

**STAFF REPORT
C36**

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08/17/17
PRC 6015.1
V. Caldwell

**ACCEPTANCE OF LEASE QUITCLAIM DEED,
ISSUANCE OF A GENERAL LEASE – COMMERCIAL USE,
AND AN AGREEMENT AND CONSENT TO ENCUMBRANCING OF LEASE**

APPLICANT:

River View Marina, a Limited Partnership

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

3.86 acres more or less of sovereign land in the Sacramento River, adjacent to 1801 Garden Highway, near Sacramento, Sacramento County.

AUTHORIZED USE:

Use and maintenance of an existing commercial marina consisting of four covered boat sheds with 50 berths of various lengths and 28 side ties, three uncovered berthing areas with approximately 32 berths of various lengths, three side ties, two restrooms with showers, harbor master office with second floor, accommodation dock with sewage pump out station and a debris deflector.

LEASE TERM:

30 years, beginning August 1, 2017.

CONSIDERATION:

\$19,344 per year, with an annual Consumer Price Index adjustment; and the State reserving the right to fix a different rent on the 10th and 20th anniversaries of the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

Insurance:

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

Surety: \$50,000 surety bond.

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Other:

1. 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 the Commission subsequently deems appropriate for either of the above categories.
2. Under this proposed authorization, the Commission's Executive Officer or designee may approve future subleases. Such approval shall not be unreasonably withheld. If the Executive Officer or his/her designee denies approval, lessee may appeal that denial to the State Lands Commission at the Commission's next available noticed public meeting. The Executive Officer shall not have the delegated authority to approve increases or decreases in total base rent, bond or insurance, nor the authority to approve any amendments, assignment, quitclaim or permanent removals involving all or part of the Lease Premises.

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:

Applicant owns the upland adjoining the lease premises. On June 24, 1981, the Commission authorized a General Lease – Commercial Use to River View Marina, a Limited Partnership, for a term of 30 years beginning January 1, 1981, ([Item C24, June 24, 1981](#)) for the operation of a commercial marina. The lease term was later extended to 48 years ([C03, April 5, 2004](#)). The lease will expire on December 31, 2029. On June 16, 2017, the Applicant submitted an application requesting termination of the existing lease, and a new long-term lease and an agreement and consent to encumbrancing of the lease to accommodate new loan term requirements.

The Applicant is in the process of obtaining refinancing in favor of First Community Bank, the Secured Party-Lender (Secured Party-Lender), in a loan amount not to exceed \$1,806,000, which is based on a loan to value ratio of 60 percent. Under the terms of the new loan, the Secured Party-

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Lender is requiring the Applicant to pledge their interest in Lease No. PRC 6015.1 as additional security. The new loan will provide financing of existing debt on the property as well as additional funds to the marina owner.

The encumbrancing of the lease would be implemented through the document, "Agreement and Consent to Encumbrancing of Lease," that includes protections for the State land associated with the lease. These protections include the following requirements:

1. No subsequent encumbrancing of the lease shall be allowed without prior written consent of the Commission.
2. Any transfer of the lease to a third party shall be subject to prior written approval and consent of the Commission.
3. If the Secured Party-Lender forecloses on the lease, it shall be bound by all terms and conditions of the lease.
4. The duration of the encumbrancing agreement is limited to the term of the lease.

River View Marina is a large marina covering nearly 4 acres in the Sacramento River. The marina is vulnerable to theft and property destruction and has experienced vandalism, accidents, fires, and other on-the-water problems requiring immediate action for the overall safety and security of the facility and the public. These factors support a limited and controlled presence of one or more navigable vessels to be occupied on a 24-hour basis for security purposes. Taking into account the size and design of the marina, staff is recommending that no more than two navigable vessels be used for security purposes. These vessels will be located in strategically designated slips subject to the approval of Commission staff. The designated vessels shall be navigable at all times and staff may request evidence of navigability with 24-hour notice. Upon request, the lessee shall submit to staff an annual report covering the security activities for the year, which shall include the name, slip number, and vessel identification number of the designated security vessel; and a summary of the incidents for the year pursuant to the duty statement. At any time a designated security vessel is no longer navigable it shall no longer be designated as a security vessel and may no longer be used for 24-hour marina security.

