small craft harbor. Shortly thereafter, on March 24, 1960, the Commission authorized a 49-year lease of 34 acres of sovereign lands to the City for the development of a harbor. A \$1,300,000 loan from the State to the City was provided for construction of the harbor facilities. During construction, various difficulties were encountered and the contractor stopped work on the project, leaving the harbor uncompleted. Following this, the various State agencies and the City held meetings to develop a program to arrange funding to complete development of the harbor and a marina, to re-define the rights of the parties, and to settle the claim filed by the original harbor contractor. As a result of these meetings, the City and the State of California, acting by and through the Administrator of the State Resources Agency; the Division of Small Craft Harbors, the Department of Parks and Recreation; the Small Craft Harbors Commission entered into a Memorandum of Agreement (Agreement) that was intended to create a program that would attract a private developer or developers to complete the harbor, develop a recreation area, and generate income therefrom. The Commission was not a party to the Agreement.

The Agreement contained various terms and conditions regarding financial considerations. It also established a joint committee composed of the Department of Finance, the Attorney General's Office, the Small Craft Harbor Commission, and the Martinez City Council, City Attorney, and City Manager. The purpose of the Committee was to review and approve all leases and contracts for development of the harbor and for other purposes contained in the Agreement. It was later recognized by the parties to the Agreement that the involvement of the Commission would be needed. Subsequently, on September 24, 1964, the Commission terminated the original 49-year lease and authorized a new 49-year lease with the City for a "small craft harbor facilities, park and recreational facilities, commercial enterprises, and industrial enterprises." At the same meeting, the Commission approved being a party to the Agreement. The terms of the lease contain many provisions found in the Agreement, including the procedures for re-payment of the \$1,300,000 loan from the State, termination of the lease upon repayment of the loan, and the absolute right of the City to renew the lease under the same terms and conditions.

CURRENT SITUATION:

The City now proposes to make improvements to the marina, including repairs, replacement, and realignment of sections of the breakwater and marina entrance; a new concrete-encased float module berthing system containing 367 slips, side ties, and end ties; construction of a fuel dock, pump-out station, new bait shop, restroom/shower/locker facilities, dry boat storage center; and upgraded electrical and water service. As part of the project, the City also proposes to dredge approximately 274,800 cubic yards of sediment from the marina basin to restore adequate depth for launching, berthing, and safe

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navigation and to conduct periodic maintenance dredging. The City also proposes to construct finished pad sites on the upland adjacent to the marina for a planned restaurant, service center, and maintenance facility. The existing upland uses, consisting of the yacht club, Sea Scouts building, boat repair facility, and amphitheater, will be retained.

The City currently has five outstanding loans with the California Department of Boating and Waterways (DBW) and plans to secure funding for many of the proposed improvements to the marina with a new loan from DBW. Accordingly, the City is requesting an Agreement and Consent to Encumbrancing of Lease for all the loans in an amount not to exceed \$13,000,000. In order to keep the marina project economically viable, the City is proposing a loan amortization period of 46 years. For the new loan to be approved, the City must have the right to use the lease premises for a term concurrent with the loan period. This is the reason for the City's request for a 46-year lease from the Commission. The City has agreed that all revenue to the City generated on the Lease Premises will remain in the City's Marina Enterprise Zone to be used for DBW loan repayment, capital improvements, repairs and maintenance, and periodic maintenance dredging. The terms of the lease as negotiated, as well as the subleases approvals, are unique and take into consideration terms agreed to in 1964. Additionally, the new lease provisions reflect the needs of the City, recognize the public benefits provided by the project, and are considered to be in the best interests of the State.

AREA, LAND TYPE, AND LOCATION:

58.77 acres, more or less, of sovereign lands in Suisun Bay where it joins with the Carquinez Strait just west of the Benicia-Martinez (I-680) Bridge, city of Martinez, Contra Costa County.

AUTHORIZED USE:

Existing:

Marina-related facilities: commercial marina consisting of a dock system with approximately 400 berths, breakwater, pump out stations, harbor master's building, bait shop, four lane boat launch ramp, parking lots, public fishing pier, and shoreline rip-rap.

