

**CALENDAR ITEM
C11**

A 9
S 6

12/05/12
PRC 6855.1
V. Caldwell
J. Frey

**CONSIDER RATIFICATION OF ASSUMPTION OF LEASE NO. PRC 6855.1
PURSUANT TO FORECLOSURE, TERMINATION AND ISSUANCE OF A
GENERAL LEASE – COMMERCIAL USE**

LESSEE/APPLICANT:

Brannan Island LLC

AREA, LAND TYPE, AND LOCATION:

5.81 acres of sovereign land in Seven Mile Slough near the town of Isleton,
Sacramento County.

AUTHORIZED USES

The continued use and maintenance of a commercial marina accommodating approximately 170 boats, including 148 berths and three accommodation docks, pilings, walkways, office, clubhouse, sewage pumpout, bridge, and a boat repair facility.

LEASE TERM:

20 years, beginning upon the earlier of the conclusion of the bankruptcy proceedings of David A. Snodderly filed on November 13, 2012 or the consent of the Bankruptcy Court, but in any event no later than June 30, 2013.

CONSIDERATION

\$13,334 per year, with the rent adjusted annually using the Consumer Price Index (CPI) established by the California Department of Industrial Relations' "California Consumer Price Index (1955-2012) All Items 1982-1984 = 100"; and the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS

Insurance:
\$2,000,000 combined single limit.

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Bond:

\$25,000.

Other:

1. 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 Berth Holders/Boaters" including additional Best Management Practices (BMPs) the Commission subsequently deems appropriate for either of the above categories. The Lessee shall provide the Commission, on the first anniversary of the lease and on every third anniversary thereafter, a report on compliance with all BMPs.
2. This lease also contains a provision for the attrition of eight liveaboards from the Lease Premises within five years of the effective date of the lease.
3. The Lease calls for the installation and maintenance of a sewage pumpout on the southwesterly side of the Marina.

BACKGROUND INFORMATION:

On June 26, 1985, the Commission approved a 35-year General Lease – Commercial Use to Bruno's Island Yacht Harbor, Inc., (Lessee) for the operation of a commercial marina which was developed with 148 berths and three accommodation docks, walkways, pilings, and appurtenant facilities including a boat repair facility and a bridge approach to Owl Island. The Lease was issued in conjunction with a negotiated settlement for trespass and disputes with the Lessee over a number of issues including the amount of the acreage to be included within the Lease, trespass damages characterized as back rent, the amount of annual rent, and valuation.

On August 17, 2004, the Commission approved an Amendment to the Lease and entered into the following negotiated settlement with the Lessee concerning a myriad of issues with the Lessee and defaults, including, but not limited to, the actual lease acreage occupied by the existing facilities, the land values used in computing the annual rent, and back rent:

- a) The lease acreage increased from 3.493 acres to 5.81 acres in recognition of the actual area occupied by the existing facilities.

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- b) The annual rent increased from \$8,490 to \$13,334 to be paid semi-annually in a five year step-up program beginning in the 2004-2005 lease year and running through the 2008-2009 lease year and thereafter.
- c) Lessee agreed to pay \$25,000 as full payment of back rent over a five year period in annual payments of \$5,000 each.
- d) The surety bond or other form of security increased from \$5,000 to \$20,000 and was to be paid in \$3,000 increments annually until it reached a maximum of \$20,000 on September 1, 2008.

At the same meeting, the Commission approved the execution of an Agreement and Consent to Encumbrancing of Lease whereby the Lessee was allowed to offer the Lease as security for a commercial loan from Owens Financial Group, Inc. (Owens Financial). Under the terms of this agreement, the lender is permitted to cure defaults of the Lease by the Lessee and to foreclose on the Lease and assign it to a new Commission-approved Lessee.

Previously Cured Defaults: Between execution of the 2004 lease amendment and June 2007, the Lessee defaulted on provisions in the amendment. On June 20, 2007, Commission staff mailed a Notice of Default to the Lessee, with a copy to Owens Financial, for failure to pay rent, make installment payments for a surety bond or other form of security in the amount required, and provide a certificate of liability insurance. Subsequently, on August 31, 2007, Owens Financial cured the financial defaults of Lease by submitting a check for \$28,265.73 in rent and another \$9,000 for the bond. On September 11, 2007, a Certificate of Liability Insurance in the amount of \$1,000,000 was received and all defaults of the Lease were cured. Subsequent to this, however, Bruno's again defaulted on its obligation to pay rent in a timely manner and Owens Financial again cured the defaults on June 8, 2008 in the amount of \$7,115.42.

