

**CALENDAR ITEM
C81**

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01/26/12
PRC 6855.1
V. Caldwell
J. Frey

**CONSIDER AMENDMENT AND REINSTATEMENT OF
LEASE PRC 6855.1 AND EXTENSION OF TIME TO CURE DEFAULTS OF
GENERAL LEASE – COMMERCIAL USE ISSUED
TO BRUNO’S ISLAND YACHT HARBOR, INC.**

LESSEE:

Bruno's Island Yacht Harbor, Inc.
1200 W. Brannan Island Road
Isleton, CA 95641

AREA, LAND TYPE, AND LOCATION:

5.81 acres, more or less, of sovereign land in Seven Mile Slough, near the town of Isleton, Sacramento County.

AUTHORIZED USE:

The continued use and maintenance of a commercial marina, including 148 berths and three accommodation docks, appurtenant facilities including a bridge and a boat repair facility; and potential dredging to allow safe navigation as shown on Exhibit A.

LEASE TERM:

35 years, beginning May 1, 1985.

CONSIDERATION:

\$13,334 per year, with the State reserving the right to fix a different rent periodically during the lease term, to be paid semi-annually.

SPECIFIC LEASE PROVISIONS:

Liability Insurance:

Combined single limit coverage of no less than \$1,000,000.

Bond:

\$20,000

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BACKGROUND

This Calendar Item is a follow up to Calendar Item C 14 presented to the State Lands Commission (the Commission) at its September 1, 2011 meeting. Prior to that meeting, the Commission's staff had found the Lessee to be in default for failure to pay rent, failure to provide a current insurance certificate in the name of the Lessee, failure to pay the last installment on its bond, failure to maintain in effect a Certificate of Good Standing with the Secretary of State and failure to maintain an access bridge in good repair and safe condition. Staff had asked the Lessee to cure these defaults and it failed to do so. At the September 1, 2011 meeting, the Commission ratified the Staff's findings of default and approved termination of the lease subject to the rights of Owens Financial Group (Owens Financial) to cure the defaults and authorized staff to send the Lessee and Owens Financial a Notice of Termination of Lease (Notice). See additional information below for details on progress, including missed deadlines, for curing defaults. As of this date, the Lessee has cured all defaults presented to the Commission except the one pertaining to the repair and safe condition of the bridge.

In 2005, the Commission approved of the Lessee entering into an Agreement and Consent to Encumbrancing of Lease (Agreement) with Owens Financial Group allowing the Lease to be held by Owens Financial as collateral for a loan. Under the terms of that Agreement, Owens Financial has the right to cure any of the Lessee's defaults within 60 days of having received the Notice. That Notice was sent to the Lessee and Owens Financial on September 12, 2011.

On September 1, 2011 the Commission authorized the Executive Officer to extend the 60-day cure period for an additional 60 days if he found that there was reasonable progress toward the curing of the defaults. Thus, the entire cure period under the Agreement could last up to 120 days. By November 15, 2011, the end of the first 60-day extension period, those defaults pertaining to payment of rent, bond and the Certificate of Good Standing had been cured to the satisfaction of the Commission's staff. Because of these actions, the Executive Officer extended the time to cure the remaining defaults regarding insurance and repair of the bridge. A new insurance certificate was received by the Commission in late November, after the deadline, but effectively curing that default and leaving the bridge repair as the only uncured default.

Additionally, David Snodderly, president of the Lessee, stated at the September 1, 2011 Commission meeting he would provide the Commission with a 1995 engineering report written when the north half of the bridge was repaired and asserted that the report showed that the entire bridge was in a safe condition.

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Mr. Snodderly did provide a report. However a review of the report by the Commission's engineer indicates that the report dealt primarily with the steel replacement pilings on the north half of the bridge and did not consider the south half of the bridge where the recent damage was sustained.

The Commission has obtained a brief letter dated October 11, 2011 from Mr. Bill A. Gearhart, P. E. indicating that the repairs to the bridge had been made and that the "two steel support beams was done correctly, per my instructions. I am happy to inform you that the new steel beam installation looked very good and should perform well for many years." Commission staff concluded this statement was inadequate to establish the bridge's structural integrity and safe condition because of its lack of supporting evidence as to the structural integrity and load bearing capacity of the bridge after the repairs. Commission staff requested a more thorough engineering inspection and report of the bridge's condition.

