

**STAFF REPORT  
C36**

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04/05/19  
PRC 6200.1  
M. Schroeder

**CONSIDER FINDING OF DEFAULT; AUTHORIZATION TO TERMINATE A  
GENERAL LEASE – COMMERCIAL USE AND ACCEPTANCE OF A LEASE  
QUITCLAIM DEED; AND AUTHORIZATION TO TAKE ALL STEPS NECESSARY,  
INCLUDING LITIGATION, TO REMOVE IMPROVEMENTS AND RESTORE THE  
LEASE PREMISES**

**LESSEE:**

Sandra L. Oman, Trustee of the Paup Marital Trust

**AREA, LAND TYPE, AND LOCATION:**

A 0.43-acre parcel, more or less, of sovereign land in the Sacramento River, adjacent to 14031 River Road (Highway 160), Walnut Grove, Sacramento County.

**AUTHORIZED USE:**

Continued use and maintenance of an existing commercial marina, known as Landing 63, consisting of two covered berths, 11 uncovered berths, gangway, ramp, and bulkhead.

**LEASE TERM:**

20 years, beginning April 6, 2010.

**CONSIDERATION:**

\$1,200 per year, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

**BACKGROUND:**

The lease premises have been used as a marina with appurtenant facilities, including boat rentals and sales. On June 28, 2010, the Commission authorized Lease No. PRC 6200.1 to the Lessee ([Item C23, June 28, 2010](#)) for an existing commercial marina, known as Landing 63, consisting of two covered berths, 11 uncovered berths, gangway, ramp, and bulkhead. The lease will expire on April 5, 2030. Since issuance of the lease, Marion R. Paup died, and Sandra L. Oman became the sole Trustee of the Paup Marital Trust.

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In 2017, staff received a public complaint about the condition of the facilities. After investigating, staff sent a letter to the Lessee dated March 5, 2018, identifying numerous material breaches of lease terms. Since that time, staff has expended significant resources to work cooperatively with the Lessee to develop solutions. Staff sent additional letters dated March 26, 2018, April 11, 2018, and January 4, 2019, and spoke with Ms. Oman by telephone several times, notifying the Lessee of the material breaches. Over this period and despite staff's repeated efforts, staff has seen essentially no effort or received any evidence of progress from the Lessee to address staff's concerns. This proposed action is a result of that lack of progress.

### **STAFF ANALYSIS AND RECOMMENDATION:**

#### **Authority:**

California Public Resources Code sections 6005, 6106, 6216, 6220, 6301, 6302, 6302.1, 6302.3, and 6501.1.

#### **Public Trust and State's Best Interests Analysis:**

The facilities within the lease premises were leased for traditional Public Trust-consistent uses in 1982 ([Item C11, August 26, 1982](#)). The marina and appurtenant facilities were all originally used to support maritime uses. However, these facilities have fallen so deeply into disrepair that there is no longer any economic value in repairing them.

The following constitute an immediate breach of the lease without requirement of notice:

- **Insurance:** Failure to obtain or maintain liability insurance in the amount of \$1,000,000 per occurrence. The liability insurance expired in October 2012, and since that time an updated certificate of insurance has not been provided. Failure to maintain insurance coverage is an immediate default of the lease.
- **Continuous Use:** Failure to maintain continual operation of the marina and appurtenant facilities. Staff received notification in January 2018 the facilities were no longer operating as a commercial marina and over the past several years have not operated as a commercial marina.
- **Permits/Entitlements:** Failure to maintain all necessary governmental permits or other entitlements. Sacramento County Code Enforcement staff notified Commission staff of the Lessee's lack of permits for repair work to the facilities.