By mid-2011 Bruno's had again failed to make timely rent payments, maintain its insurance, make a final installment payment on its bond, and maintain its certificate of good standing with the California Secretary of State – all defaults of various Lease covenants. In June 2011, Commission staff learned that the bridge connecting Owl Island to Andrus Island had suffered significant damage. Bruno's made temporary repairs to the bridge which the Commission believed to be inadequate and considered the condition of the bridge to be a default of Bruno's covenant to maintain the bridge in good order and safe condition. Commission staff informed Bruno's of the defaults and required that Bruno's cure them within 60 days, which Bruno's failed to do.

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On September 1, 2011, the Commission ratified the staff's findings of default and terminated the Lease, subject to the right of Owens to make the cures within 60 days and/or take the Lease at foreclosure, i.e. by November 15, 2011. The Commission also granted its Executive Officer the authority to extend the cure period for an additional 60 days, i.e. by January 15, 2012. Bruno's cured all of the defaults except that pertaining to the bridge repair by November 1, 2011, and the Executive Officer extended the cure period. During the 60-day extension, negotiations were held between the Commission and Bruno's regarding an inspection and repair of the bridge. Finally, in late December 2011 and early January 2012, the inspection was completed and two engineering evaluations were reported to the Commission.

On January 26, 2012, the Commission offered to reinstate the Lease if Bruno's would execute an amendment to the Lease governing the repair process and authorized the Executive Officer to extend the repair period to July 31, 2012. Further negotiations were held and no agreement was reached and no repairs were made as of July 31, 2012.

In April 2012, Owens Financial was informed that it must step in and make the repairs or take the Lease at foreclosure. Owens Financial was prepared to do so when Bruno's filed a petition with the United States Bankruptcy Court on April 15, 2012, thereby halting the foreclosure process. The Bankruptcy petition was dismissed on June 25, 2012, when the Bankruptcy Court found that the Debtor's estate had no funds to make the repairs to the bridge and that it had not provided the Court with a copy of its insurance policy.

Bruno's again filed a petition in Bankruptcy on September 11, 2012. On motion of the United States Trustee, Owens Financial, and the Commission, the Bankruptcy Court dismissed the petition on October 15, 2012, because the Debtor had no assets to make the bridge repairs.

On October 16, 2012, Owens Financial published in A Notice of Unified Trustee's Sale to be held on November 14, 2012. On October 31, 2012, and subsequent to the publication of the Notice of Sale, Owens Financial created a new entity called Brannan Island LLC and transferred all of its interest in the mortgage to it. The sale was held as noticed and there were no bidders.

On November 13, 2012, David Snodderly, owner of Bruno's, filed a Chapter 7 Bankruptcy Petition. This filing suspended the foreclosure sale. Brannan Island LLC has informed the Commission that it hopes to complete the sale within the

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scope of the bankruptcy proceedings and hopes to acquire the island and the lease within the next 30 to 60 days.

ISSUANCE OF NEW LEASE:

Brannan Island LLC requested termination of the existing Lease and the issuance of a new lease commencing on December 5, 2012. Additionally, Brannan Island LLC agrees to the repair of the bridge no later than March 31, 2013; and that the bridge will be repaired by a California licensed contractor after review of the bridge repair plans by the Commission's staff. Commission staff agrees that these terms are appropriate. There will be no Agreement and Consent to Encumbrancing of Lease as a part of this new Lease. Commission staff and Brannan Island LLC propose that the lease become effective upon the earlier of the conclusion of the bankruptcy proceedings or the consent of the Bankruptcy Court but in any event no later than June 30, 2013.

OTHER PERTINENT INFORMATION:

1. Applicant Brannan Island LLC will own the upland adjoining the Lease Premises, effective upon the earlier of the conclusion of the bankruptcy proceedings or the consent of the Bankruptcy Court.
2. Bruno's Island Yacht Harbor is a large commercial marina covering nearly six acres. The marina is vulnerable to theft and property destruction and has experienced vandalism, accidents, fires, and other on-the-water problems, requiring immediate action for the overall safety and security of the facility and the public. These factors support a limited and controlled need for the presence of one or more navigable vessels to be occupied on a 24-hour basis for security purposes. Presently 13 such vessels are authorized. Taking into account the size and design of the marina, staff is recommending that no more than five navigable vessels be used for security purposes and that the eight remaining vessels be attritioned over 4 years at the rate of two per year. The security vessels will be located in strategically designated slips subject to the approval of Commission staff. The security vessels will be required to leave the marina waters at least once every 90 days for a minimum of six hours and the Applicants are required to submit an annual log to Commission staff demonstrating compliance.
3. **Ratification of Assumption of Lease Pursuant to Foreclosure:** The staff recommends that the Commission find that the subject ratification of assumption of lease does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the

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environment, and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

4. **Lease Termination:** The staff recommends that the Commission find that the subject lease termination does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

5. **Issuance of Lease:** The staff recommends that the Commission find that this activity 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.
6. 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.