By November 1, 2011, it was apparent that the Lessee had failed to conduct the engineering studies requested by the Commission and was going to allow the Lease to be terminated. Owens Financial took a more active role at that time and began to solicit bids for a bridge inspection by a California registered engineer. Since then, the Commission's staff met with the Lessee and its legal representative (who is also representing Owens Financial in this matter) to have the structural analysis of the entire bridge be conducted. The Lessee entered into a contract with Duke Duarte Engineering on December 16, 2011 for the inspection. The analysis was done and the engineer's report was submitted to the Commission on January 10, 2012. In his initial report the engineer made the following findings and recommendations to repair and maintain the bridge in a safe condition, capable of supporting design criteria of Highway Standard (HS)15 inventory loading and HS20 operational loading and suited for its intended purpose:

1. In its current condition and without further repair the bridge's load limit is 6 tons and traffic on the bridge should be limited to 3 mph.
2. There is a missing stringer and/or excessive stringer spacing. The stringer should be replaced and/or the existing stringers should be re-spaced.
3. There is a stringer in poor condition because of dry rot and should be replaced.
4. A deck plank has deteriorated and should be replaced.

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5. There is a cap to pile connection which is deficient and should be fixed with the addition of two $\frac{3}{4}$ " bolts to each pile for a total of six bolts.
6. Wheel curb is missing or in poor condition and should be replaced.
7. Wheel curb connection is missing and connection bolts should be installed.
8. Guard rail connections are missing or in poor condition. Redesigned guardrail connections should be made and installed.
9. There is a missing edge stringer which should be replaced.
10. There is a rolled stringer which should be straightened.
11. Cross bracing is in poor condition and should be replaced.
12. C10 pile cap is rolled and should be straightened and the pile connection repaired.
13. Blocking at the bents is missing or in poor condition and should be replaced with full depth blocking.
14. Decking is not typically fastened to the stringers and should be fastened to the deck stringers.
15. The edge stringer is in poor condition because of dry rot and should be replaced.
16. A deck plank is deteriorated and should be replaced.

While not necessary to put the bridge in a safe condition, the engineer also made the following recommendations:

1. The approach bulkhead is in poor condition because of dry rot and should be replaced.
2. There is a four inch lip at one end of the bridge and transition pavement should be constructed to eliminate it.
3. Some of the stringers are in contact with steel bent cap and beginning to rust the steel beam. It is recommended that this condition be observed on an

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ongoing basis and the steel beam replaced when necessary and a barrier installed between the steel and timber at that time.

Finally, and importantly, the engineer recommended "...that a complete bridge evaluation be performed again within the next four years. I also recommend that a special evaluation be performed within the next 2 years to include stringers between grids 13 and 15, piles on grids 11, 12 and 13, and pile caps on grids 2.8, 3 and 4.9."

After the issuance of the engineer's report, Commission staff, the Lessee and its representatives met with the Lessee's engineer on January 12, 2012 to discuss the inspection report. Commission staff requested further testing of some of the bridge pilings which the engineer conducted. His subsequent inspection, described in Addenda to Bridge Evaluation dated January 17, 2012, found dry rot on pile 2 on grid 9, pile 3 on grid 10, and pile 2 on grid 14. He concluded the dry rot does not affect the piles' capability of supporting anticipated bridge loads. However, the engineer did recommend that "these piles be placed on the accelerated evaluation program and be reevaluated within 2 years." At the January 12 meeting, the Lessee's engineer also said he believes the repairs could take as long as seven months to complete.

Commission Staff recommends that the engineer's reports, his findings and recommendations be made a part of the Lease through an amendment to it. Additionally the Staff believes the lease should be amended to require the engineering inspections be continued on a two and four year schedule for the remainder of the lease term of eight years. Staff believes the future inspections are necessary to ensure the ongoing safety of the bridge.

