

**CALENDAR ITEM
C34**

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06/22/17
PRC 5110.1
J. Holt

**ASSIGNMENT OF LEASE AND REVISION OF RENT
GENERAL LEASE – COMMERCIAL USE**

LESSEE/ASSIGNOR:

Hugh Turner

APPLICANT/ASSIGNEE:

ALAMAR, LP

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Sacramento River, adjacent to 5999 Garden Highway, near Sacramento, Sacramento County.

AUTHORIZED USE:

Continued use and maintenance of an existing commercial marina, consisting of 25 covered berths, two side tie docks, fuel dock, restaurant/bar, office area, storage room, gangway, and elevator.

LEASE TERM:

20 years, beginning August 1, 2012.

CONSIDERATION:

This lease provides that the Commission may modify the rent periodically during the lease term. Pursuant to this provision, staff reviewed the rent under this lease and recommends that the minimum annual rent be revised from \$5,426 per year to \$4,230 per year, against 6 percent of gross annual income derived from commercial activities from mooring, berthing, and docking of boats; 1½ percent of gross income from restaurant and bar operations; and \$0.015 per gallon of fuel sold annually to a maximum of 100,000 gallons and \$0.02 per gallon thereafter, as authorized in the Lease, effective August 1, 2017.

SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance in an amount no less than \$2,000,000 per occurrence

Surety Bond or Other Security:

\$20,000

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Other:

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

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

Public Trust and State's Best Interests Analysis:

On March 29, 2012, the Commission authorized a General Lease – Commercial Use to Hugh Turner ([Calendar Item C23, March 29, 2012](#)). This lease will expire on July 31, 2032. On February 19, 2013, ownership of the upland parcel was deeded to ALAMAR, LP. The Applicant is applying for an assignment of lease, due to business reorganization. The assignment will be made effective February 19, 2013, to align with the transfer date. This business remains under the leadership of Hugh Turner and Paula T. Seals.

The current lease is for a commercial marina for the mooring, berthing, and docking of boats. The lease area also contains a restaurant/bar, office area, storage room, and gangway, which provides access and support services. Recreational boating has been found by California courts to be a use generally consistent with the common law Public Trust Doctrine.

The subject structures are privately owned and maintained. The lease includes certain provisions protecting the public use of the property, including a lease term limited to 20 years, and a non-exclusive use provision. The subject facilities have existed for many years at this location and do not create a significant alteration of the land or permanent severance of State resources or public rights.

The proposed assignment will not result in a change of Public Trust resource usage or the impacts thereto. The leased facilities are consistent with the design of other similar facilities in the area, and they are not larger than necessary to accomplish the intended purpose. Upon termination of the lease, the lessee may be required to remove all improvements and restore the lease premises to their original condition.

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The lease requires the lessee to insure the lease premises and indemnify the state for any liability incurred as a result of the lessee's activities thereon. The lease also requires the payment of annual rent into the state's general fund to compensate the people of the state for the use of the public land involved.

In conjunction with the assignment of the lease, Commission staff performed a rent review, as directed by lease terms and conditions. Based on this review, staff recommends the minimum annual rent be revised from \$5,426 to \$4,230 per year, against 6 percent of gross annual income derived from commercial activities from mooring, berthing, and docking of boats; 1½ percent of gross income from restaurant and bar operations; and \$0.015 per gallon of fuel sold annually to a maximum of 100,000 gallons and \$0.02 per gallon thereafter, effective August 1, 2017. The reduction in the minimum rent was requested by the Applicant to align the minimum rent with income generated from the lease premises over the past 4 years. Moreover, the Applicant's projected future income will be reduced, while remaining repairs and maintenance are completed, which impact occupancy rates of the marina.

Climate Change:

Climate change impacts, including sea-level rise, are not limited to the open coast and may involve increased wave activity, storm events, and flooding. The existing structures within the proposed lease area are located along the Sacramento River within a tidally-influenced region. The subject facilities are vulnerable to flooding at current sea levels and at higher risk of flood exposure given future projection scenarios of sea-level rise. The lease area contains 25 covered slips, two side-tie docks, fuel dock, restaurant/bar, office area, storage room, gangway, and elevator.