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Ratification of Assumption of Lease Pursuant to Foreclosure: Find that the subject ratification of assumption of lease pursuant to foreclosure is not subject to the requirements of CEQA pursuant to California Code of

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Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

Lease Termination: Find that the subject lease termination is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

Issuance of Lease: 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 2, section 2905, subdivision (a)(2).

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. Ratify the assumption of Lease No. PRC 6855.1 by Brannan Island LLC effective upon the earlier of the conclusion of the bankruptcy proceedings or the consent of the Bankruptcy Court, but in any event no later than June 30, 2013.
2. Authorize termination of Lease No. PRC 6855.1, a General Lease - Commercial Use, issued to Bruno's Island Yacht Harbor, Inc. on May 1, 1985. Authorize termination of the Agreement and Consent to Encumbrancing of Lease in favor of Owens Financial approved on August 17, 2004. These terminations shall become effective upon the earlier of the conclusion of the bankruptcy proceedings or the consent of the Bankruptcy Court but in any event no later than June 30, 2013.
3. Authorize issuance of a new General Lease – Commercial Use to Brannan Island LLC for a term of 20 years, for the continued use, maintenance, and operation of an existing commercial marina accommodating approximately 170 boats, including 148 berths and three accommodation docks, appurtenant facilities including a bridge and boat repair facility as described in Exhibit A and shown

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on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; annual rent in the amount of \$13,334, adjusted annually using the Consumer Price Index, as provided in the lease; liability insurance with coverage of no less than \$2,000,000; and a surety in the amount of \$25,000. The lease term shall commence upon the earlier of the conclusion of the bankruptcy proceedings or the consent of the Bankruptcy Court but in any event no later than June 30, 2013.

**LAND DESCRIPTION
OF OWL ISLAND SURVEY 1990**

Four parcels of tide and submerged land in the state-owned bed of Seven Mile Slough, Sacramento County, California, adjoining Owl Island in projected fractional Sections 10 and 11, T 3 N, R 3 E. MDM, said parcels being described as follows:

Parcel 1

Beginning at a point that bears S 03° 22' 44" E, 631.19 feet from a concrete monument with a California State Lands Commission brass cap stamped "BRUNO 1969" having coordinates of X = 2,111,067.87 and Y = 163,381.98, said monument is shown on that map entitled "Record of Survey of Owl Island", October 6, 1969, filed in Book 27 of Surveys at page 9, Official Records of Sacramento County. Said Point of Beginning is designated MHW 1 on said map, being on the line described in Boundary Line Agreement 114 (BLA 114), recorded October 14, 1969, in Book 69-10-14 at Page 132, Official Records of Sacramento County; thence along said BLA 114 the following seven (7) courses:

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|----|-----------------|---|
| 1. | N 13° 44' 40" E | 92.34 feet to MHW 51 |
| 2. | N 01° 44' 14" E | 85.76 feet to MHW 50 |
| 3. | N 19° 28' 14" W | 81.18 feet to MHW 49 |
| 4. | N 35° 35' 24" W | 217.58 feet to MHW 46 |
| 5. | N 51° 38' 18" W | 200.44 feet to MHW 44 |
| 6. | N 60° 17' 58" W | 180.86 feet to MHW 42 |
| 7. | N 58° 32' 19" W | 853.62 feet to a point on the BLA line;
thence leaving said BLA 114 line and running into Seven Mile Slough the
following 35 courses: |

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|-----|-----------------|--------------|
| 8. | N 30° 00' 06" E | 93.52 feet; |
| 9. | S 55° 24' 52" E | 143.24 feet; |
| 10. | S 24° 23' 54" E | 19.06 feet; |
| 11. | S 55° 45' 53" E | 325.35 feet; |
| 12. | S 22° 23' 15" E | 31.02 feet; |
| 13. | S 59° 22' 55" E | 81.77 feet; |
| 14. | S 51° 47' 40" E | 24.21 feet; |
| 15. | S 60° 02' 56" E | 359.18 feet; |
| 16. | S 56° 00' 48" E | 24.60 feet; |
| 17. | S 55° 29' 20" E | 195.49 feet; |
| 18. | S 48° 07' 30" E | 18.06 feet; |
| 19. | S 39° 08' 45" E | 142.46 feet; |
| 20. | S 48° 17' 16" E | 25.00 feet; |

