

CALENDAR ITEM

C18

A 9

01/29/09

WP 4049.1

S 6

V. Caldwell

**ISSUANCE OF A GENERAL LEASE – COMMERCIAL USE,
APPROVAL OF SUBLEASE, AGREEMENT AND CONSENT
TO ENCUMBRANCING OF LEASE AND COLLATERAL ASSIGNMENT OF
LESSEE’S INTEREST IN LEASE**

APPLICANT/SUBLESSOR:

Stockon Marina Properties LLC
425 15th Street, Mare Island
Vallejo, California 94592

SUBLEESSEE:

CS Marine Constructors, Inc.
425 15th Street, Mare Island
Vallejo, California 94592

SECURED-PARTY LENDERS:

California Oaks State Bank
1255 Treat Blvd. Suite 300
Walnut Creek, California 94596

U.S. Small Business Administration (SBA)
Bay Area Employment Development Company
1801 Oakland Blvd. Suite 100
Walnut Creek, California 94596

AREA, LAND TYPE, AND LOCATION:

8.57 acres, more or less, of sovereign lands in Seven Mile Slough, adjacent to
1550 Twitchell Island Road, near the town of Isleton, Sacramento County.

AUTHORIZED USE:

Operation, use and maintenance of an existing commercial marina, known as
Owl Harbor Marina, consisting of ten docks with a total of eight covered boat
berths, 135 uncovered boat berths, 20 end ties, 73 side ties; connecting
walkways; 14 gangways; three restrooms; electrical and water hookups; 78

CALENDAR ITEM NO. **C18** (CONT'D)

individual utility meters, and allow no more than ten navigable vessels to be used as residences for security purposes only.

LEASE TERM:

21 years, beginning the later of January 29, 2009, or close of escrow, but no later than May 30, 2009.

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; with a minimum annual rent of \$12,000; 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 \$3,000,000

Bond:

\$50,000

Other:

The 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. Applicant has the right to use the upland adjacent to the Lease Premises.
2. On December 17, 1981, the Commission issued a 30-year, General Lease – Commercial Use, with a beginning date of November 9, 1978, to Roy F. Gustavson, for operation of Owl Harbor Marina. On December 13, 1988, the Commission authorized an assignment to Albert R. Marcotte and Annette Marcotte and an Agreement and Consent to Encumbrancing of the Lease with Owen's Financial Group, Inc., in the amount of \$600,000. Staff has confirmed that the loan obligation to Owen's Financial Group, Inc., was repaid in full in 1993. The lease expired on November 8, 2008. The lease is currently in holdover and the rent is paid to date.
3. The Applicant, Stockon Marina Properties LLC (Stockon), is a newly formed and wholly owned subsidiary of CS Marine Constructors, Inc. (CS Marine), a California corporation specializing in dock repair and marine

CALENDAR ITEM NO. **C18** (CONT'D)

construction for refinery and shipping terminals. Stockon was formed for the purpose of purchasing Owl Harbor Marina; however, Stockon has delegated the operation of the Marina through a lease to CS Marine and has applied for approval of a sublease for the day to day operation of the Marina. Staff has reviewed the operating agreement between Stockon and CS Marine and recommends approval of a sublease.

4. Stockon is requesting that the Commission approve an Agreement and Consent to Encumbrancing of Lease in favor of California Oaks State Bank, a secured-party lender, in the amount of \$900,000 and the U.S. Small Business Administration (SBA), a secured-party lender, in the amount of \$646,000. The purpose of the loan is to purchase the upland property, make repairs, and rebuild the infrastructure of the Marina.

In approving Encumbrancing Agreements, the Commission retains the right to approve any transfer from the lending institution to a prospective lessee, should any foreclosure of the loans occur.

In conjunction with the Encumbrancing Agreement, the Lenders require the Applicant/Borrower to execute a "Collateral Assignment of Lessee's Interest in Lease" which provides for the assignment of the lease to the Lenders in the event of a default by the Applicant/Borrower. This Assignment calls for the Commission's consent and signature as the Lessor of the Lease Premises.