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In addition, the Lessee has failed to perform the following Lease obligations for a period of 12 months or more:

- **Residential Use of the Lease Premises:** It has been reported to staff and staff believe based on their personal observations that people have been allowed to live on vessels in the marina. It is the responsibility of the Lessee to ensure the lease premises are not used for residential purposes. Section 2, paragraph 2 allows for one on-site security detail to reside on or adjacent to the lease premises.
- **Health and Safety:** The Lessee is required to maintain the facilities in good order and repair and in a safe condition. The Lessee was notified in March 2018 of the derelict and dangerous conditions of the facilities. In December 2018, staff received a Notice of Violation from the Sacramento County Code Enforcement Officer. The Notice of Violation confirms that repair work had not commenced. Staff has also received reports of at least two sunken boats at the facilities.
- **Pollution and Harm to Environment:** The same events described immediately above and in particular, the sunken and derelict boats present a threat of pollution to the environment.
- **Best Management Practices:** The notice of violation and public complaint indicates there has not been an attempt to comply with the Best Management Practices required under the lease.

Staff has attempted to work with the Lessee to meet the terms of its lease while allowing the commercial marina to continue to operate. However, experience over the past several years has shown that the Lessee is not willing or able to fulfill the terms of the lease. The Lessee has no plan to repair, remove, or bring any of the derelict facilities into compliance with local, state, or federal requirements, and, in fact, the Lessee has expressed no interest in continuing the lease at all. The insurance requirement remains delinquent and the lease premises remain out of compliance with lease terms. The existing marina and appurtenant facilities pose a nuisance and hazard to the public and the environment.

Based on the Lessee's continued failure to cure the defaults described above, staff recommends that the Commission authorize staff to terminate the lease and eject the Lessee from the lease premises. This recommendation includes a request for authority to take all steps necessary, including litigation, to seek the removal of all improvements from the lease premises; restoration of the lease premises to their original

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condition; and recovery of other damages to which the Commission is entitled.

In administering its Public Trust responsibilities, the Commission may exercise its discretionary authority to accommodate the changing needs of the public. Additionally, it is in the State's best interests to enforce the terms of the leases, particularly those terms that are designed to protect the State and its resources and assets.

At the Commission's direction, staff is prepared to request the Lessee to voluntarily surrender its interest in the lease back to the State. Staff believes a lease quitclaim deed is desirable because once voluntarily executed, it is effective immediately and not subject to contest. It also allows the Commission and staff to immediately enter the property and commence any necessary safety procedures. Acceptance of a lease quitclaim deed does not release the Lessee from their obligations to restore the lease premises to a natural state, nor is the Lessee relieved from liability stemming from a breach of the lease at the time of the quitclaim.

In the event the Lessee is unable to perform its post-termination obligations, the Commission will likely need to abate the derelict facilities. Staff will coordinate with neighboring property owners, the community of Walnut Grove, and Sacramento County to develop a plan to secure the site and address the dilapidated structures.

Since the lease allows the Lessee 90 days to vacate the lease premises and 180 days to restore the lease premises, staff recommends that the Commission grant the Executive Officer the authority to terminate the lease immediately. This will provide staff with the earliest opportunity to enter and secure the lease in the event the Lessee is unwilling or unable to execute a lease quitclaim deed.

**Conclusion:**

For all the reasons above, staff believes the termination of this lease, by quitclaim or by direct action of Commission staff, is consistent with the Public Trust needs at this location, at this time; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

**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

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protection, preservation and responsible economic use of the lands and resources under the Commission's jurisdiction. More specifically, the proposed action aligns with Strategy 1.1.4 to identify and abate hazards and associated liability on sovereign and school lands.

2. Authorizing the termination of Lease No. PRC 6200.1 and acceptance of a lease quitclaim 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 to 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 the removal of improvements and restoration of the lease premises is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 4, Minor Alteration to Land; California Code of Regulations, title 2, section 2905, subdivision (d)(3).

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

**EXHIBIT:**

- A. Site and Location Map

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

Find that the removal of improvements and restoration of the lease premises is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 4, Minor Alteration to Land; California Code of Regulations, title 2, section 2905, subdivision (d)(3).

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that the proposed termination will not substantially interfere with the Public Trust needs and values at this location, at this time; is consistent with the common law Public Trust Doctrine; and is in the State's best interests.

