

CALENDAR ITEM

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08/20/10

PRC 8765.9

S 5, 14

V. Caldwell

**CONSIDER TERMINATION OF RECREATIONAL PIER LEASE AND
AUTHORIZATION OF LITIGATION FOR EJECTMENT**

LESSEE/PARTY:

Larry M. Hamilton and Laura B. Hamilton, Trustees of the Larry and Laura Hamilton Family Trust Dated January 3, 2006

LAND TYPE, AND LOCATION:

Sovereign land in the Sacramento River, adjacent to 14065 River Road, near Walnut Grove, Sacramento County.

AUTHORIZED USE:

Construction use and maintenance of an uncovered floating boat dock, gangway and six pilings.

LEASE TERM:

Ten Years, beginning October 30, 2007.

CONSIDERATION:

No monetary consideration pursuant to Public Resources Code section 6503.5.

BACKGROUND:

The lease area is located in the Sacramento River at a location designated in 2006 as a critical levee erosion site. The Reclamation Board (now the Central Valley Flood Protection Board (CVFPB) in partnership with the U. S. Army Corps of Engineers (Corps) under the Sacramento River Bank Protection Project (SRBPP) completed levee repairs at this site which is a portion of a long-term levee repair project to enhance public safety and protect property along the Sacramento River and its tributaries by maintaining levees and reducing stream bank erosion. The Corps is responsible for implementation of the SRBPP in conjunction with the CVFPB. As part of the levee repair project at this site, a mitigation area for the delta smelt, a federally-listed species under the Endangered Species Act, was constructed by the Corps as well as on other portions of the Sacramento River.

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The bank protection measures associated with the SRBPP consisted of reinforcement of the bank toe with riprap; placement of soil and riprap on top of the lower bank to create an approximately 4-foot wide trenched area; placement of a layer of soil and riprap along the upper bank; planting the trenched area (berm) and upper bank with vegetation to provide bank stabilization and riparian habitat; anchoring instream woody material along the waterside edge of the berm, and anchoring brush bundles along the lower bank. The constructed berm includes 4-foot wide openings every 100 feet along its length to provide off-channel habitat and prevent aquatic organisms from being stranded in the trench area during tidal fluctuations. Riparian trees and shrubs were planted along the upper bank and the top of the bank was planted with only herbaceous plants. Container plants and willow cuttings were installed within larger rock voids and standing trees at the site were preserved.

On June 1, 2007, Commission staff received a lease application from Larry and Laura Hamilton, Trustees, through their consultant for the construction of a proposed uncovered floating boat dock, six pilings and a gangway. The application provided information regarding the permits obtained from the Department of Fish and Game, Reclamation Board and Reclamation District No. 554. Those under review and not yet obtained were the Central Valley Regional Water Quality Control Board and the Corps. The application was deemed complete and on October 30, 2007, the Commission authorized a ten year Recreational Pier Lease for the use of State owned lands for the project. From October 2008 and April 2009, staff sent several letters requesting that the Hamiltons comply with the terms of the lease that required notification to staff of when construction was to begin and when staff could anticipate the photographs of the completed project and "as built" to be submitted. There was no response from the Hamiltons.

On July 23, 2009, Commission staff was notified by the Corps that the Hamiltons constructed the docking facilities sometime in 2008 and they were in violation of Section 10 of the Rivers and Harbors Act because they constructed the docking facilities without obtaining a permit from the Corps and that the docking facilities were constructed in the Corps delta smelt mitigation area. The Corps requested the docking facilities to be removed.

Between August and October 2009, staff sent letters and emails to the Hamiltons and their consultant requesting status of their efforts to resolve the Corps violations. Neither the Hamiltons nor their consultant responded. On June 7, 2010, staff received a copy of a second notice of violation from the Corps stating the Hamiltons remained in violation.

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On July 14, 2010, the Hamiltons were formally notified in writing that the lease was in default because 1) pursuant to Section D, paragraph 8 (Compliance with Applicable Law) of the lease, the Hamiltons agreed as a condition and continued existence of the lease to obtain and maintain in effect all other federal, State, and local permits and entitlements and 2) pursuant to Section E, paragraphs 3 and 4 (Special Provisions), the Hamiltons agreed to provide Commission staff 15 days notice prior to the start of construction; and within 60 days of completion of the construction, confirm when construction was completed and submit photographs and "as-built" drawings of the authorized improvements. The Hamiltons were further notified they must cure the defaults within 30 days or Commission staff would recommend termination of the lease.

As of the date of the noticing of the August 20, 2010 meeting, the Lessee has not responded to staff's letters or to the Corps's notices of violation. Therefore, staff is now requesting that the Commission authorize staff to terminate the Recreational Pier Lease and authorize staff and the Office of the Attorney General to take whatever steps are necessary to remove the uncovered floating boat dock, six pilings, and gangway located in the Sacramento River; to seek restoration of the sovereign land at this location to its natural condition prior to the placement of the improvements to the satisfaction of the Commission; to seek such other remedies available for the breach of Lease as are appropriate; and to recover the Commission's damages and costs.

OTHER PERTINENT INFORMATION:

1. The Lessee owns the uplands adjoining the lease premises.
2. On October 30, 2007, the Commission authorized a Recreational Pier Lease to Larry M. Hamilton and Laura B. Hamilton, Trustees of the Larry and Laura Hamilton Family Trust Dated January 3, 2006 for the construction of a 30-foot by 8-foot uncovered floating boat dock, six pilings, and three-foot by 66-foot gangway.
3. Pursuant to the Commission's delegation of authority and 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.

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EXHIBIT:

- A. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

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.

AUTHORIZATION:

1. Ratify staff's finding that Larry M. Hamilton and Laura B. Hamilton, Trustees of the Larry and Laura Hamilton Family Trust Dated January 3, 2006 are in default of Lease No. PRC 8765.9, because the Hamiltons have not complied with; 1) Section D, paragraph 8 (Compliance with Applicable Law) of the lease where they agreed as a condition and continued existence of the lease to obtain and maintain in effect all other federal, State, and local permits and entitlements; 2) Section E, paragraphs 3 and 4 (Special Provisions), where they agreed to provide the Commission 15 days notice prior to the start of construction and within 60 days of completion of the construction, confirm when construction was completed and submit photographs and "as-built" drawings of the authorized improvements.
2. Authorize staff to issue a notice of termination, of Lease No. PRC 8765.9, a Recreational Pier Lease, issued to Larry M. Hamilton and Laura B. Hamilton, Trustees of the Larry and Laura Hamilton Family Trust Dated January 3, 2006.
3. Authorize staff of the State Lands Commission and the Office of the Attorney General to take all necessary legal steps, including litigation, to eject Larry M. Hamilton and Laura B. Hamilton, Trustees of the Larry and Laura Hamilton Family Trust Dated January 3, 2006, from State sovereign lands; to seek removal of the uncovered floating boat dock, six pilings, and gangway from sovereign land in the Sacramento River adjacent to 14065 River Road, near Walnut Grove, Sacramento County; to seek restoration of the sovereign land at this location to its natural condition prior to the placement of the improvements to the satisfaction of the Commission; to seek such other remedies available for the breach of lease No. PRC 8765.9; and to recover the Commission's damages and costs.