

**STAFF REPORT
C40**

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08/17/17
PRC 4812.1
J. Holt

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

LESSEE/ASSIGNOR:

Donald Joseph Glidewell, dba Metro Marina

APPLICANT/ASSIGNEE:

Metro Marina Properties, LLC

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Sacramento River, adjacent to 5871 Garden Highway, near Sacramento, Sacramento County.

AUTHORIZED USE:

Continued use and maintenance of an existing commercial marina, consisting of 12 covered berths with water and electric outlets, one uncovered finger berth with two outlets, one uncovered floating side-tie dock with eight outlets, one accommodation dock with three outlets, gangway, walkway, two steel pilings, two wood three-pile dolphins, two wood two-pile dolphins, and six wood pilings.

LEASE TERM:

20 years, beginning September 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 \$2,453 per year to \$2,130 per year, against 6 percent of gross annual income derived from commercial activities from mooring, berthing, and docking of boats; as authorized in the lease, effective September 1, 2017.

SPECIFIC LEASE PROVISIONS:

Insurance:

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

Surety Bond or Other Security:

\$10,000

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Best Management Practices for Marina Owners/Operators:

Lessee agrees to adopt and maintain operational practices which protect the natural environment, per Exhibit C - Best Management Practices for Marina Owners/Operators.

Best Management Practices for Berth Holders and Boaters:

Lessee agrees to adopt and maintain berthing practices which protect the natural environment, per Exhibit D - Best Management Practices for Marina Owners/Operators.

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 Donald Joseph Glidewell, dba Metro Marina ([Item C16, March 29, 2012](#)). This lease will expire on August 31, 2032. On February 28, 2014, ownership of the upland parcel was deeded to Metro Marina Properties, LLC. The members of this corporation include Harvey Gilbeau, Laura Gilbeau, and Donald Glidewell. Metro Marina Properties, LLC, is now applying for an assignment of lease, due to business reorganization. The assignment will be made effective February 28, 2014.

The assignment of lease from Donald Joseph Glidewell, dba Metro Marina (Assignor) to Metro Marina Properties, LLC (Assignee) will not result in a change in the use of public resources or the impacts thereto. Staff believes approval of this assignment is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

The current lease is for a commercial marina for the mooring, berthing, and docking of boats. The lease area also contains water and electrical outlets, which promote safety and cleanliness. 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.

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The leased facilities are consistent with the design of other similar facilities in the area, and 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. Based on the foregoing, staff believes that the commercial marina will not substantially interfere with Public Trust needs at this time, at this location, for the foreseeable term remaining on the lease.

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 assignment of the lease, 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 \$2,453 per year to \$2,130 per year, against 6 percent of gross annual income derived from commercial activities from mooring, berthing, and docking of boats, effective September 1, 2017. The reduction in minimum rent is based on decreasing gross annual revenue over the previous 4 years. Staff believes that revising the minimum rent would contribute to the sustainability of a locally owned small business that offers recreational boating facilities to the general public, which in turn, serves the State's best interests. In addition, if the Lessee's income increases, the State would continue to receive 6 percent of the Lessee's gross income as provided in the existing lease.

Climate Change:

Climate change impacts, including sea-level rise, more frequent and intense storm events, and increased flooding and erosion, affect both open coastal areas and inland waterways in California. The lease area is located on the Sacramento River, which is a tidally influenced site vulnerable to flooding at current sea levels. The facilities associated in this lease area include 12 covered berths with water and electric outlets, an uncovered finger berth with two outlets, an uncovered floating side-tie dock with eight outlets, an accommodation dock with three outlets, a gangway, a walkway, two steel pilings, two wood 3-pile dolphins, two wood 2-pile dolphins, and six wood pilings. This area will also be at a higher risk of flood exposure given future projection scenarios of sea-level rise: the region could see up 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

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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 and storms (especially when coupled with sea-level rise).

Climate change could have a number of impacts in 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 outcome is because warming temperatures will result in more water falling as rain rather than snow, earlier spring snowmelt, and less snowpack overall. In tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris. Conversely, prolonged droughts could dramatically reduce river flow and water levels, leading to loss of public access and navigability. 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, as well as runoff, will likely increase scour and decreasing bank stability at a faster rate.

