

**CALENDAR ITEM
C34**

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S 3

08/14/12
PRC 3821.1
N. Lavoie

**CONSIDER TERMINATION OF A
GENERAL LEASE - COMMERCIAL USE**

LESSEE:

Mira Monte Marina, Inc.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in San Antonio Creek, adjacent to 8934 Redwood Highway, near the city of Novato, Marin County.

AUTHORIZED USE:

A 30-berth marina, fuel pump, and boat launching ramp.

LEASE TERM:

25 years, beginning January 1, 1994.

CONSIDERATION:

\$1,262 per year, with the State reserving the right to fix a different rent periodically during the lease term.

SPECIFIC LEASE PROVISIONS:

Insurance:

Combined Single Limit coverage of no less than \$1,000,000.

Bond:

\$5,000.

OTHER PERTINENT INFORMATION:

1. Lessee no longer owns the upland adjoining the lease premises.
2. On October 28, 1996, the Commission authorized a 25-year General Lease – Commercial Use to Mira Monte Marina, Inc. That lease will expire December 31, 2018.

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3. On May 22, 1996, just prior to the Commission approval of the above lease and execution of the Lease, the Lessee filed a Chapter 11 bankruptcy petition. In November 1997, the Lessee converted to a Chapter 7 bankruptcy and in July 1997, a Trustee's Deed upon Sale was recorded selling the upland property at a public auction to Leonard and Shirley Fleishman being the highest qualified bidder by satisfaction of the indebtedness then secured by the Deed of Trust. All of the above actions by the Lessee and the Trustee's sale were done without staff's knowledge at the time.
4. Between 1998 and 2011, staff attempted to bring the Fleishman's Marina under lease. During this time period Mr. Fleishman passed away, and the marina facilities on State land were abandoned and deteriorating. It is not known exactly when marina operations ceased, but there is no evidence of any marina business activity beyond the 1997 bankruptcy and all evidence points to marina operations ceasing well before that time. Since the approval of the lease, no rent has been received by the Commission, and there is no evidence insurance or surety has been in place since 1998. On June 1, 2011, Mrs. Fleishman sold the upland property, and staff is now working with the new upland owner to submit a lease application and repair the facilities.
5. Staff believes there is no reasonable chance for recovery of any damages in the form of back rent or trespass, and staff also questions whether the original lease was enforceable due to the bankruptcy proceedings which began prior to the approval of the lease by the Commission. Further, the Lessee is a California Corporation with a 1993 "suspended" status on the Secretary of State's website, not allowing them to do business in the State. Staff believes the corporation was dissolved as a result of the bankruptcy. There is no evidence Mr. and Mrs. Fleishman took title to the lease or ownership of the waterside improvements during the bankruptcy or the foreclosure. The current owner has no connection to the Commission's lease or Lessee. Staff recommends termination of the lease as a result of the abandonment of the Lease Premises.
6. The staff recommends that the Commission find that the subject termination does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

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

CALENDAR ITEM NO. **C34** (CONT'D)

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the subject termination is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

AUTHORIZATION:

Authorize termination, effective August 14, 2012, of Lease No. PRC 3821.1, a General Lease – Commercial Use, issued to Mira Monte Marina, Inc. due to abandonment of the Lease Premises.

EXHIBIT A

PRC 3821.1

LAND DESCRIPTION

A parcel of tide and submerged land in San Antonio Creek, Marin County, State of California, situated approximately six miles southeasterly from the City of Petaluma, more particularly described as follows:

BEGINNING at a point on the south bank of San Antonio Creek, which bears S 74°08'38" W, 1421.84 feet more or less from California State Lands Commission Triangulation Station, "SAN 2, 1958," said station having California Coordinate System Zone 3 coordinates of X=1,412,431.02 and Y=610,148.21; thence from said point of beginning along the southerly bank of San Antonio Creek the following 3 courses:

1. N 73°07' W, 362.56 feet;
2. N 64°37' W, 245.30 feet
3. N 76°12' W, 322.40 feet; thence leaving the southerly bank of San Antonio Creek the following 5 courses:

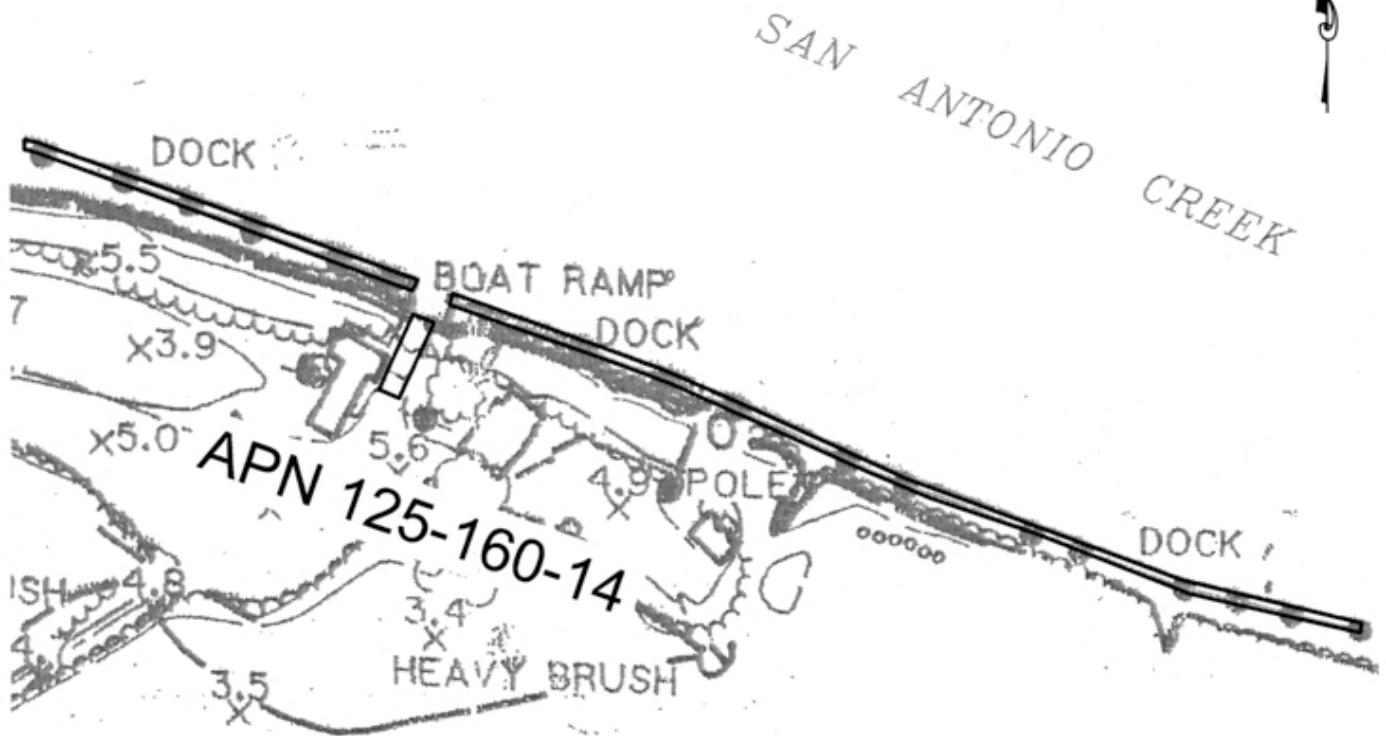
4. N 13°48' E, 40.00 feet;
5. S 76°12' E, 322.40 feet;
6. S 64°37' E, 247.52 feet;
7. S 73°07' E, 362.56 feet;
8. S 16°53' W, 40.00 feet to the point of beginning.

END OF DESCRIPTION

REVIEWED AND TRANSCRIBED BY OR UNDER THE DIRECTION OF
RAND LA FORCE, SENIOR BOUNDARY DETERMINATION OFFICER
CALIFORNIA STATE LANDS COMMISSION
OCTOBER 24, 1995

NO SCALE

SITE



8934 REDWOOD HIGHWAY, NEAR NOVATO

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 3821.1
 MIRA MONTE MARINA, INC.
 APN 125-160-14
 GENERAL LEASE-
 COMMERCIAL USE
 MARIN COUNTY



SITE

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.

TS 07/25/12