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The subject marina directly promotes Public Trust needs. The subject commercial marina facilities accommodate, promote, and foster the public's need for maritime services and the public's enjoyment of the State's waterways. Recreational boating is a water-dependent use that is generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private recreational boating facilities as an authorized use of public trust land (Pub. Resources Code, § 6503.5).

The adjacent upland is privately owned. The subject structures are privately owned and maintained and used for commercial use.

The proposed lease includes certain provisions protecting the public use of the proposed lease area, including a limited lease term of 30 years, and a non-exclusive use provision. The marina and appurtenant facilities have existed for many years at this location; they do not significantly alter the land, they do not permanently alienate the State's fee simple interest in the underlying land, and they do not permanently impair public rights. Upon termination of the lease, the lessee may be required to remove any improvements and restore the lease premises to their original condition. The proposed lease also 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 to compensate the people of the State for the occupation of the public land involved.

Based on the foregoing, Commission staff believes that the marina facilities will not substantially interfere with Public Trust needs, at this location, at this time, and for the foreseeable term of the proposed lease, and is consistent with the common law Public Trust Doctrine.

Climate Change Analysis:

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 lease area is located along the Sacramento River within a tidally-influenced region vulnerable to flooding at current sea levels. The facilities associated with the lease include the commercial marina with four covered boat sheds with 50 berths of various lengths and 28 side ties, three uncovered berthing areas with approximately 32 berths of various lengths, three side ties, two restrooms with showers, harbor master office with second floor, accommodation dock with sewage pump out station and a debris deflector. This area will also be at higher risk of flood exposure given future projection scenarios of sea-level rise: the region could see up

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to 1 foot of sea-level rise (from year 2000 levels) by 2030, 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, fire, drought, extreme heat, and storms (especially when coupled with sea-level rise).

Climate change could have a number of impacts for the 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 is because warming temperatures will result in more water falling as rain rather than snow, 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. 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.

The combination of these projected conditions could potentially raise the likelihood of damage to structures within the lease premises during the term of the lease. For example, the potential for more frequent and stronger storm events may expose the lease area structures to higher flood risks and cause structures to be damaged or dislodged, presenting hazards to public safety and navigation. Conversely, prolonged drought conditions could lower water levels exposing previously submerged structures to the elements, potentially leading to increased wear and tear of structures and facilities, thereby increasing hazards and impacting the function and utility of the lease area structures.

The floating structures (covered and uncovered berths) are adaptable to variable water levels, allowing them to rise and fall with storms and droughts. This also increases their resiliency to some climate change impacts, but may require more frequent maintenance to ensure continued function during and after storm seasons. The fixed structures (pilings, etc.) may need to be periodically maintained and reinforced to withstand higher levels of flood exposure, and could be more at risk of accelerated deterioration from currents and floods. Regular maintenance, as required by the terms of the lease, will reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the

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Applicant acknowledges that the lease premises and adjacent upland are located in an area that may be subject to effects of climate change, including sea-level rise.

Conclusion:

For all the reasons above, Commission staff, at this time, believes the issuance of this lease is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. The rent associated with the existing lease is based on a percentage of gross income. The lessee will submit evidence of their gross income for the period beginning January 1 through July 31, 2017. The new lease will commence on August 1, 2017. Any overpayment of rent for the prorated period of January 1 through July 31, 2017, will be applied to the rent due under this proposed lease.
2. This action is consistent with Strategy 1.1 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.
3. Acceptance of the lease quitclaim deed and authorization of the consent to encumbrancing of the lease are not projects as defined by the California Environmental Quality Act (CEQA) 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, section 15378, subdivision (b)(5).

4. The staff recommends that the Commission find that issuance of the lease is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

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

5. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon

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staff's consultation with the persons nominating such lands and through the CEQA review process, it is staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that issuance of the lease is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease 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.

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 acceptance of lease quitclaim deed for Lease No. PRC 6015.1, effective July 31, 2017.
2. Authorize staff to prorate the prepaid rent for the period beginning January 1 through July 31, 2017, upon receipt and review of the percentage of gross income report.
3. Authorize issuance of a General Lease – Commercial Use to River View Marina, LP, beginning August 1, 2017, for a term of 30 years, for a commercial marina as described in Exhibit A and as shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; annual rent in the amount of \$19,344, with an annual Consumer Price Index adjustment, as provided in the lease; and the State reserving the right to fix a

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different rent on the 10th and 20th anniversaries of the lease term, as provided in the lease; liability insurance in an amount no less than \$2,000,000 per occurrence; and a surety bond in the amount of \$50,000.