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**AUTHORIZATION:**

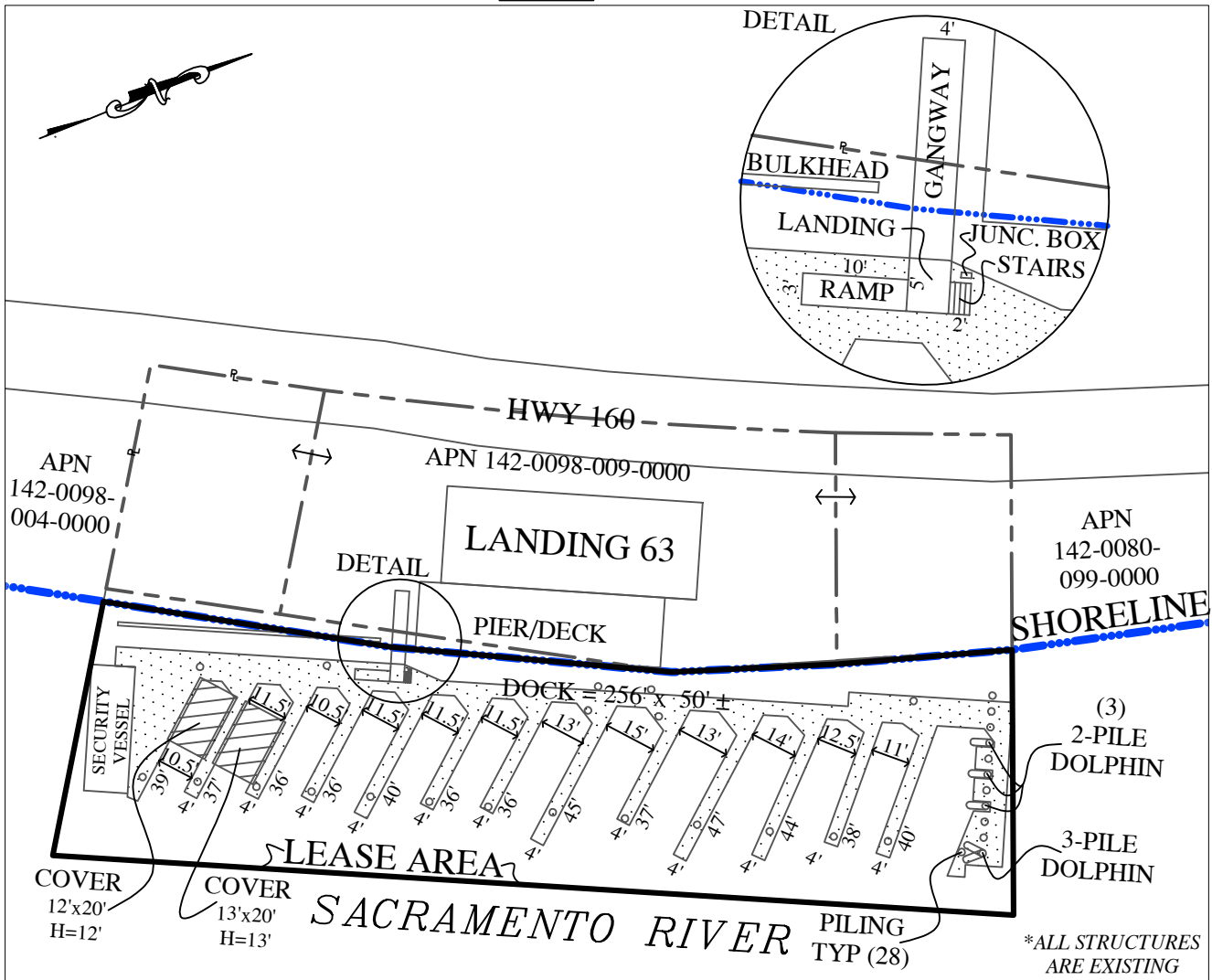
1. Find that the Lessee has failed to make sufficient good faith efforts to cure its nonperformance of lease obligations as described in this staff report and as noticed to Lessee in letters dated March 5, 2018, March 26, 2018, April 11, 2018, and January 4, 2019, and in numerous telephone conversations.
2. Find that the Lessee's failure to cure its nonperformance constitutes a default under Lease No. PRC 6200.1.
3. Delegate authority to the Executive Officer, or her designee, to terminate Lease No. PRC 6200.1, to request that the Lessee voluntarily surrender its interest by executing a lease quitclaim deed, to accept a lease quitclaim deed, and to serve notice or execute any instruments necessary to effectuate the termination of the lease.
4. Authorize the Executive Officer, or her designee, to enter upon the lease premises to secure the existing marina and appurtenant facilities in order to prevent harm to human health or the environment.
5. Authorize the Executive Officer to request that the Lessee, upon acceptance of a lease quitclaim deed or termination by the Executive Officer, commence performance of its obligations to fully restore the lease premises to their natural state.
6. Authorize the Executive Officer, or her designee, to coordinate with public and private entities to develop a plan for restoration of the lease premises to their natural state; to solicit funding and proposals for the restoration; to declare vessels that do not leave the premises as abandoned; to negotiate a fair and reasonable price for the restoration; and to award and execute contracts for restoration of the lease premises, including removal of docks and appurtenant structures and abandoned vessels.
7. Authorize the Executive Officer, or her designee, in cooperation with the Office of the Attorney General, to take all necessary and appropriate steps, including litigation, to enforce the termination of Lease No. PRC 6200.1 against the Lessee and any agents, affiliates, successors, or assigns; to access the lease premises to ensure the health and safety of the people of California and the surrounding environment; to eject trespassers that occupy the