Upland facilities: Yacht Club, Sea Scout building, boat repair facility, amphitheater, park, and Bay Trail for walking or biking with benches for viewing.

To be constructed:

Marina-related facilities: A combination of repairs, replacement, and realignment to sections of the breakwater; phased replacement of the existing docks with a new concrete-encased float module berthing system containing 367 slips, side ties, and end ties; construction of a fuel dock and pump-out station; new bait

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shop, restroom/shower/locker facilities, dry boat storage center; and dredging approximately 274,800 cubic yards of sediment from the marina basin to restore adequate depth for boat launching, berthing, and safe navigation.

Upland facilities: The City also proposes to construct finished pad sites for a planned restaurant, service center, and maintenance facility. Commission approval will be required prior to the construction of the buildings for these pad sites. The existing Yacht Club, Sea Scout building, boat repair facility, amphitheater, park, and Bay Trail facilities will remain unchanged.

LEASE TERM:

46 years, beginning February 1, 2010.

CONSIDERATION:

Years 1-10: A minimum annual rent of \$10,000 for the marina-related facilities plus five percent of rent collected by the City for the upland facilities. Beginning in Year 11 and each year thereafter: A minimum annual rent against a schedule of percentage rents and fuel charges for marina-related activities and a percentage of gross income from the upland facilities. The minimum annual rent, schedule of percentage rents, and fuel charges beginning in Year 11 shall be negotiated by staff at least 12 months prior to Year 11. The schedule of percentage rents for marina-related activities shall be applied to the gross income derived from the berthing of boats; the sale of food and beverages on the premises; the sale of watercraft, goods, merchandise, or products; and the gross income derived from any other authorized or unauthorized activity. The charge for fuel sales shall be assessed on a per-gallon basis and may be tiered to pre-determined levels of gallons sold.

SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance of no less than \$5,000,000, or equivalent staff-approved self-insurance program.

Bond:

\$1,500,000 construction bond

\$2,000,000 performance bond

Other:

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

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OTHER PERTINENT INFORMATION:

1. Lessee has the right to use the uplands adjoining the lease premises.
2. On September 24, 1964, the Commission terminated Lease No. PRC 2545.9, authorized a new 49-year lease to the City, and approved the Commission being a party to a Memorandum of Agreement with the State of California, acting by and through the Administrator of the State Resources Agency; the Division of Small Craft Harbors, the Department of Parks and Recreation; the Small Craft Harbors Commission. The lease will expire October 26, 2013.
3. On March 1, 1966, the Commission approved an amendment of the lease to delete the existing land description and approve a new land description that incorporates the site of the Martinez Municipal Wharf. On February 24, 1977, the Commission approved another amendment of the land description, revising the lease premises to 58.66 acres.
3. The City subleases operation of the marina-related facilities to Almar Management, Inc. The marina operations include berth rentals, marina fuel sales, wet and dry boat storage, transient docking, boat trailer storage, boat launch, operation of the bait shop, and other related marina services.
4. The City has four other sublessees that occupy upland facilities within the lease premises. The subleases are: Gerald N. Long, operator of the Eagle Marine boat repair facility; Sea Scouts, which under the guidance of the Mt. Diablo Council of the Boy Scouts of America, occupy a meeting hall for activities of the Sea Scouts; Martinez Yacht Club operates a clubhouse, including facilities for the preparation of food and beverages for club members and their guests; and The Benefactors, Inc., dba the Willows Theatre Company, for the use of an amphitheater for theatrical performances.
5. The City is requesting that the Commission approve an Agreement and Consent to Encumbrancing of Lease in favor of the California Department of Boating and Waterways, a secured-party lender, in an amount not to exceed \$13,000,000. The City currently has five outstanding loans with the California Department of Boating and Waterways (DBW) and plans to secure funding for many of the proposed improvements to the marina with a new loan from DBW. The purpose of the new loan is for the marina reconstruction, including work on the breakwater; construction of 367 new slips, side ties, and end ties; construction of a new fuel dock, pumpout

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stations, bait shop, and dry boat storage; and the dredging of approximately 274,800 cubic yards of sediment from the marina basin.