Because of the engineer's recommendations and the Lessee's agreement to make the recommended repairs and inspections and due to the progress made in attempting to cure the lease defaults and comply with the conditions placed by the Commission on maintaining the lease, Commission Staff is requesting that the Commission reinstate the Lease with the proposed amendments to insure safety of the bridge and that the Lessee and Owens Financial be given additional time at the discretion of the Executive Officer, not to exceed July 31, 2012, to make the repairs, cure the default and restore the bridge to a state of good repair and safe condition. If the repairs are made within that time frame and to the satisfaction of the Commission's staff, then Staff recommends that the lease be reinstated.

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OTHER PERTINENT INFORMATION:

1. Lessee owns the uplands adjoining the lease premises.
2. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15060, subd. (c)(3)), the 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 California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378

3. 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. Legal Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that this 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 the 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 Executive Office at his discretion to grant an extension of time up to July 31, 2012 to Bruno's Island Yacht Harbor, Inc. and Owens Financial

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Group to cure the default of the covenant to maintain the access bridge in good repair and safe condition, such extension to be conditioned upon Lessee amending the Lease as stated below and diligently pursuing the bridge repair and completing the repairs by July 31, 2012.

2. Authorize Amendment and Reinstatement of Lease PRC 6855.1 to incorporate the recommended repairs and inspections set forth in Bridge Evaluation dated January 12, 2012 and Addenda to Bridge Evaluation dated January 17, 2012 by Duarte Engineering and require future inspections as stated in the proposed amendment as mandatory measures for compliance with the Lease.

**LAND DESCRIPTION
OF OWL ISLAND SURVEY 1990**

Four parcels of tide and submerged land in the state-owned bed of Seven Mile Slough, Sacramento County, California, adjoining Owl Island in projected fractional Sections 10 and 11, T 3 N, R 3 E, MDM, said parcels being described as follows:

Parcel 1

Beginning at a point that bears S 03° 22' 44" E, 631.19 feet from a concrete monument with a California State Lands Commission brass cap stamped "BRUNO 1969" having coordinates of X = 2,111,067.87 and Y = 163,381.98, said monument is shown on that map entitled "Record of Survey of Owl Island", October 6, 1969, filed in Book 27 of Surveys at page 9, Official Records of Sacramento County. Said Point of Beginning is designated MHW 1 on said map, being on the line described in Boundary Line Agreement 114 (BLA 114), recorded October 14, 1969, in Book 69-10-14 at Page 132, Official Records of Sacramento County; thence along said BLA 114 the following seven (7) courses:

- | | | |
|----|-----------------|---|
| 1. | N 13° 44' 40" E | 92.34 feet to MHW 51 |
| 2. | N 01° 44' 14" E | 85.76 feet to MHW 50 |
| 3. | N 19° 28' 14" W | 81.18 feet to MHW 49 |
| 4. | N 35° 35' 24" W | 217.58 feet to MHW 46 |
| 5. | N 51° 38' 18" W | 200.44 feet to MHW 44 |
| 6. | N 60° 17' 58" W | 180.86 feet to MHW 42 |
| 7. | N 58° 32' 19" W | 853.62 feet to a point on the BLA line; |
- thence leaving said BLA 114 line and running into Seven Mile Slough the following 35 courses:

- | | | |
|-----|-----------------|--------------|
| 8. | N 30° 00' 06" E | 93.52 feet; |
| 9. | S 55° 24' 52" E | 143.24 feet; |
| 10. | S 24° 23' 54" E | 19.06 feet; |
| 11. | S 55° 45' 53" E | 325.35 feet; |
| 12. | S 22° 23' 15" E | 31.02 feet; |
| 13. | S 59° 22' 55" E | 81.77 feet; |
| 14. | S 51° 47' 40" E | 24.21 feet; |
| 15. | S 60° 02' 56" E | 359.18 feet; |
| 16. | S 56° 00' 48" E | 24.60 feet; |
| 17. | S 55° 29' 20" E | 195.49 feet; |
| 18. | S 48° 07' 30" E | 18.06 feet; |
| 19. | S 39° 08' 45" E | 142.46 feet; |
| 20. | S 48° 17' 16" E | 25.00 feet; |

