CALENDAR ITEM

C39

A 9 06/28/10
WP 8513.1
S 6 M. Hays
J. Frey

CONSIDER TERMINATION AND ISSUANCE OF A GENERAL LEASE - RECREATIONAL USE

LESSEE/APPLICANT:
Robert L. Hulbert

AREA, LAND TYPE, AND LOCATION:
0.04 acre, more or less, of sovereign land in the Sacramento River, near the city of Sacramento, Sacramento County.

AUTHORIZED USE:
The use and maintenance of an existing floating dock with a single slip boathouse, roof railings, spiral staircase, four pilings, gangway, sewer line, and pump out facility, as shown on Exhibit A.

LEASE TERM:
Ten years, beginning June 28, 2010.

CONSIDERATION:
$415 per year; with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

1. Combined single limit coverage of no less than $500,000.

2. Modification of existing improvements per Litigation Settlement Agreement.

BACKGROUND

On April 5, 2004, the Commission authorized a General Lease – Recreational Use to Robert L. Hulbert for the construction, use, and maintenance of a 40’ x 32’ (erroneously stated as 40’ x 34’ in the Lease document) covered floating boat

dock with a 34-foot by 14-foot slip (having a floor elevation of 13 feet), four pilings, and a four-foot by 52-foot gangway.

Construction of the dock began in 2005. Once the dock was in place, staff received a complaint from a member of the public expressing concern over the size of the dock. Because of the complaint, staff conducted a site inspection and determined that the improvements were not constructed as authorized. On August 8, 2007, Mr. Hulbert was advised of the defaults of the lease and pursuant to the terms of the lease he was given 30 days from receipt of the notice to cure the defaults. Following is a summary of the unauthorized improvements that constituted a default under the terms of the lease:

1) The boat dock is approximately 252 square feet larger than authorized.

2) The boathouse is approximately 248 square feet larger than authorized with an unauthorized sundeck and railing. The elevation of the boathouse is 20 feet, which is seven feet higher than authorized.

3) The spiral staircase.

4) The gangway is ten-feet longer than authorized.

5) A 144 square foot enclosed cabana (nine feet high) with a kitchen unit (all located on top of the 20 foot high boat dock) including the following in the cabana:

    a) Electric grill and cooktop
    b) Sink with garbage disposal
    c) Dishwasher
    d) Two refrigerators

6) A toilet, sink, and shower were constructed in the boathouse.

7) Sewer line.

On August 22, 2007, Mr. Hulbert submitted an application to amend his lease to obtain authorization after the fact and retain all of the above accessories and the increase dock dimension to the lease. On September 13, 2007, Commission staff presented an item to the Commission to deny the application for an amendment to the lease; find the lease in default; and authorize staff to issue a notice of lease termination and require removal of the improvements and to

terminate the lease if Mr. Hulbert did not cure the defaults. At the meeting, the Commissioners offered Mr. Hulbert two options, 1) remove the structure in its entirety or 2) retain the covered floating boat dock as-built including the length, width, spiral staircase and gangway. However, the height of the structure would have to be reduced to conform to what was applied for and previously authorized under the lease (13 feet high from the top of the lower deck to the top of the railing). The Commission gave Mr. Hulbert 30 days to decide which option he would pursue. In addition, the Commission also directed Mr. Hulbert to immediately remove the accessory features and the removal or modification of the boat dock structure within 180 days of the meeting with the exception of those items subject to seasonal in-water work window restrictions. In that case, the final removal requirements would be met by October 31, 2008.

On October 12, 2007, Mr. Hulbert's counsel wrote Commission staff advising that Mr. Hulbert would be challenging the Commission's decision by filing a Writ Petition in Sacramento Superior Court and would not be making modifications to the boat dock nor would he be terminating the lease until the matter is adjudicated by the Court. The letter indicated Mr. Hulbert would remove the toilet and barbeque facility, pending the outcome of the Writ Petition. Further negotiation ensued and on November 19, 2007, staff met with Mr. Hulbert's counsel and Gill LaBrie of DCC Engineering. Mr. Hulbert's counsel offered that Mr. Hulbert would remove the cabana and kitchen (but would leave in place the covered shed for storage of life vests, etc.), the toilet, and cap the outdoor shower, but would leave the dock structure as-built with the sewer pump out.

On December 3, 2007, staff presented an item to the Commission outlining their belief that the above proposal was inconsistent with the Commission's previous direction and recommended that the proposal not be accepted. At the meeting, the Commissioners approved acceptance of the staff's recommendations to 1) issue a notice of default to Mr. Hulbert and if he fails to comply with the Commission's previous direction, terminate the lease; 2) authorize staff and the Office of the Attorney General to take all necessary steps, including litigation to enforce the Commission's findings and to remove all of the improvements from the lease premises; and 3) to deny the application submitted by Mr. Hulbert to amend his lease.