The lease is a 20-year General Lease – Commercial Use that began on September 1, 2012, and may be subject to the climate change effects of the projected scenario of 1 foot of sea-level rise (from year 2000 levels) by 2030 provided above. Because of the location on the Sacramento River, the facilities and associated infrastructure (e.g., utility outlets) within the lease area could experience vulnerabilities from future climate change towards the end of the 20-year lease term; however, regular maintenance, as required by the terms of the lease, will help reduce the likelihood of severe structural degradation or dislodgement. 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 and would be based on projected sea-level rise scenarios at that time.

Conclusion:

For all the reasons above, staff believes the assignment of lease and revision of rent 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

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resources under the Commission's jurisdiction; Strategy 1.3 to protect, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways; and Strategy 2.2 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

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 remaining on 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 4812.1, 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 Donald Joseph Glidewell, dba Metro Marina (Assignor) to Metro Marina Properties, LLC (Assignee); effective February 28, 2014.
2. Approve the revision of rent for Lease No. PRC 4812.1 from a minimum annual rent of \$2,453 to a minimum annual rent of \$2,130, against 6 percent of gross annual income derived from authorized commercial activities, effective September 1, 2017.

Exhibit A

Land Description

PRC 4812.1

A parcel of tide and submerged land in the State-owned bed of the Sacramento River adjacent to the east bank in Sacramento County, State of California, described as follows:

COMMENCING at a concrete monument marking the intersection of the boundary line between Swamp and Overflowed Survey 898, Sacramento County, and Lot 23 of Natomas Elkhorn Subdivision with the easterly boundary line of the river levee right of way of Reclamation District No. 1000, said concrete monument being shown on the official "Map of Natomas Elkhorn Subdivision" recorded in the office of the County Recorder of Sacramento County, February 26, 1918, in Book 15 of Maps, Map No. 42; thence the following four courses:

1. S 52° 30' 30" W 314.20 feet;
2. N 45° 57' 30" W 545.00 feet;
3. N 39° 30' 00" W 300.50 feet;
4. N 35° 38' 00" W 46.70 feet, to the POINT OF BEGINNING; thence the following nine courses:

5. S 55° 26' 05" W 5.00 feet;
6. S 76° 00' 00" W 40.00 feet;
7. S 53° 32' 00" W 16.00 feet;
8. N 65° 30' 00" W 187.50 feet;
9. N 40° 32' 00" W 173.40 feet;
10. N 49° 28' 00" E 115.00 feet;
11. N 65° 35' 19" E 67.62 feet;
12. S 30° 23' 30" E 159.20 feet;
13. S 35° 38' 00" E 188.10 feet to the point of beginning.