21.	S 53° 00' 07" E	22.26 feet;
22.	S 30° 21' 12" E	107.44 feet;
23.	S 17° 36' 19" E	27.60 feet;
24.	S 05° 40' 36" E	115.49 feet;
25.	S 10° 38' 57" W	24.53 feet;
26.	S 04° 21' 04" W	94.71 feet;
27.	N 85° 35' 40" W	17.22 feet;
28.	S 14° 42' 26" E	129.54 feet;
29.	S 76° 11' 36" w	93.20 feet;
30.	N 14° 42' 16" W	111.32 feet;
31.	N 45° 57' 46" W	26.38 feet;
32.	N 53° 43' 11" W	281.35 feet;
33.	N 45° 56' 23" W	105.25 feet;
34.	N 41° 33' 19" W	245.58 feet;
35.	N 40° 09' 26" W	162.76 feet;
36.	N 49° 50' 43" W	131.59 feet;
37.	N 54° 20' 01" W	209.77 feet;
38.	N 54° 53' 01" W	222.98 feet;
39.	S 52° 30' 39" W	60.52 feet;
40.	N 53° 13' 16" W	163.96 feet;
41.	N 48° 26' 23" W	10.94 feet;
42.	N 30° 37' 48" E	88.21 feet to a point on the BLA 114 line; thence along said BLA 114 line the following 4 courses:
43.	S 58° 32' 19" E	682.45 feet to MHW 10;
44.	S 39° 52' 58" E	495.71 feet to MHW 5;
45.	S 46° 51' 16" E	225.28 feet to MHW 3;
46.	S 55° 01' 25" E	192.67 feet (S 54° 57' 39" E, 192.50 feet per B.L.A. 114) to MHW 1, the Point of Beginning

Parcel 1 containing 4.939 acres, more or less.

Parcel 2

Beginning at a point bearing N 58° 32' 19" W, 853.62 feet from that point designated as MHW 42 on a map entitled "Record of Survey of Owl Island", filed October 6, 1969, in Book 27 of Surveys at Page 9, Official Records of Sacramento County; thence along said bearing N 58° 32' 19" W, 30.00 feet; thence N 30° 00' 06" E, 180.00 feet; thence S 58° 32' 19" E, 30.00 feet; thence S 30° 00' 06" W, 180.00 feet, to the Point of Beginning.

Parcel 2 containing 0.124 acres, more or less.

Parcel 3

Beginning at a point bearing N 58° 32' 19" W, 682.45 feet from that point designated as MHW 10 on a map entitled "Record of Survey of Owl Island", filed October 6, 1969, in Book 27 of Surveys at Page 9, Official Records of Sacramento County; thence leaving said BLA 114 line and running into Seven Mile Slough the following 12 courses:

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|-----|-----------------|--|
| 1. | S 30° 37' 48" W | 88.21 feet; |
| 2. | N 48° 26' 22" W | 34.00 feet; |
| 3. | N 58° 52' 55" W | 43.14 feet; |
| 4. | N 48° 45' 31" W | 20.88 feet; |
| 5. | N 58° 07' 26" W | 88.04 feet; |
| 6. | N 17° 50' 08" E | 18.20 feet; |
| 7. | N 03° 52' 02" E | 34.94 feet; |
| 8. | N 59° 47' 10" W | 55.92 feet; |
| 9. | N 80° 26' 48" W | 83.32 feet; |
| 10. | N 00° 59' 02" E | 38.51 feet; to a point on the BLA 114 line;
thence along said BLA 114 line the following two courses: |
| 11. | S 73° 46' 41" E | 109.47 feet; |
| 12. | S 58° 32' 19" E | 251.54 feet to the Point of Beginning. |

Parcel 3 containing 0.473 acres, more or less.

Parcel 4

Beginning at a point bearing N 58° 32' 19" W, 883.62 feet from that point designated as MHW 42 on a map entitled "Record of Survey of Owl Island, filed October 6, 1969 in Book 217 of Surveys at page 9, Official Records of Sacramento County; thence leaving said BLA 114 line and running into Seven Mile Slough the following 7 courses:

- | | | |
|----|---|--|
| 1. | N 30° 00' 06" E | 50.00 feet; |
| 2. | N 58° 32' 20" W | 253.13 feet; |
| 3. | S 30° 12' 50" W | 50.21 feet; |
| | to a point on the BLA 114 line; thence along said BLA 114 line the following 2 courses: | |
| 4. | S 58° 32' 20" E | 229.13 feet to MHW 34 |
| 5. | S 59° 02' 18" E | 24.18 feet (S 58° 32' 19" E, 24.19 feet per B.L.A. 114) to the Point of Beginning. |

Parcel 4 containing 0.292 acres, more or less.

