

CALENDAR ITEM

C74

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PRC 2546.1

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GENERAL LEASE - COMMERCIAL USE

APPLICANT:

Kenneth J. Carver, II

AREA, LAND TYPE, AND LOCATION:

6.24 acres, more or less, of sovereign land in the Carquinez Strait adjacent to 501 Port Street, Crockett, Contra Costa County.

AUTHORIZED USE:

Continued use and maintenance of an existing commercial marina, restaurant, non-operational boat repair facility, and appurtenant facilities.

LEASE TERM:

10 years, beginning August 23, 2013.

CONSIDERATION:

\$15,263 annually with annual CPI adjustments commencing on the second anniversary of the lease term as described in Paragraph 10 of Section 2, Special Provisions; and subject to modification by Lessor as specified in Paragraph 2 of Section 3, General Provisions.

SPECIFIC LEASE PROVISIONS:

Insurance:

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

Bond:

Surety bond or other security in the amount of \$200,000.

Other:

1. Lessee agrees to repair and rehabilitate existing improvements within the lease premises, remove or cause the removal of derelict and/or near derelict vessels within the lease premises, remove

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pilings associated with the prior Sea Scout facility, pursuant to a work plan as outlined in the lease.

2. 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 Berth Holders and Boaters", including additional Best Management Practices (BMPs) the Commission subsequently deems appropriate for either of the above categories.
3. Consideration is due on the date the lease is executed and shall be pre-paid, through automatic transfer, for the upcoming year. If Lessee defaults on the lease, there will be no proration of consideration.
4. Failure to pay consideration is an immediate default and the Lessee may be required to vacate the Lease Premises within 90 days and restore the Lease Premises within 180 days.

OTHER PERTINENT INFORMATION:

1. Applicant has the right to use the upland adjoining the lease premises.
2. On April 24, 1960, the Commission authorized a 25-year lease to California and Hawaiian Sugar Company. On December 22, 1960, the Commission authorized a sublease to Dowrelia Boat Works. On November 27, 1978, the Commission authorized the assignment of the sublease from Dowrelia Boat Works to Crockett Marine Service, Inc.
3. On September 25, 1984, the Commission authorized an assignment of the lease from California and Hawaiian Sugar Company to Crockett Marine Service Inc. and amended the lease to reflect a 49-year lease term beginning on August 20, 1960. The lease expired on August 19, 2009. Crockett Marine Service, Inc., Carver Enterprises, Inc., dba the Nantucket, Kenneth J. Carver, and Jacqueline Carver (herein collectively "CMS") occupied and/or continue to occupy, in whole or in part, certain State property adjacent to 501 Port Stet, Crockett, Contra Costa County.
4. In the 1990's, CMS fell into financial difficulty and they stopped making lease payments and the marina fell into disrepair. This was highlighted in the August 2011 Bureau of State Audit's audit of the State Lands Commission.

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5. At its April 6, 2011 meeting, the Commission found that CMS was in trespass and unlawfully occupying sovereign land and authorized the staff and the Office of the Attorney General to take all action necessary to collect payment of back rent, address the ongoing trespass on state property, and see restoration of the lease premises.
6. On January 8, 2013, CMS and the Commission entered into a Release and Settlement Agreement concerning the occupation of the lease premises, including but not limited to payment of rent, nuisance, ejectment, trespass, and maintenance of the lease premises. As part of this mediated settlement, the Commission agreed to consider a new lease application from the Applicant. The Applicant is now applying for a General Lease – Commercial Use.
7. The prior lease authorized the use of the lease premises for a boat harbor, marine repair, restaurant, and Sea Scout facility. The Sea Scout facility has since been damaged by a fire and only pilings remain at the site. The Applicant has requested a reduction in the size of the lease premises to exclude the prior Sea Scout facility. Commission staff has agreed to reduce the Lease Premises subject to a Lease provision requiring the Applicant to remove the remaining pilings at the Sea Scout facility subject to a work plan as defined in the lease. Additionally, the Applicant has advised the Commission staff that the lease premises will no longer include a boat repair facility.
8. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, Title 14, section 15301.

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

9. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. 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.

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FURTHER APPROVALS REQUIRED:

- A. United States Army Corps of Engineers
- B. San Francisco Bay Conservation and Development Commission
- C. Regional Water Quality Control Board
- D. Contra Costa Building Department

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, Title 14, section 15301.