By 2030, California's coast could see up to 1 foot of sea-level rise (from year 2000 levels), 2 feet by 2050, and possibly more than 5 feet by 2100 (National Research Council 2012). This effect could increase the Sacramento River's inundation levels within the lease area. In addition, as stated in *Safeguarding California* (California Natural Resources Agency 2014), climate change is projected to increase the frequency and severity of natural disasters related to flooding, drought, and storms (especially when coupled with sea-level rise).

Climate change could have a number of impacts for this region. The amount and timing of snowmelt runoff will likely change such that runoff pulses are earlier in the season and stronger precipitation events will occur over a shorter period of time. This projection is because warming temperatures will result in more water falling as rain rather than snow,

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earlier spring snowmelt, and less snowpack overall. In rivers and tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris. In addition, there will be greater amounts of runoff because less water will be trapped at higher altitudes in snowpack. Conversely, climate-change induced droughts could decrease river levels and flow for extended periods of time. Climate change and sea-level rise will further influence coastal and riverine areas by changing erosion and sedimentation rates. In rivers and tidally influenced waterways, flooding and storm flow will likely increase scour, decreasing bank stability and structure. Further climate change impact analyses on the leased facilities will be conducted at the time the lease expires in 2032 if a new lease is proposed.

Conclusion:

For all the reasons above, Commission staff believes the assignment of lease and revision of rent will not substantially interfere with Public Trust needs at this time and at this location or for the foreseeable term of the lease, are consistent with the common law Public Trust Doctrine and in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction and Strategy 2.2 of the Commission's Strategic Plan to ensure timely receipt of revenues and royalties from the use and development of State lands and minerals.
2. The assignment of lease and revision of rent are not projects as defined by the California Environmental Quality Act because they are administrative actions that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, sections 15378, subdivision (b)(5).

EXHIBITS:

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

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RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the assignment of the existing lease and revision of rent will not substantially interfere with the Public Trust needs and values at this location at this time or for the foreseeable term of the lease, is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

AUTHORIZATION:

1. Authorize the assignment of Lease No. PRC 5110.1, a General Lease – Commercial Use, of sovereign land as described in Exhibit A, Land Description, and shown on Exhibit B, Site and Location Map (for reference purposes only), attached and by this reference made a part hereof, from Hugh Turner (Assignor) to ALAMAR, LP (Assignee); effective February 19, 2013.

2. Approve the revision of rent for Lease No. PRC 5110.1 from a minimum of \$5,426 per year to a minimum of \$4,230 per year, against 6 percent of gross annual income derived from commercial activities from mooring, berthing, and docking boats; 1½ percent of gross income from restaurant and bar operations; and \$0.015 per gallon of fuel sold annually to a maximum of 100,000 gallons and \$0.02 per gallon thereafter, effective August 1, 2017.

Exhibit "A"

Land Description

PRC 5110.1

A parcel of tide and submerged lands situated in Section 35, T10N, R3E, MDM, Sacramento County, California, more particularly described as follows:

COMMENCING at the most easterly corner of that certain parcel of land as described in that certain deed to Herold R. Beem recorded in Volume 8009, at Page 154, of Sacramento County Records; thence N 40° 50' W 400 feet along the northeasterly line of said parcel to the most northerly corner thereof; thence S 63° 40' W 220 feet to the POINT OF BEGINNING; thence continuing S 63° 40' W 155 feet; thence S 37° 30' 06" E 424.88 feet to a point on the southwesterly extension of the northwesterly line of that certain parcel of land as described in that certain lease No. PRC 4812.1 on file in the Office of the California State Lands Commission, Sacramento; thence N 49° 28' E 127.41 feet along said southwesterly extension and northwesterly line of said lease parcel; thence continuing N 65° 35' 19" E 67.62 feet along the northwesterly line of said lease parcel to a point on the southwesterly extension of the southeasterly line of above described Beem parcel; thence N 43° 18' 33" W 405.52 feet to the point of beginning.