4. Authorize the Executive Officer or her designee to execute the document entitled "Agreement and Consent to Encumbrancing of Lease," allowing Lessee's right, title, and interest in Lease No. PRC 6015.1 to be pledged as partial security for a loan in the principal amount not to exceed \$1,806,000 in favor of First Community Bank, in substantially the same form as that on file in the Sacramento office of the Commission, effective at the close of escrow, but no later than December 31, 2017; authorize the Executive or her designee to execute, acknowledge, accept, and record all related documents as may be reasonably necessary to complete the transaction.
5. Authorize the Executive Officer or designee to endorse future subleases; such approval shall not be unreasonably withheld. If the Executive Officer or designee denies approval, lessee may appeal that denial to the Commission at the Commission's next available properly noticed public meeting. The Executive Officer shall not have the delegated authority to approve increases or decreases in the base rent, adjustments in bond and insurance coverage, nor the authority to approve any amendments, assignment, quitclaim or permanent removals involving all or part of the lease premises.

EXHIBIT A

PRC 6015.1

LAND DESCRIPTION

A parcel of tide and submerged land in the bed of the Sacramento River, Sacramento County, California, situated in Section 27, T9N, R4E, MDM, being more particularly described as follows:

COMMENCING at a point on the northerly line of Reclamation District No. 1000 right of way as said right of way is shown on that map entitled "Map of Natomas Riverside Subdivision No. 1" recorded in Book 15 of Maps, Map No. 26, August 9, 1915, in the office of the county recorder of Sacramento County, said point being at the intersection with the west line of the east one-half of Lot 5 of said subdivision, said intersection being the northwest corner of Parcel 1 of that deed recorded January 12, 1981, in Book 4433, page 170 of Official Records of said county recorder; thence South 194 feet along said west line; thence East 160 feet to the TRUE POINT OF BEGINNING of this description; thence the following seven courses:

1. N 79° 55' E 539 feet;
2. N 89° 13' E 423 feet;
3. S 3° 36' E 177 feet;
4. S 86° 20' W 587 feet;
5. South 30 feet;
6. West 379 feet;
7. North 144 feet to the true point of beginning.