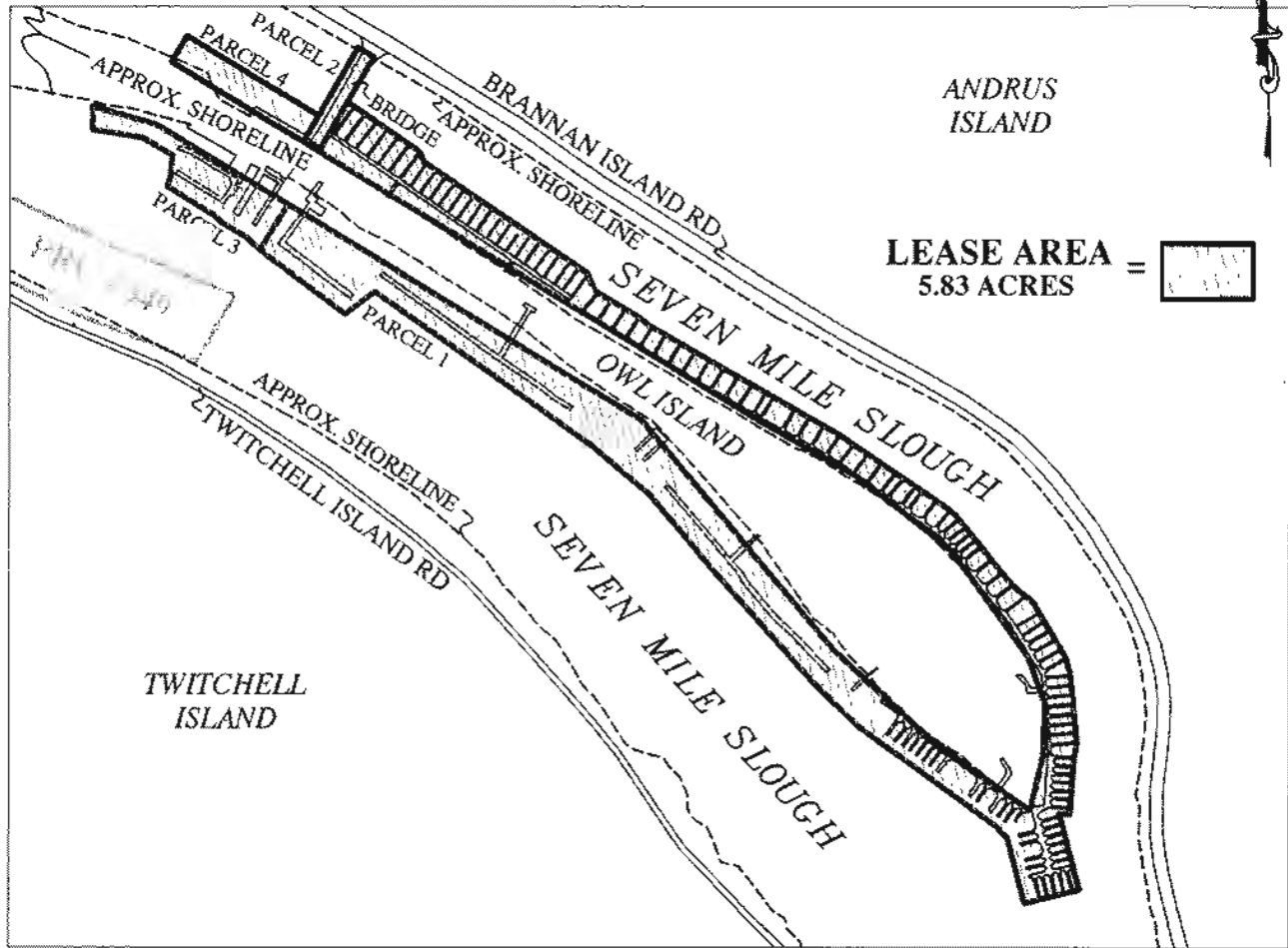
Total of all the parcels = 5.83 acres.

END OF DESCRIPTION



NO SCALE

SITE



Bruno's Island Yacht Harbor
 12000 W. Brannan Island Road, Isleton

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 6855.1
 APN 156-0080-047,061
 BRANNAN ISLAND LLC
 GENERAL LEASE
 COMMERCIAL USE
 SACRAMENTO COUNTY



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.