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21.	S 53° 00' 07" E	22.26 feet;
22.	S 30° 21' 12" E	107.44 feet;
23.	S 17° 36' 19" E	27.60 feet;
24.	S 05° 40' 36" E	115.49 feet;
25.	S 10° 38' 57" W	24.53 feet;
26.	S 04° 21' 04" W	94.71 feet;
27.	N 85° 35' 40" W	17.22 feet;
28.	S 14° 42' 26" E	129.54 feet;
29.	S 76° 11' 36" w	93.20 feet;
30.	N 14° 42' 16" W	111.32 feet;
31.	N 45° 57' 46" W	26.38 feet;
32.	N 53° 43' 11" W	281.35 feet;
33.	N 45° 56' 23" W	105.25 feet;
34.	N 41° 33' 19" W	245.58 feet;
35.	N 40° 09' 26" W	162.76 feet;
36.	N 49° 50' 43" W	131.59 feet;
37.	N 54° 20' 01" W	209.77 feet;
38.	N 54° 53' 01" W	222.98 feet;
39.	S 52° 30' 39" W	60.52 feet;
40.	N 53° 13' 16" W	163.96 feet;
41.	N 48° 26' 23" W	10.94 feet;
42.	N 30° 37' 48" E	88.21 feet to a point on the BLA 114 line;
	thence along said BLA 114 line the following 4 courses:	
43.	S 58° 32' 19" E	682.45 feet to MHW 10;
44.	S 39° 52' 58" E	495.71 feet to MHW 5;
45.	S 46° 51' 16" E	225.28 feet to MHW 3;
46.	S 55° 01' 25" E	192.67 feet (S 54° 57' 39" E, 192.50 feet per B.L.A. 114) to MHW 1, the Point of Beginning

Parcel 1 containing 4.939 acres, more or less.

Parcel 2

Beginning at a point bearing N 58° 32' 19" W, 853.62 feet from that point designated as MHW 42 on a map entitled "Record of Survey of Owl Island", filed October 6, 1969, in Book 27 of Surveys at Page 9, Official Records of Sacramento County; thence along said bearing N 58° 32' 19" W, 30.00 feet; thence N 30° 00' 06" E, 180.00 feet; thence S 58° 32' 19" E, 30.00 feet; thence S 30° 00' 06" W, 180.00 feet, to the Point of Beginning.

Parcel 2 containing 0.124 acres, more or less.

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Parcel 3

Beginning at a point bearing N 58° 32' 19" W, 682.45 feet from that point designated as MHW 10 on a map entitled "Record of Survey of Owl Island", filed October 6, 1969, in Book 27 of Surveys at Page 9, Official Records of Sacramento County; thence leaving said BLA 114 line and running into Seven Mile Slough the following 12 courses:

1. S 30° 37' 48" W 88.21 feet;
2. N 48° 26' 22" W 34.00 feet;
3. N 58° 52' 55" W 43.14 feet;
4. N 48° 45' 31" W 20.88 feet;
5. N 58° 07' 26" W 88.04 feet;
6. N 17° 50' 08" E 18.20 feet;
7. N 03° 52' 02" E 34.94 feet;
8. N 59° 47' 10" W 55.92 feet;
9. N 80° 26' 48" W 83.32 feet;
10. N 00° 59' 02" E 38.51 feet; to a point on the BLA 114 line;
thence along said BLA 114 line the following two courses:
11. S 73° 46' 41" E 109.47 feet;
12. S 58° 32' 19" E 251.54 feet to the Point of Beginning.

Parcel 3 containing 0.473 acres, more or less.

Parcel 4

Beginning at a point bearing N 58° 32' 19" W, 883.62 feet from that point designated as MHW 42 on a map entitled "Record of Survey of Owl Island, filed October 6, 1969 in Book 217 of Surveys at page 9, Official Records of Sacramento County; thence leaving said BLA 114 line and running into Seven Mile Slough the following 7 courses:

1. N 30° 00' 06" E 50.00 feet;
2. N 58° 32' 20" W 253.13 feet;
3. S 30° 12' 50" W 50.21 feet;
to a point on the BLA 114 line; thence along said BLA 114 line the following 2 courses:
4. S 58° 32' 20" E 229.13 feet to MHW 34
5. S 59° 02' 18" E 24.18 feet (S 58° 32' 19" E, 24.19 feet per B.L.A. 114) to the Point of Beginning.

