

**CALENDAR ITEM
C09**

A 8,15

08/20/10

PRC 7620.1

S 5,14

M. Clark

**CONSIDER RESCISSION OF MINUTE ITEM 11 APPROVED BY THE CALIFORNIA
STATE LANDS COMMISSION AT ITS AUGUST 11, 2009 MEETING; AND
TERMINATION AND APPROVAL OF AN AGREEMENT AND CONSENT TO
ENCUMBRANCING OF LEASE**

LESSEES:

Wallace G. Clark and Carolyn Sue Clark, Trustee of the Wallace G. Clark and Carolyn Sue Clark Trust Dated February 18, 1997, Wallace Bradley Clark, Brian Marchini Clark, Dennis Edward Vollman and Ginger Lee Vollman as Trustees of the Dennis E. Vollman and Ginger L. Vollman 2006 Revocable Trust, Joanne Vollman, James B. Morey and Patricia J. Morey, and Marilyn A. Vollman, Trustee of the Mav Revocable Trust Dated July 8, 1997

CURRENT SECURED-PARTY LENDER:

California Department of Boating and Waterways
2000 Evergreen Street, Suite 100
Sacramento, California 95815-3888

PROPOSED SECURED-PARTY LENDER:

The Merchants National Bank
of Sacramento
1015 7th Street
Sacramento, California 95814

AREA, LAND TYPE, AND LOCATION:

A 1.139 acre parcel, more or less, of sovereign land in the Sacramento River, adjacent to 14180 River Road, Walnut Grove, Sacramento County.

AUTHORIZED USE:

Continued use and maintenance of an existing commercial marina, known as Dagmar's Landing, consisting of 30 covered berths, 27 pilings, two gangways, sewage pump out, public fishing dock, and public accommodation dock.

LEASE TERM:

26 years, beginning June 1, 2009.

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CONSIDERATION:

Annual rent of five percent of the gross annual income derived from the berthing, docking, and mooring of boats; and ten percent of all other gross income generated on the Lease Premises; and minimum annual rent in the amount of \$4,251; with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

Insurance:

Liability Insurance of no less than \$2,000,000.

Bond:

\$20,000.

Other:

The lease contains provisions requiring the public fishing pier and transient dock, to be available to the public during daylight hours. Access shall be provided to and through the lease premises for the general public, including non-paying visitors. Access will be from the Sacramento River and across the Lessees' upland property to assure public access from the first public road and to provide for public fishing access to this area of the Sacramento River.

PROPOSED ENCUMBRANCE OF LEASE:

Lessees are requesting that the Commission consider approval of a new Agreement and Consent to Encumbrancing of Lease in favor of the Merchants National Bank of Sacramento, as a secured-party lender in the amount not to exceed \$750,000.

OTHER PERTINENT INFORMATION:

1. Lessees own the uplands adjoining the lease premises.
2. On June 1, 2009, the Commission authorized a General Lease - Commercial Use to Wallace G. Clark and Carolyn Sue Clark, Trustee of the Wallace G. Clark and Carolyn Sue Clark Trust Dated February 18, 1997, Wallace Bradley Clark, Brian Marchini Clark, Dennis Edward Vollman and Ginger Lee Vollman as Trustees of the Dennis E. Vollman and Ginger L. Vollman 2006 Revocable Trust, Joanne Vollman, James B. Morey and Patricia J. Morey, and Marilyn A. Vollman, Trustee of the Mav Revocable Trust Dated July 8, 1997 (Lessees); and approved an Agreement and Consent to Encumber the Lease in favor of the Department of Boating and Waterways (DBW), in the amount of \$600,000. That lease will expire May 31, 2035.

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3. On August 11, 2009, the Commission authorized (as Minute Item 11) the termination of the Agreement and Consent to Encumbrancing of Lease in favor of Department of Boating and Waterways and authorized a new Agreement to Consent and Encumber the Lease in favor of the Bank of Sacramento, in an amount not to exceed \$1,200,000. Lessee never consummated the loan with the Bank of Sacramento and as a result, the DBW loan continues to be active. Lessee is now applying for a new Agreement and Consent to Encumber the Lease with Merchants National Bank of Sacramento. Commission staff is requesting that the Commission rescind Minute Item 11, approved on August 11, 2009, to clear up the record and reinstate the encumbrancing agreement with Department of Boating and Waterways.
4. Lessees are now in the process of obtaining new financing in an amount not to exceed \$750,000 for the purpose of paying off the existing loan from DBW and private loans secured by the upland properties, and have requested to encumber the lease as a portion of the security for the new loan. In approving the encumbrancing agreement with Merchants Bank of Sacramento, the Commission retains the right to approve any transfer from the lending institution to a prospective lessee, should any foreclosure of the loan occur. The Lessee will provide staff with a copy of the reconveyance document evidencing that the Department of Boating and Waterways loan has been paid.
5. 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.

6. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 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

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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.

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 rescission of Minute Item 11 authorized by the State Lands Commission at its August 11, 2009, meeting, effective August 20, 2010.
2. Authorize the termination of the Agreement and Consent to Encumbrancing of Lease authorized by the Commission on June 1, 2009, between the State Lands Commission, the Lessees, and the Department of Boating and Waterways, effective August 20, 2010.
3. Authorize the execution of the document entitled "Agreement and Consent to Encumbrancing of Lease" in the amount not to exceed \$750,000, on file in the office of the Commission, between the State Lands Commission, Wallace G. Clark and Carolyn Sue Clark, Trustee of the Wallace G. Clark and Carolyn Sue Clark Trust Dated February 18, 1997, Wallace Bradly Clark, Brian Marchini Clark, Dennis Edward Vollman and Ginger Lee Vollman as Trustees of the Dennis E. Vollman and Ginger L. Vollman 2006 Revocable Trust, Joanne Vollman, James B. Morey and Patricia J. Morey, and Marilyn A. Vollman, Trustee of the Mav Revocable Trust Dated July 8, 1997, and Merchants National Bank of Sacramento, effective August 20, 2010.