

**CALENDAR ITEM
C02**

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12/06/16
PRC 7766.1
M.J. Columbus

**AUTHORIZE TERMINATION OF A GENERAL LEASE – COMMERCIAL USE,
ISSUANCE OF A GENERAL LEASE – COMMERCIAL USE, AND ISSUANCE OF AN
AGREEMENT AND CONSENT TO ENCUMBRANCING OF LEASE**

APPLICANT/LESSEE:

Verona Marina, Inc., a California Corporation

SECURED PARTY - LENDER:

T Bank, N.A.

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Sacramento River, adjacent to 6955 Garden Highway, near Nicolaus, Sutter County.

AUTHORIZED USE:

Continued use, maintenance, and operation of an existing commercial marina, known as Verona Marina, consisting of an existing U-shaped uncovered floating boat dock, concrete boat launch ramp, signage, two gangways, 25 uncovered berths, 23 covered berths, 454 lineal feet of side-tie dock, sewage pumpout facilities, electrical and water hookups, debris deflector, gabion wall, and maintenance dredging of less than 15 cubic yards annually, previously authorized by the Commission; and an uncovered floating boat dock, two covered jet ski lifts, one covered boat lift, boat diverter, harbormaster office, and bank protection, not previously authorized by the Commission.

LEASE TERM:

35 years, beginning December 6, 2016.

CONSIDERATION:

Marina Facility: \$8,764 per year, with an annual Consumer Price Index adjustment; and the State reserving the right to fix a different rent on each 10th anniversary of the lease term, as provided in the lease.

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Bank Protection: The public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests.

SPECIFIC LEASE PROVISIONS:

Insurance:

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

Bond: \$20,000

Other:

The lease contains provisions requiring implementation of the Commission's "Best Management Practices for Marina Owners/Operators" and encouraging 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.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, and 6501.1; California Code of Regulations, title 2, section 2000, subdivision (b).

Public Trust and State's Best Interests Analysis:

Applicant owns the upland adjoining the lease premises. On May 26, 1994, the Commission authorized a 20-year General Lease – Commercial Use to Gary Kaveney, for proposed construction and operation of marina facilities ([Calendar Item C14, May 26, 1994](#)). On June 26, 2006, the Commission authorized an assignment and amendment of the lease from Gary Kaveney to Verona Marina, Inc., and an amendment to include provisions for Best Management Practices for Marina Owners/Operators and Berth Holders and Boaters ([Calendar Item C31, June 26, 2006](#)). The lease will expire on May 25, 2019. The Applicant is applying for termination of the existing lease, issuance of a new lease, and consent to encumbrancing of the new lease.

The Applicant is in the process of obtaining refinancing in favor of T Bank, N.A., the Secured Party-Lender (Secured Party-Lender or Lender/Beneficiary), in a loan amount not to exceed \$834,000. Under the

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terms of the new loan, the Secured Party-Lender is requiring the Applicant to pledge their interest in Lease No. PRC 7766.1 as additional security. The new loan will refinance the existing debt on the property. The Secured Party-Lender informed staff that, because the lessee's interest in Lease No. PRC 7766.1 was a part of the collateral for lessee's refinancing, a condition of granting the loan was that a new lease be issued with a 35-year term. To facilitate the lessee's refinancing arrangement, staff recommends issuance of a new 35-year lease.

The encumbrancing of the lease would be implemented through a document, "Agreement and Consent to Encumbrancing of Lease," that includes protections for the State land associated with the lease. These protections include requirements that 1) no subsequent encumbrancing of the lease shall be executed without prior written consent of the Commission; 2) any transfer of the lease to a third party shall be subject to prior written approval and consent of the Commission; 3) if the Secured Party-Lender becomes the lessee, it shall be bound by all terms and conditions of the lease; 4) any transaction requiring Commission approval and consent shall be void in the absence of such approval and consent; and 5) the duration of the encumbrancing agreement is limited to the term of the lease.

The subject marina directly promotes Public Trust needs. The subject commercial marina facilities accommodate, promote, and support recreational boating, public access and enjoyment of the State's sovereign lands. Recreational boating is a water-dependent use that is generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private recreational boating facilities as an authorized use of Public Trust land (Public Resources Code section 6503.5).

The subject harbormaster office is consistent with the common law Public Trust Doctrine because it is used to aid in water-dependent commerce and navigation. The facility is used for marina security and general marina business. The harbormaster office provides a necessary and convenient service to regional boaters thereby facilitating public navigation, fishing, and water-related recreation. The proposed new lease will allow for the continued operation of the marina and appurtenant facilities.

The adjacent upland is privately owned and developed as a campground. The campground is available for use by the general public.

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The maintenance dredging is consistent with the common law Public Trust Doctrine because it is intended to facilitate water-dependent commerce and navigation. The dredging will maintain a navigable depth for recreational boating at the base of the launch ramp.

The bank protection is consistent with the common law Public Trust Doctrine because it serves as an aid to navigation by providing reinforced structural support to the banks of the waterway and limiting potentially harmful erosion of the bank into the waterway. The bank protection also confers benefits to the upland owner by ensuring sufficient sublateral support to the adjoining properties.

The proposed lease includes certain provisions protecting the public use of the proposed lease area, including a limited lease term of 35 years, and a non-exclusive use provision. The marina and appurtenant facilities have existed for many years at this location; they do not significantly alter the land, they do not permanently alienate the State's fee simple interest in the underlying land, and they do not permanently impair public rights. Upon termination of the lease, the lessee may be required to remove any improvements and restore the lease premises to their original condition. The proposed lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred as a result of the lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved.