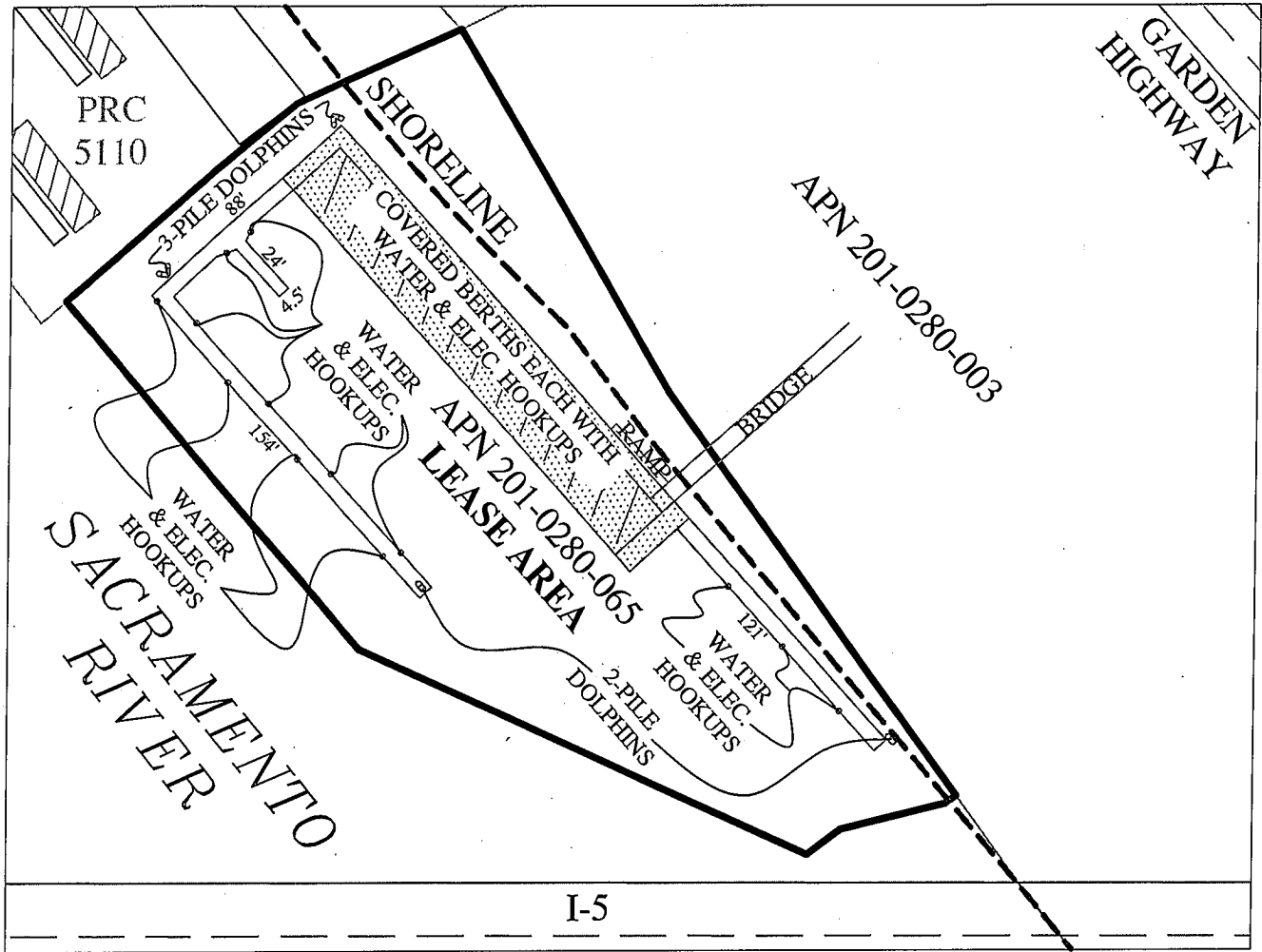
EXCEPTING THEREFROM any portion thereof lying landward of the ordinary high water mark of the left bank of the Sacramento River.

END OF DESCRIPTION

REVIEWED MAY 19, 1982 BY TECHNICAL SERVICES UNIT, ROY MINNICK, SUPERVISOR.

NO SCALE

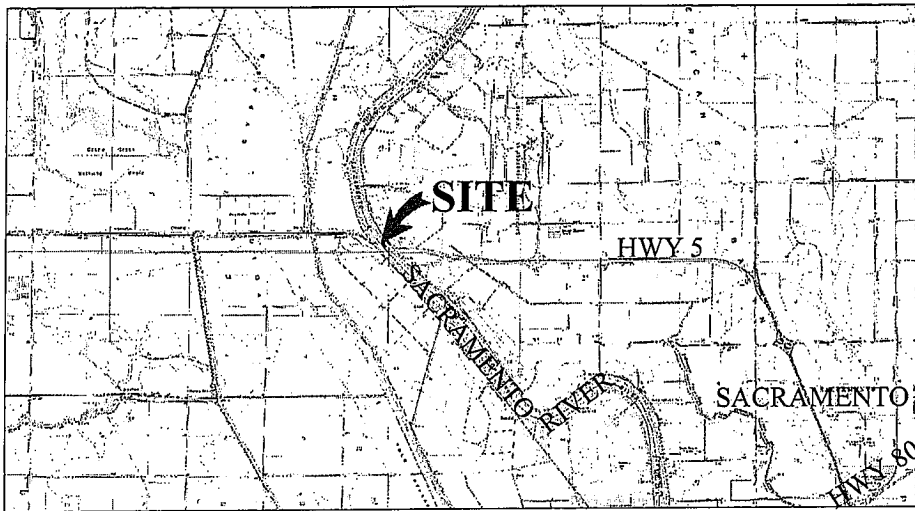
SITE



5871 Garden Highway

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 4812.1
 METRO MARINA
 PROPERTIES, LLC
 APN 201-0280-003,065
 GENERAL LEASE -
 COMMERCIAL USE
 SACRAMENTO COUNTY



MJF 11/09/16

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.