

**CALENDAR ITEM
C12**

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08/20/10
WP 2851.1
M. Clark

**AMENDMENT OF LEASE, TERMINATION AND APPROVAL OF AN AGREEMENT
AND CONSENT TO ENCUMBRANCING OF LEASE
AND REVISION OF RENT**

LESSEE:

TA & JC Properties, LLC
P.O. Box 31114
Walnut Creek, CA 94598

CURRENT SECURED-PARTY LENDER:

Diablo Valley Bank
3189 Danville Blvd, Suite 255
Alamo, CA 94507

SECURED-PARTY LENDER:

Bank of Agriculture & Commerce
2021 West March Lane, Suite 2D
Stockton, CA 95207

AREA, LAND TYPE, AND LOCATION:

1.14 acres, more or less, of sovereign land in Seven Mile Slough, adjacent to
1100 West Brannan Island Road, near the town of Isleton, Sacramento County.

AUTHORIZED USE:

Continued use and maintenance of an existing commercial marina consisting of
approximately 40 covered and uncovered berths and side ties.

LEASE TERM:

20 years, beginning December 1, 2004.

CONSIDERATION:

This lease provides that Lessor may modify the method, amount, or rate of
consideration periodically during the lease term. Pursuant to this provision, staff
has conducted a review of the rent under this lease, and recommends that the

CALENDAR ITEM NO. **C12** (CONT'D)

minimum annual rent be revised from \$1,312 to \$1,461, effective December 1, 2010.

PROPOSED AMENDMENT:

The "Authorized Marina Improvements" in Section 2, Paragraph 1 are amended from 40 covered and uncovered berths and side ties to 35 uncovered berths and side ties.

All other terms and conditions of the lease shall remain in effect without amendment.

SPECIFIC LEASE PROVISIONS:

Insurance:

Liability Insurance of no less than \$1,000,000.

Bond:

\$20,000

Other:

This lease contains provisions that the Lessee must implement the Commission's "Best Management Practices for Marina Owners/Operators" and encourage implementation of the Commission's "Best Management Practices for Guest Dock Users and Boaters", including additional Best Management Practices (BMPs) the Commission subsequently deems appropriate for either of the above categories

OTHER PERTINENT INFORMATION:

1. Lessee owns the uplands adjoining the lease premises.
2. On December 9, 2004, the Commission issued a 20-year General Lease – Commercial Use, to Alan and Peggy Martin for the continued use and maintenance of a commercial marina consisting of approximately 40 covered and uncovered berths and side ties. That lease will expire November 30, 2024.
3. On February 5, 2007, the Commission authorized an assignment of the lease to TA & JC Properties; an amendment of the lease to include Best Management Practices; and approved an Agreement and Consent to Encumber the Lease in favor of Diablo Valley Bank, in the amount of up to \$1,000,000.
4. The proceeds from the above-mentioned loan went toward the purchase of the upland RV Park property, the marina facilities on the lease premises and to fund repairs and renovation of the marina docks. The marina berths have been renovated with new floats and a gangway. There were previously 40

CALENDAR ITEM NO. **C12** (CONT'D)

covered and uncovered berths that have now been replaced with 35 uncovered berths in the same footprint. No pilings were replaced or added. The Lessee is now applying to amend the Lease to revise the authorized improvements.

5. The Lessees are in the process of obtaining new financing in an amount not to exceed \$1,000,000 for the purpose of paying off the existing loan from Diablo Valley Bank, and have requested authorization to encumber the lease as a portion of the security for the new loan. The Lessees have now applied to terminate the Agreement and Consent to Encumber the Lease with Diablo Valley Bank and are requesting a new Agreement and Consent to Encumber the Lease with the Bank of Agriculture & Commerce.
6. The existing Agreement and Consent to Encumbrancing of Lease in favor of Diablo Valley Bank will be terminated upon receiving the new loan from the Bank of Agriculture & Commerce. The Lessee will provide a copy of the reconveyance document showing that Diablo Valley Bank loan has been paid. In approving the Encumbrancing Agreement, the Commission retains the right to approve any transfer from the lending institution to a prospective lessee, should any foreclosure of the loan occur.
7. **AMENDMENT OF LEASE:** 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 and Title 2, California Code of Regulations, section 2905.

8. **TERMINATION AND APPROVAL OF AN AGREEMENT AND CONSENT TO ENCUMBRANCING OF LEASE AND REVISION OF RENT:** 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.

CALENDAR ITEM NO. **C12** (CONT'D)

9. 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. Legal Description

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

AMENDMENT OF LEASE: 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)

TERMINATION AND APPROVAL OF AN AGREEMENT AND CONSENT TO ENCUMBRANCING OF LEASE AND THE REVISION OF RENT:

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 the Amendment of Lease No. PRC 2851.1, a General Lease-Commercial Use, to revise the authorized improvements from 40 covered and uncovered berths and side ties to 35 uncovered berths and side ties, effective August 20, 2010. All other terms and conditions of the lease shall remain in effect without amendment.
2. Authorize the termination of the Agreement and Consent to Encumbrancing of Lease authorized by the Commission on February 5, 2007, between the State Lands Commission,

CALENDAR ITEM NO. **C12** (CONT'D)

TA & JC Properties, LLC, and Diablo Valley Bank, effective upon receipt of reconveyance document.

3. Authorize the execution of the document entitled "Agreement and Consent to Encumbrancing of Lease" in the amount not to exceed \$1,000,000, on file in the office of the Commission, between the State Lands Commission, TA & JC Properties, LLC, and the Bank of Agriculture & Commerce, effective August 20, 2010.
4. Approve the revision of the minimum annual rent for Lease No. PRC 2851.1 from \$1,312 to \$1,461, effective December 1, 2010.