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:

Authorize issuance of a General Lease – Commercial Use to Kenneth J. Carver, II beginning August 23, 2013, for a term of 10 years, for the continued use and maintenance of a commercial marina, restaurant, non-operational boat repair facility, and appurtenant facilities, as described in Exhibit A and as shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; annual rent in the amount of \$15,263 adjusted annually by the California Consumer Price Index, with the State reserving the right to fix a different rent periodically during the lease term as provided in the lease; liability insurance in an amount no less than \$2,000,000 per occurrence; and surety bond in the amount of \$200,000.

EXHIBIT A

PRC 2546

LAND DESCRIPTION

Those certain State-owned tide and submerged lands, situated in the County of Contra Costa, State of California, more particularly described as follows:

COMMENCING at a monument formerly set and marked by the California and Hawaiian Sugar Company as No. 258, but since adopted by the United States Army Engineers as their Harbor Line Monument No. 33, and so marked by them on a brass plate set in the concrete filling of a six inch pipe, and shown on that certain map entitled "Harbor Lines for Carquinez Strait, California", dated June 10, 1924, and marked File 4, Div. 4, Sheet 6, which said Harbor Line Monument and point of commencement is located 435.28 feet North and 254.71 feet East of the corner common to Sections 31 and 32, T3N, R3W, MDM, and Sections 5 and 6, T2N, R3W, MDM, said corner common to said Sections 31, 32, 5 and 6, being marked by a point in a bronze plate set in the top of a concrete pyramid approximately 10 feet high resting on piles driven into the earth, thence N 83°15'30" W 255.96 feet to a point; thence due North 145.66 feet to a point on the United States Bulkhead Line of 1888; thence N 89°03'15" W along the said United States Bulkhead Line of 1888, 536.35 feet to the TRUE POINT OF BEGINNING of this description, said true point of beginning bears 617.44 feet North and 536.28 feet West of the aforementioned Section Corner common to Section 31, 32, 5 and 6, thence due North 462.81 feet to a point in the waters of Carquinez Strait located on the United States Bulkhead Line as shown on the aforementioned map entitled "Harbor Lines for Carquinez Strait, California"; thence N 87°07'22" W along said United States Bulkhead Line 666.92 feet to a point; thence S 20°22'14" E 520.94 feet to a point on the northerly right-of-way line of the Southern Pacific Railway Company which right-of-way line is also the United States Bulkhead Line of 1888; thence continuing along said right-of-way line and said Bulkhead Line of 1888, S 89°03'15" E 484.81 feet to the true point of beginning.