Parcel 4 containing 0.292 acres, more or less.

Total of all the parcels = 5.83 acres.

END OF DESCRIPTION

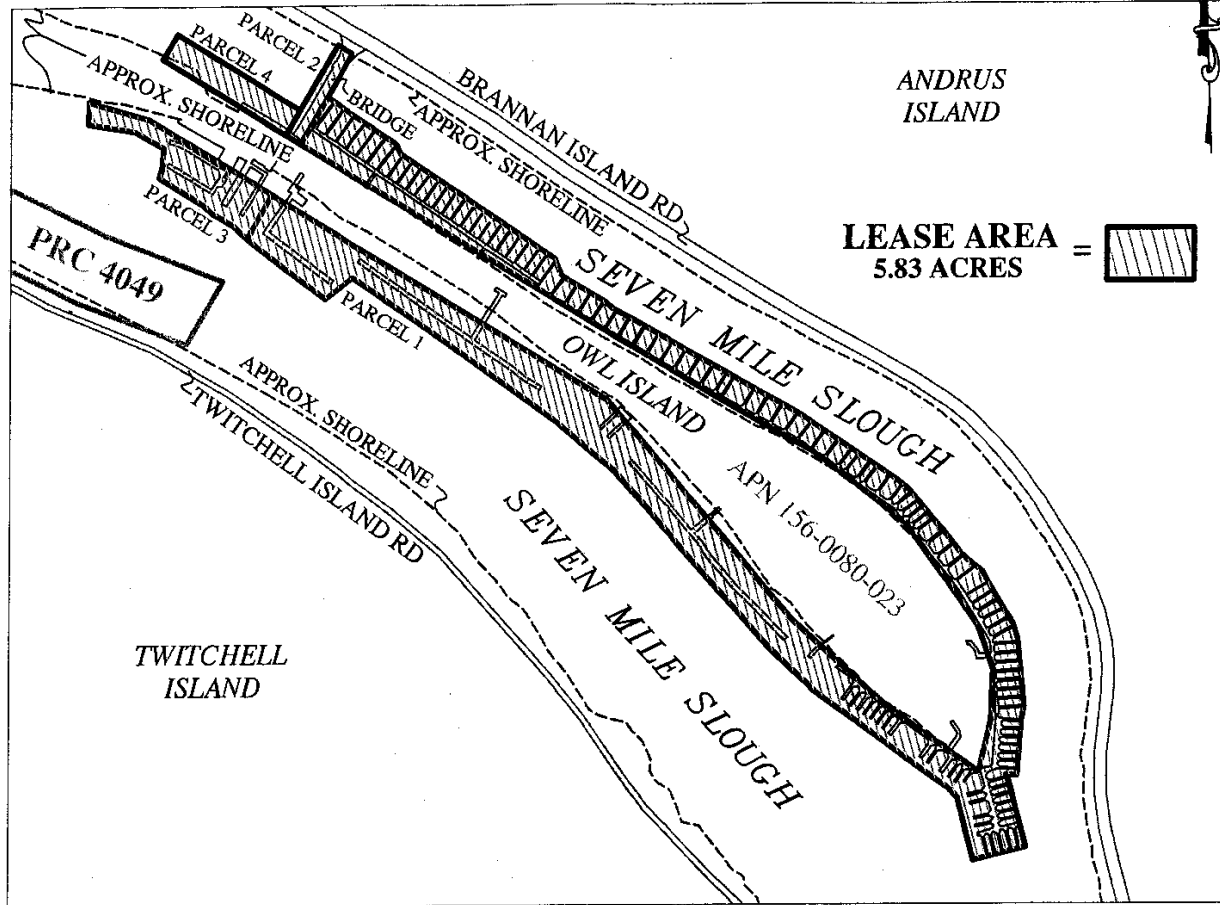


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NO SCALE

SITE



Bruno's Island Yacht Harbor
12000 W. Brannan Island Road, Isleton

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 6855.1
APN 156-0080-023, 047, 061
BRUNO'S ISLAND YACHT HARBOR
GENERAL LEASE-
COMMERCIAL USE
SACRAMENTO COUNTY



MJF 3/28/11

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.