Sea Level Rise Analysis

Climate change-related impacts such as sea-level rise and more frequent flood events may affect the lease area over the 35-year term of the lease. This region of the Sacramento River has been identified as tidally influenced and is therefore likely to experience an increase in permanent inundation due to projected sea-level rise over the next century. The lease area is near the northern end of the tidally-influenced range of the San Francisco Bay waters, where sea-level rise is projected to be up to one foot by 2030, two feet by 2050, and over five feet by 2100 (NRC 2012). Flooding events may occur in this location as a result of the more intense and frequent storms that are expected. In addition to storms, the amount and timing of snowmelt runoff will likely change such that runoff pulses are earlier in the season and stronger precipitation events will occur over a shorter period of time. This is because warming temperatures will result in more water falling as rain rather than snow, earlier spring snowmelt, and

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less snowpack overall. Flooding and storm flow will likely increase scour and erosion of the riverbed and banks, as well as carry large pulses of sediment and debris, which can pose risks to the lease area's structures and undermine their integrity.

Many features of the marina facility and the adjacent upland facilities are adaptable to higher water levels. The 48 berths, the side-tie dock, and the docks all float while secured to fixed pilings. These structures appear to be in good condition. Dock gangways are fixed on one end to the upland bank and are designed to roll up and down with the vertical motion of the dock on the other end. The parts of the dock complex that are most vulnerable to sea-level rise and more frequent flood events are those that are fixed, and/or contain contaminated or hazardous materials, such as the pumpout station, harbor master office, and the fixed pilings. These structures may need additional fortification or repair and maintenance to ensure they do not become dislodged or degraded. If they are not, they could become hazards that pose risks to public safety and navigation.

The bank is stabilized by vegetation, reducing the amount of erosion and scour pressure it may experience during future events. While currently outside the Commission's leasing jurisdiction, the upland parking lots and campgrounds are mostly unpaved, which will reduce the amount of run-off and aid in the absorption of flood waters due to the permeability of these surfaces. The upland restroom facilities are on a moderately elevated foundation, but may need to incorporate additional features, such as inflating door seals, to safeguard against flood damage and prevent the exposure of waste materials.

Terms within the lease will require the lessee to conduct monitoring, including inspections by a professional engineer, maintenance, and necessary adaptation to the improvements as sea-level rise begins to affect the leased lands.

Conclusion

For all the reasons above, Commission staff believes that the marina facilities and the bank protection will not substantially interfere with Public Trust needs, at this location, at this time, and for the foreseeable term of the proposed lease. Commission staff believes the issuance of this lease is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

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OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction, and Strategy 1.3 to protect, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.

2. Termination and encumbrancing of the lease are not projects as defined by the California Environmental Quality Act (CEQA) because they are administrative actions that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

3. Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

4. 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 staff's consultation with the persons nominating such lands and through the CEQA review process, it is staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

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

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RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that issuance of the lease 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 2, section 2905, subdivision (a)(2).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

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 termination of Lease No. PRC 7766.1, a General Lease – Commercial Use, effective December 5, 2016, issued to Verona Marina, Inc., a California Corporation.
2. Authorize issuance of a General Lease – Commercial Use to Verona Marina, Inc., a California Corporation, beginning December 6, 2016, for a term of 35 years, for the continued use, maintenance, and operation of an existing commercial marina known as Verona Marina, consisting of an existing U-shaped uncovered floating boat dock, concrete boat launch ramp, signage, two gangways, 25 uncovered berths, 23 covered berths, 454 lineal feet of side-tie dock, sewage pumpout facilities, electrical and water hookups, debris deflector, gabion wall, and maintenance dredging of less than 15 cubic yards annually, previously authorized by the Commission; and an uncovered floating boat dock, two jet ski lifts, one boat lift, boat diverter, harbormaster office, and bank protection, not previously authorized by the Commission, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration for the marina facilities: annual rent in the amount of

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\$8,764, with an annual Consumer Price Index adjustment, as provided in the lease, and the State reserving the right to fix a different rent on each 10th anniversary of the lease term, as provided in the lease; consideration for the bank protection: the public use and benefit with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests; liability insurance in an amount no less than \$2,000,000 per occurrence; and a surety bond in the amount of \$20,000.

3. Authorize the Executive Officer or her designee to execute the document entitled "Agreement and Consent to Encumbrancing of Lease," allowing Lessee's right, title, and interest in Lease No. PRC 7766.1 to be pledged as partial security for a loan in the principal amount not to exceed \$834,000 in favor of T Bank, N.A, in substantially the same form as that on file in the Sacramento office of the Commission, effective December 6, 2016, or the close of loan, but no later than June 30, 2017; authorize the Executive Officer or her designee to execute, acknowledge, accept, and record all related documents as may be reasonably necessary to complete the transaction.

EXHIBIT A

PRC 7766.1

LAND DESCRIPTION

A parcel of tide and submerged land situate in the bed of the Sacramento River, lying adjacent to Section 23, Township 11 North, Range 3 East, Mount Diablo Meridian, also lying adjacent to those parcels as described in Grant Deed to Verona Marina Inc., Recorded as Document No. 2006-0020757, Official Records of Sutter County, State of California, and more particularly described as follows:

COMMENCING at the northwest corner of said Section 23; thence southerly along the west line of said section to a point on the left (northeasterly) bank of said Sacramento River, said point also being the POINT OF BEGINNING; thence along the southerly prolongation of said west line South 03°05' West 185 feet; thence leaving said west line South 58°26'04" East 668.24 feet; thence North 03°05" East 185 feet to a point on said bank; thence northwesterly along said bank to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the Sacramento River.

END OF DESCRIPTION

Prepared 10/6/2009 by the California State Lands Commission Boundary Unit.