END OF DESCRIPTION

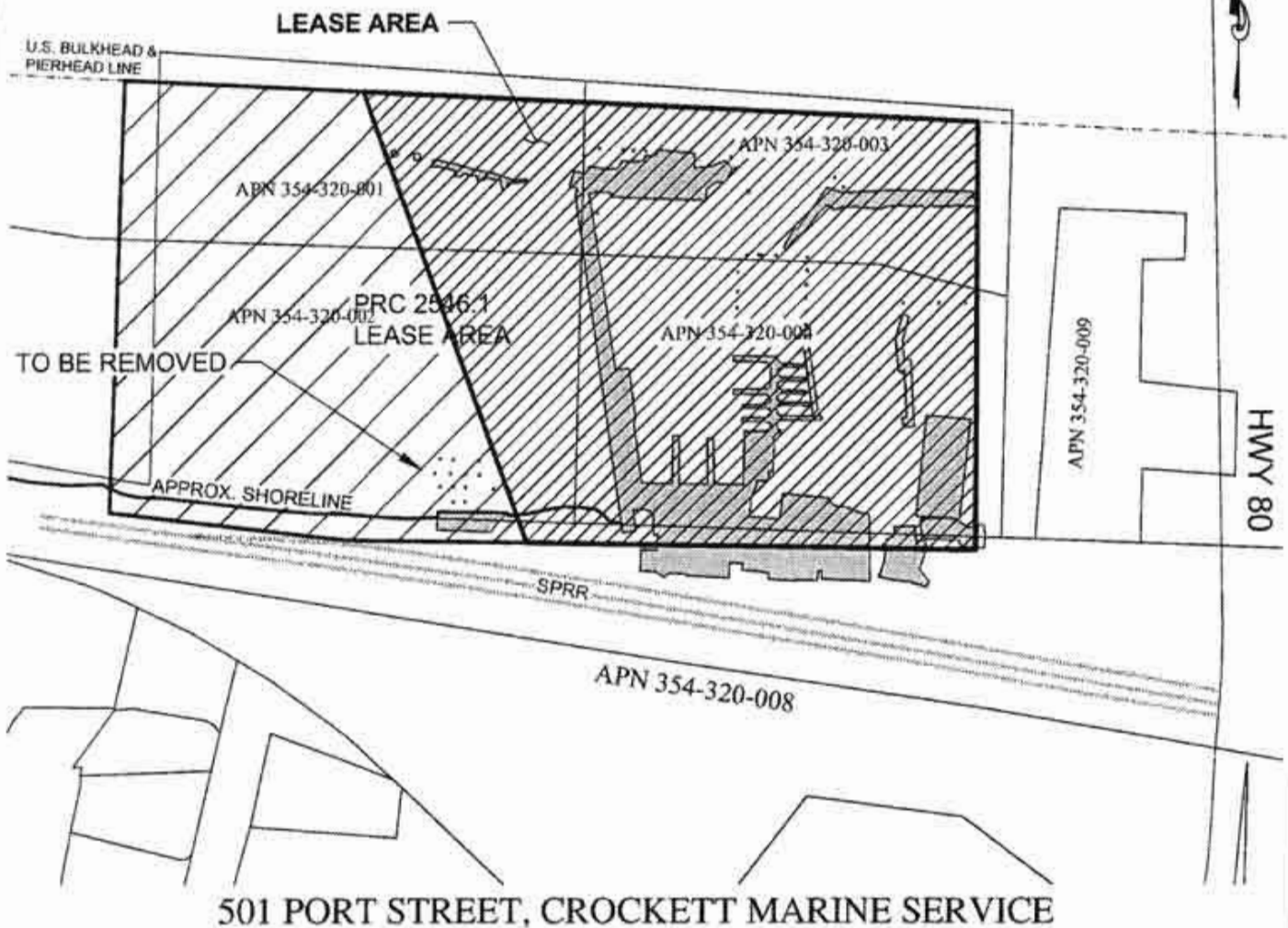
The above description was revised based on that original description prepared by the Technical Services Unit on May 7, 1980 as found in PRC 2546 Lease File.



NO SCALE

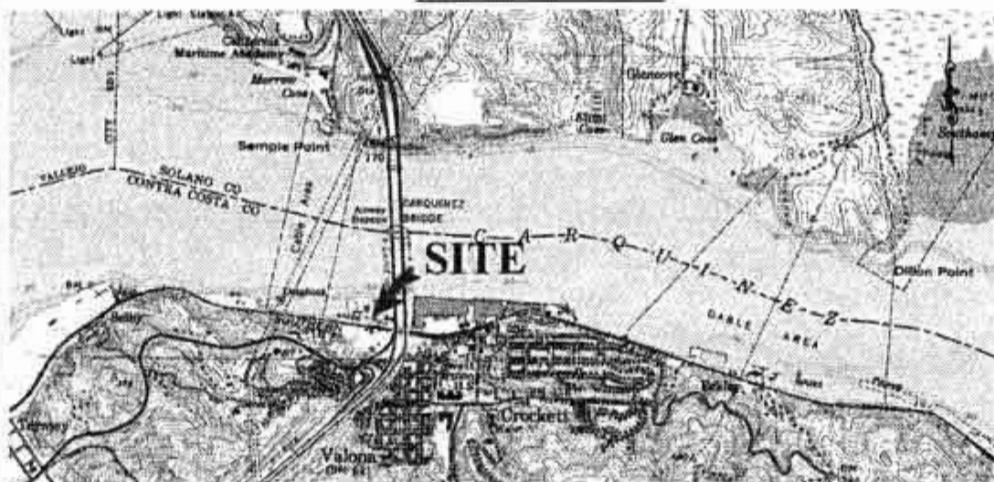
SITE

CARQUINEZ STRAIT



NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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.

Exhibit B

PRC2546

CARVER

APN 354-320-001, 002,
003, 004

GENERAL LEASE -
COMMERCIAL USE
CONTRA COSTA COUNTY



JAK 7/31/13