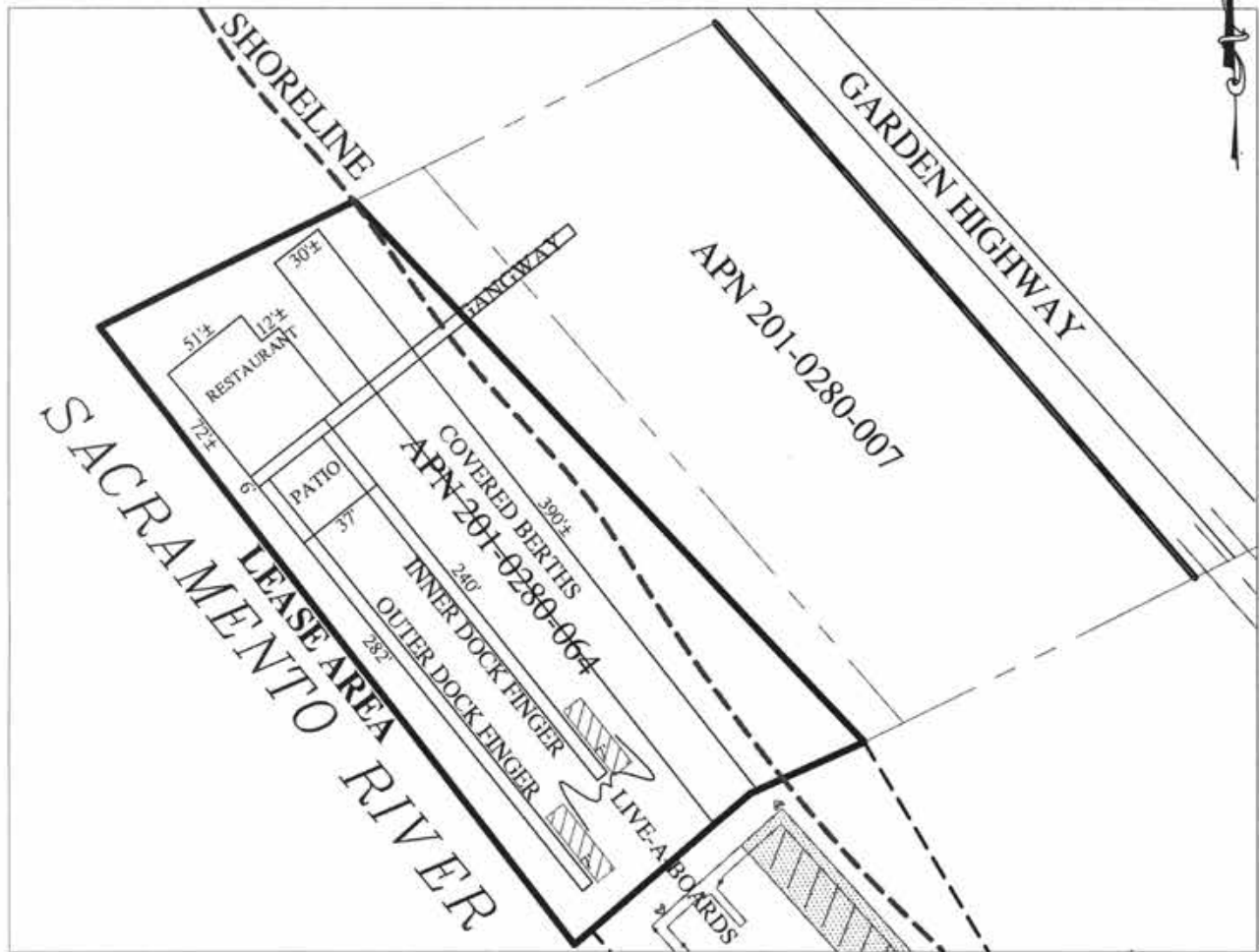
EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the Sacramento River.

END OF DESCRIPTION

PREPARED AUGUST 21, 1981 BY TECHNICAL SERVICES UNIT, ROY MINNICK, SUPERVISOR.

NO SCALE

SITE



5999 Garden Highway

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 5110.1
 ALAMAR LP
 APN 201-0280-007 & 064
 GENERAL LEASE -
 COMMERCIAL USE
 SACRAMENTO COUNTY



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.