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

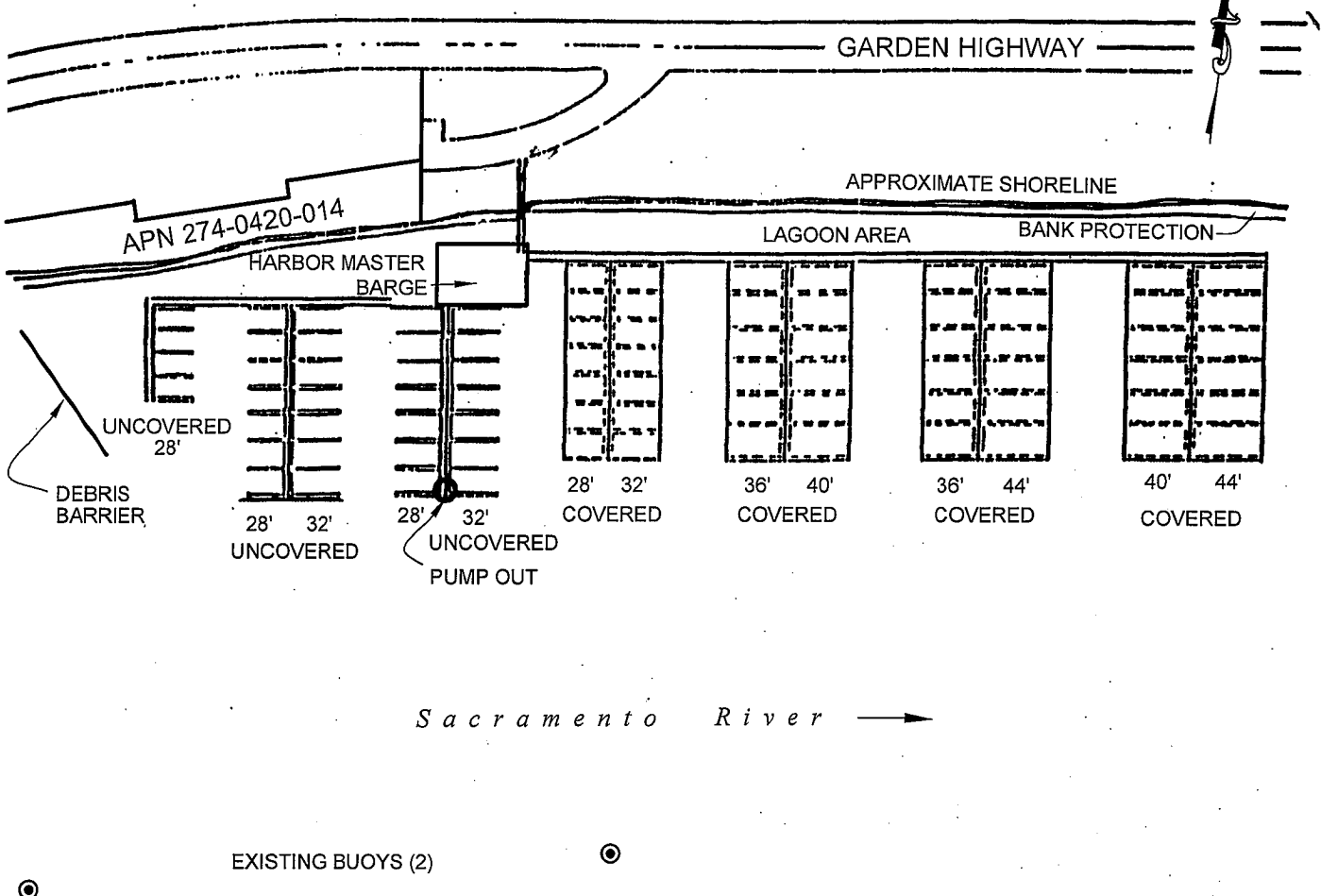
TOGETHER WITH three circular parcels of submerged land each 10 feet in diameter, adjacent to, and southerly of the above described parcel.

END OF DESCRIPTION

REVISED NOV. 29, 1982 BY BOUNDARY AND TITLE UNIT, LEROY WEED, SUPERVISOR.

NO SCALE

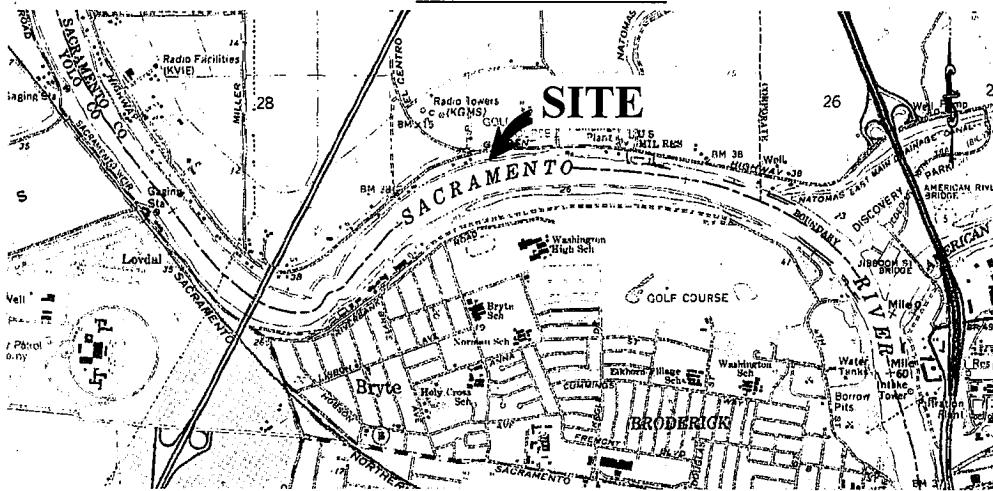
SITE



1801 GARDEN HIGHWAY, RIVER VIEW MARINA

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 6015.1
 RIVER VIEW MARINA, LP.
 APN 274-0420-014
 GENERAL LEASE -
 COMMERCIAL USE
 SACRAMENTO CO.



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.

MJJ 7/06/17