Staff has reviewed the appraisal recently performed as part of the purchase loan process for both lending institutions. The total of the loans is significantly below the property's appraised value.

5. Owl Harbor is a large marina with approximately 8,149 lineal feet of dock area covering a total of 30,005 square feet and has the capacity for mooring approximately 236 boats. Because the docks and boats are vulnerable to vandalism, theft, property destruction, accidents, fire and other on-the-water problems that may require immediate action, Stockon is requesting a limited and controlled presence of navigable vessels used as residences for security purposes.

Based on the above, staff is recommending that no more than ten vessels to be used as liveaboards for security purposes, and only in strategically designated slips subject to the approval of Commission staff. These security vessels will be required to leave the Marina waters at least once for a minimum of six hours in each 90-day period and submit an annual

CALENDAR ITEM NO. **C18** (CONT'D)

log to the staff of the Commission. Additionally, a portable vessel holding tank pump out system is used at the Marina and moves from dock to dock.

6. **Issuance 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 the 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.

7. **Encumbrance of Lease, Collateral Assignment of Lessee's Interest in Lease and Approval of a Sublease:** 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 the CEQA because it is not a "project" as defined by the 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.

8. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 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 Map
- B. Land Description

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

ISSUANCE OF LEASE: FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 1, EXISTING

CALENDAR ITEM NO. **C18** (CONT'D)

FACILITIES; TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTION 2905 (a)(2).

ENCUMBRANCE OF LEASE, COLLATERAL ASSIGNMENT OF LESSEE'S INTEREST IN LEASE AND APPROVAL OF A SUBLEASE:

FIND THAT THE ACTIVITY IS NOT SUBJECT TO THE REQUIREMENTS OF THE 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 SECTIONS 6370, ET SEQ.

AUTHORIZATION:

1. AUTHORIZE ISSUANCE OF A GENERAL LEASE – COMMERCIAL USE TO STOCKON MARINA PROPERTIES LLC BEGINNING JANUARY 29, 2009, OR THE CLOSE OF ESCROW, BUT, NO LATER THAN MAY 30, 2009, FOR A TERM OF 21 YEARS, FOR THE OPERATON, USE, AND MAINTENANCE OF AN EXISTING COMMERCIAL MARINA AS SHOWN ON EXHIBIT A ATTACHED (FOR REFERANCE PURPOSES ONLY) AND AS DESCRIBED ON EXHIBIT B AND BY THIS REFERENCE MADE A PART HEREOF; ANNUAL RENT OF FIVE PERCENT OF THE GROSS INCOME DERIVED FROM THE BERTHING, DOCKING AND MOORING OF BOATS; AND TEN PERCENT FROM ALL OTHER GROSS INCOME; WITH A MINIMUM ANNUAL RENT IN THE AMOUNT OF \$12,000; WITH THE STATE RESERVING THE RIGHT TO FIX A DIFFERENT RENT PERIODICALLY DURING THE LEASE TERM, AS PROVIDED IN THE LEASE; LIABILITY INSURANCE IN THE AMOUNT OF NO LESS THAN \$3,000,000; A SURETY BOND IN THE AMOUNT OF \$50,000; AND APPROVAL OF A SUBLEASE TO CS MARINE CONSTRUCTORS, INC.
2. AUTHORIZE EXECUTION OF THE DOCUMENT ENTITLED "AGREEMENT AND CONSENT TO ENCUMBRANCING OF LEASE" AND COLLATERAL ASSIGNMENT OF LESSEE'S INTEREST IN LEASE BETWEEN THE COMMISSION, STOCKON

CALENDAR ITEM NO. **C18** (CONT'D)

MARINA PROPERTIES, LLC, CALIFORNIA OAKS STATE BANK,
AND THE U.S. SMALL BUSINESS ADMINISTRATION,
EFFECTIVE ON JANUARY 29, 2009.