6. The Marina's slips, docks, and boats are vulnerable to vandalism, theft, property destruction, accidents, fire and other on-the-water problems. Accordingly the City is requesting a limited and controlled presence of navigable vessels to be used as residences for security purposes.

Based on the above, staff is recommending that no more than seven vessels are to be used as security for security purposes, and only in strategically designated slips, subject to the approval of Commission staff. These security vessels will be required to leave the marina waters at least once for a minimum of six hours in each 90-day period. The City will submit an annual report covering the security activities for each year.

7. **Issuance of Lease:** A Negative Declaration (SCH # 2008012065) was prepared and adopted for this project by the City of Martinez on May 7, 2008. Commission staff has reviewed such document.
8. **Termination of Lease, Approval of Subleases and Encumbrance of Lease:** Pursuant to the Commission's delegation of authority and State CEQA Guidelines [Title 14, California Code of Regulations, section 15060 (c)(3)], the staff has determined that these activities are not subject to the provisions of CEQA because it is not a "project" as defined by CEQA and State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

8. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 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.

APPROVALS REQUIRED: U.S. Army Corps of Engineers, San Francisco Bay Conservation and Development Commission, Regional Water Quality Control Board, and California Environmental Protection Agency

EXHIBITS:

- A. Site Map
- B. Land Description

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RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

ISSUANCE OF LEASE: Find that a Negative Declaration (SCH # 2008012065) was prepared and adopted for this project by the city of Martinez on May 7, 2008, and that the Commission has reviewed and considered the information contained therein.

TERMINATION OF LEASE, APPROVAL OF SUBLEASES AND AGREEMENT AND CONSENT TO ENCUMBRANCING OF LEASE: Find that this 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.

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 section 6370, et seq.

AUTHORIZATION:

1. Authorize the termination of Lease No. PRC 3194.9, effective January 31, 2010.
2. Authorize issuance of a General Lease – Commercial Use to city of Martinez beginning February 1, 2010, for a term of 46 years, for the reconstruction, use, operation, and maintenance of a marina and appurtenant facilities, for the use and maintenance of upland facilities consisting of a yacht club, Sea Scout building, marine repair shop, amphitheater, public park, bay trail, and for the construction of three finished pad sites on the upland for a planned restaurant, service center, and maintenance facility; as shown on Exhibit A attached (for reference purposes only) and described on Exhibit B attached and by this reference made a part hereof; consideration for Years 1-10 to be a minimum annual rent of \$10,000 for the marina-related facilities plus five percent of rent collected by the City for the upland facilities, consideration for Year 11 and thereafter to be a minimum annual rent against a schedule of percentage rents and fuel charges for the marina-related facilities and a percentage of gross income for the upland facilities; liability insurance in the amount of no less than \$5,000,000, or equivalent staff-approved self-insurance program; a construction bond in the

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amount of \$1,500,000 and a surety bond in the amount of \$2,000,000.

3. Authorize the sublease (Management Agreement) between the city of Martinez and Almar Management, Inc., for operation of the marina-related facilities within the lease premises, on a year to year basis commencing on January 1, 2010; the lease can be terminated by either party giving 60 day notice.
4. Authorize the sublease between the city of Martinez and Gerald N. Long (Eagle Marine) for operation of the boat repair facility located within the lease premises, for term of 10 years beginning August 1, 2007.
5. Authorize the sublease between the city of Martinez and Sea Scouts (Security Owners Corporation) for a meeting hall and facilities appropriate for Sea Scout activities the sea building located within the lease premises, for a term of five years beginning May 31, 2008.
6. Authorize the sublease between the city of Martinez and Martinez Yacht Club for maintenance and use of a clubhouse, including facilities for the preparation of food and beverages for club members and their guests located within the lease premises, for a term of one year beginning January 1, 2010.
7. Authorize the sublease between the city of Martinez and The Benefactors, Inc., dba The Willows Theatre Company for the use of the amphitheater located within the lease premises, with a beginning date of May 4, 2005 and an expiration date of December 31, 2013.
8. Authorize execution of the document entitled "Agreement and Consent to Encumbrancing of Lease "between the Commission, city of Martinez and California Department of Boating and Waterways, effective upon approval of the loan.