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lease premises; to remove improvements from the lease premises; to restore the sovereign land at this location to the satisfaction of the Executive Officer, or her designee; and to recover the Commission's damages and costs.

NO SCALE

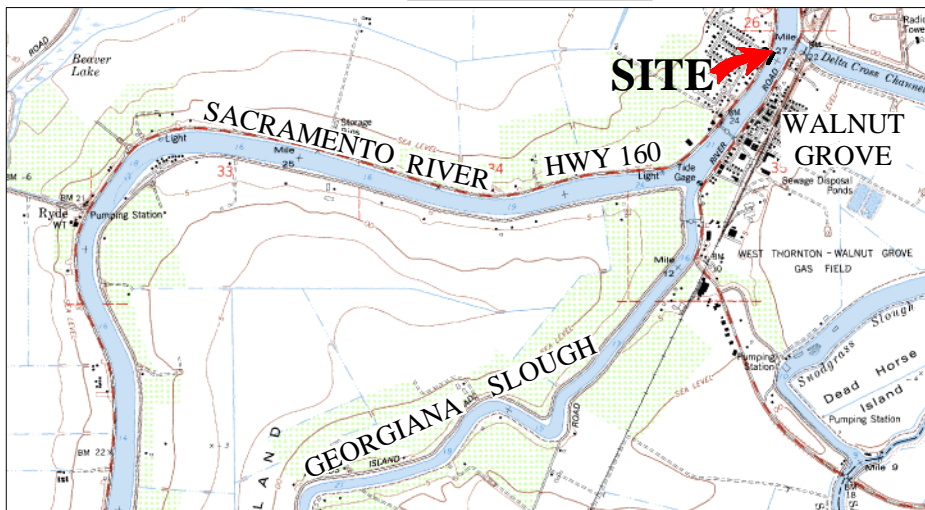
# SITE



Landing 63  
 14031 River Road (HWY 160), Walnut Grove

NO SCALE

# LOCATION



MAP SOURCE: USGS QUAD

# Exhibit A

PRC 6200.1  
 APN 142-0098-009-0000  
 PAUP MARITAL TRUST  
 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.