CURRENT STATUS:

After months of pretrial work and negotiations, on May 17, 2010, representatives of the parties met in mediation and reached a Litigation Settlement Agreement. The Agreement provides for the termination of Mr. Hulbert's existing lease and the issuance of a new General Lease – Recreational Use with a term of 10 years. Except as stated below, if approved, the new lease will allow Mr. Hulbert to retain his boathouse and dock as built including the increased dimensions, spiral

staircase, roof railings, gangway, sewer line and pump out. Mr. Hulbert has agreed to remove, within 90 days of approval of the new lease, the cabana/gazebo including the electric grill, cook-top, sink with garbage disposal, dishwasher, two refrigerators, the toilet and sink inside the boathouse and cap the shower head. At the end of the new lease, Mr. Hulbert has agreed to remove all of the siding on the boathouse provided, however, that he may petition the Commission to retain the garage door located at the opening of the slip entrance and a small portion of the siding along the top of the structure to protect utilities from inclement weather. Lastly, the lease will include language prohibiting the use of the roof/deck for residential uses or as a recreational sun deck.

The Agreement is unique, driven by the litigation and does not represent a change in staff's handling of lease applications. It will resolve a dispute over Mr. Hulbert's application, its processing and interpretation and avoid a lengthy and costly trial with uncertain results while meeting the Commission's goal of having Mr. Hulbert remove the unauthorized residential amenities and, ultimately, the boathouse siding.

OTHER PERTINENT INFORMATION:

1. Lessee owns an undivided one-sixth interest in the unimproved uplands adjoining the lease premises and does not qualify for a rent-free lease under Public Resources Code section 6503.5. The remaining interest holders (five-sixths) indicated, in writing, that they did not object to the issuance of a lease for the construction of the dock.

2. **Termination of Lease:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(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 Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

3. **Issuance of Lease for Previously Approved Project Elements:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), the staff has determined that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; Title 2, California Code of Regulations, section 2905 (a)(2).

Authority: Public Resources Code section 21084 and Title 14, California Code of Regulations, section 15300.

4. **Issuance of Lease for Project Elements Not Previously Approved:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), the staff has determined that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 3, New Construction or Conversion of Small Structures; Title 14, California Code of Regulations, section 15303.

   Authority: Public Resources Code section 21084 and Title 14, California Code of Regulations, section 15300.

5. 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. Site and Location Map
B. Land Description

RECOMMENDED ACTION:
It is recommended that the Commission:

CEQA FINDING:

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

Issuance of Lease for Previously Approved Project Elements: Find that the activity is exempt from the requirements of CEQA pursuant to Title 14, California Code of Regulations, section 15061 as a categorically exempt project, Class 1, Existing Facilities; Title 2, California Code of Regulations, section 2905(a)(2).

Issuance of Lease for Project Elements Not Previously Approved: Find that the activity is exempt from the requirements of CEQA pursuant to Title 14, California Code of Regulations, section 15061 as a

categorically exempt project, Class 3, New Construction or Conversion of Small Structures; Title14, California Code of Regulations, section 15303.

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 sections 6370, et seq.

AUTHORIZATION:

Upon receiving from the Lessee/Applicant a fully executed Settlement Agreement as approved by the Commission:

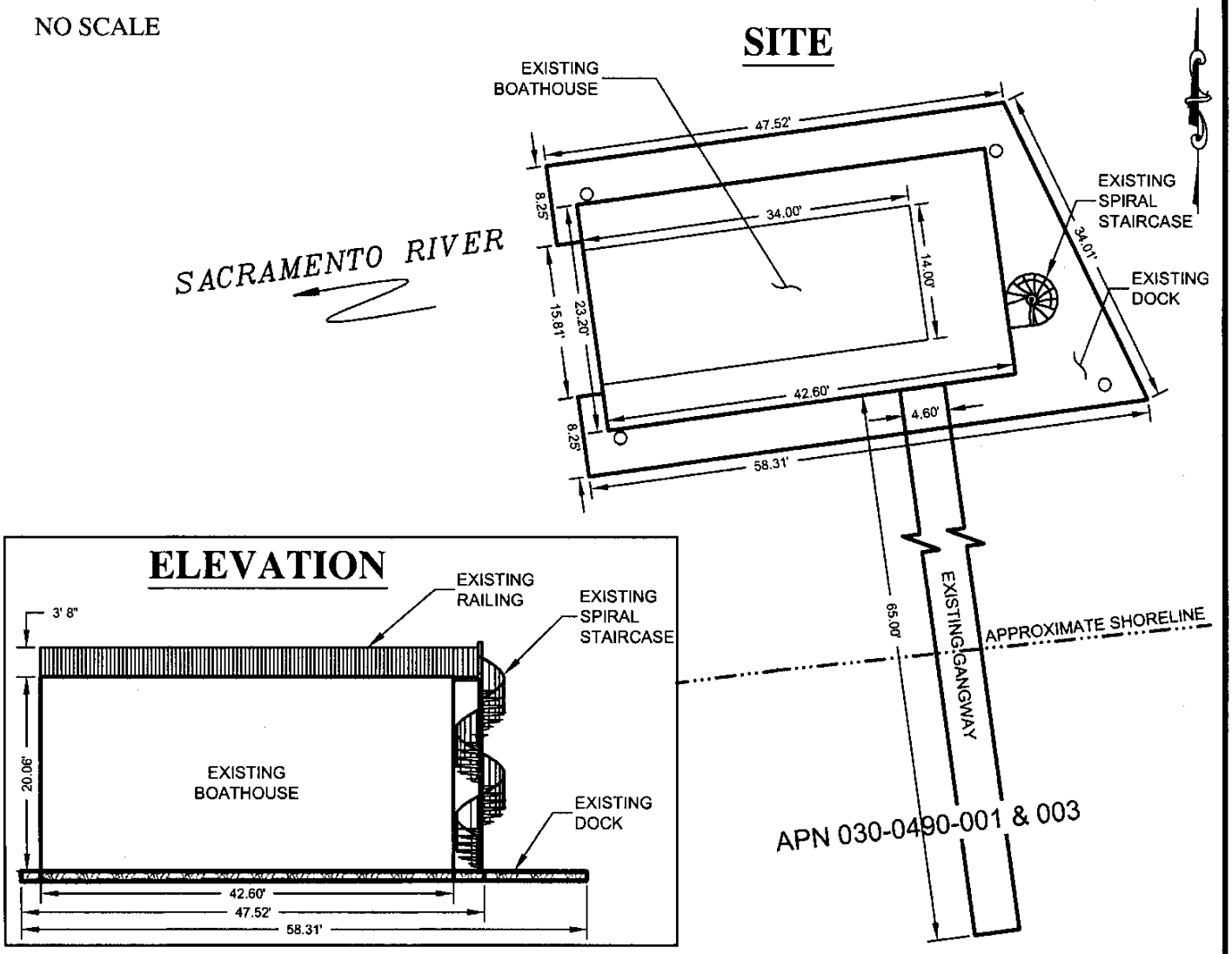
1. Authorize acceptance of uncollected rent in the amount of $899.16 for the lease period from April 1, 2008 to June 28, 2010 and waive any accrued penalty and interest.

2. Authorize termination, effective June 28, 2010, of Lease No. PRC 8513.1, a General Lease – Recreational Use, issued to Robert L. Hulbert with an effective date of April 1, 2004.

3. Authorize issuance of a ten year General Lease – Recreational Use to Robert L. Hulbert beginning June 28, 2010 for the use and maintenance of an existing floating dock with a single slip boathouse, roof railings, spiral staircase, four pilings, gangway, sewer line, and pump out facility as shown on Exhibit A and as described in Exhibit B attached and by this reference made a part hereof; annual rent in the amount of $415 with the State reserving the right to fix a different rent periodically during the lease term, as provided in the Lease; and liability insurance with coverage of no less than $500,000.

NO SCALE

SITE



673 BRICKYARD DR., SACRAMENTO RIVER

NO SCALE

LOCATION

MAP SOURCE: USGS QUAD

This Exhibit 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.

Exhibit A

PRC 8513.1
HULBERT
APN 030-0490-001 & 003
GENERAL LEASE
RECREATIONAL USE
SACRAMENTO COUNTY

JAK 05/10

EXHIBIT B

PRC 8513.1

LAND DESCRIPTION

A parcel of tide and submerged land situate in the bed of the Sacramento River, lying adjacent to projected Section 27, Township 8 North, Range 4 East, MDM., as shown on Official Government Township Plat approved August 22, 1872, County of Sacramento, State of California, and more particularly described as follows:

> All those lands underlying an existing dock, boathouse, and gangway, adjacent to Parcel One as described in that Grant Deed recorded June 14, 2001 in Book 20010614 at Page 1028 of Official Records of said County.

EXCEPTING THEREFROM any portion lying landward of the Ordinary High Water Mark of the left bank of the Sacramento River.

END OF DESCRIPTION

Prepared May 27, 2010 by the California State Lands Commission Boundary Unit.