

STAFF REPORT

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02/28/20

PRC 6855.1

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G. Asimakopoulos

ASSIGNMENT OF LEASE

LESSEE/ASSIGNOR:

Brannan Island, LLC, a California Limited Liability Company

APPLICANT/ASSIGNEE:

5 Bros Marina, LLC, a California Limited Liability Company

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Seven Mile Slough, adjacent to 1200 W. Brannan Island Road, near Isleton, Sacramento County.

AUTHORIZED USE:

Continued operation, use, and maintenance of an existing commercial marina known as Brannan's Island Time Marina, including 148 berths and three accommodation docks, pilings, walkways, office, clubhouse, sewage pumpout, bridge, and boat repair facility.

LEASE TERM:

20 years, beginning January 29, 2013.

CONSIDERATION:

\$15,689 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$2,000,000 per occurrence.
- Surety bond or other security in an amount no less than \$25,000.
- 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/Guest Dock Users/Boaters," including additional Best Management Practices (BMPs) the Commission subsequently deems appropriate for either of the above categories.

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STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

Public Trust and State's Best Interests Analysis:

On December 5, 2012, the Commission authorized a 20-year General Lease – Commercial Use to Brannan Island, LLC, a California Limited Liability Company ([Item C11, December 15, 2012](#)). The lease will expire on January 28, 2033. On September 11, 2019, interest in the upland parcel was transferred to 5 Bros Marina, LLC, a California Limited Liability Company.

As required by provisions in the lease, from 2013 to 2018, the Lessee removed eight floating homes (known as liveaboards) from the lease premises, made necessary repairs to the existing access bridge, and installed a sewage pumpout facility. Based on the most recent inspection reports for the access bridge (2018) and the sewage pumpout facility (2019), both appear to be in good working condition. The next recommended complete inspection of the bridge is June 2020. Staff also performed a visual inspection of the lease premises and noted compliance with all provisions of the lease.

The Lessee and Applicant are now requesting an assignment of the lease. The Applicant agrees to perform and be bound by the terms, conditions, covenants, and agreements contained in the lease. Staff recommends an assignment of the lease to reflect the change in ownership of the upland parcel from the Assignor to the Assignee. The assignment will be effective as of the date of transfer, September 11, 2019.

The Applicant is registered with the office of the Secretary of State under Entity Number 201923910337, and the managers of the limited liability company are Thai Q. Tran, Thomas Tran, and Huu Tran. The Applicant has more than 25 years of experience in business operations, including real estate development and property management, and intends to operate the marina in the same manner as it is currently being operated. The Applicant has also extended offers of employment to all of the Lessee's current employees to help provide continuity and a smooth transition.

The subject marina directly promotes Public Trust needs by accommodating, promoting, and fostering the public's need for boating services, helping increase public access to the waterway, and facilitating

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the public's enjoyment of the State's adjacent waterways. Recreational boating is a water-dependent use that is generally consistent with the common law Public Trust Doctrine. The California Legislature has identified recreational boating facilities as an authorized use of Public Trust land (Pub. Resources Code, § 6503.5).

The proposed assignment of lease will not result in a change in the use of, or impacts to, Public Trust resources. Staff believes approval of this assignment will not substantially interfere with the common law Public Trust Doctrine and is in the best interests of the State.

Climate Change:

Climate change impacts, including sea-level rise, more frequent and intense storm events, and increased flooding and erosion, affect both open coastal areas and inland waterways in California. The lease facilities are located in Seven Mile Slough, in a tidally influenced site that is vulnerable to flooding at current sea levels and will be at higher risk of flood exposure given projected scenarios of sea-level rise.

The California Ocean Protection Council updated the State of California Sea-Level Rise Guidance in 2018 to provide a synthesis of the best available science on sea-level rise projections and rates. Commission staff evaluated the "high emissions," "medium-high risk aversion" scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. The San Francisco tide gauge was used for the projected sea-level rise scenario for the lease area as listed in Table 1.

Table 1. Projected Sea-Level Rise for San Francisco¹

Year	Projection (feet)
2030	0.8
2040	1.3
2050	1.9
2100	6.9

Source: Table 13, State of California Sea-Level Rise Guidance: 2018 Update

Note: ¹ Projections are with respect to a 1991 to 2009 baseline.

Rising sea levels can lead to more frequent flood inundation in low-lying areas and larger tidal events and could increase Seven Mile Slough's inundation levels within the lease area over the remaining term of the lease. In addition, as stated in *Safeguarding California Plan: 2018 Update* (California Natural Resources Agency 2018), climate change is projected

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to increase the frequency and severity of natural disasters related to flooding, fire, drought, extreme heat, and storms (especially when coupled with sea-level rise). In rivers and tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris, as well as decreased bank stability and structure. Conversely, climate change induced droughts could decrease river levels and flow for extended periods of time. Climate change and sea-level rise will further influence riverine areas by changing erosion and sedimentation rates. In rivers and tidally influenced waterways, flooding and storm flow, as well as runoff, will likely increase scour and decrease bank stability at a faster rate.

The combination of these projected conditions could increase the likelihood of damage and affect access to structures within the lease premises during the term of the lease. For example, the potential for more frequent and stronger storm events may expose the lease area structures to higher flood risks and cause facilities to be damaged or dislodged, presenting hazards to public safety as well as dangers for navigation within the channel. Conversely, prolonged drought conditions could lower water levels, exposing previously submerged structures to the elements and potentially leading to increased wear-and-tear on the pilings. Lowered water levels could also reduce navigability of the channel, thereby increasing hazards related to the lease area structures.

Most of the features of this marina are either floating or adaptable to variable water levels, allowing them to rise and fall with storms and droughts, and increasing their resiliency to some climate change impacts, but may require more frequent maintenance to ensure continued functionality, during and after storm seasons and to avoid dislodgement of dock facilities. The fixed features, such as pilings, may need reinforcement to withstand higher levels of flood exposure.

The vegetated bank (not under lease) provides additional stability and reduces the amount of erosion and scour pressure experienced during future events because of the vegetation's underground root system; but remains at risk of accelerated deterioration from currents and floods.

The lease is a 20-year General Lease – Commercial Use that began on January 29, 2013, and may be subject to the climate change effects of the projected sea-level rise scenario provided above. Regular maintenance and implementing best management practices, as required by the terms of the lease, will help reduce the likelihood of severe structural degradation and dislodgement. Further climate change impact

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analyses on the leased facilities will be assessed at the time the lease expires in 2033 and would be based on projected sea-level rise scenarios at that time.

Conclusion:

Approval of this lease assignment will not result in a change in the use of, or impacts to, Public Trust resources at this location, at this time, and for the foreseeable term of the lease. For these reasons, staff recommends finding that approval of this assignment is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application for assignment is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. Upon expiration or prior termination of the lease, the lessee has no right to a new lease or to renewal of any previous lease.
2. 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.
3. Assignment of the lease is not a project as defined by the California Environmental Quality Act because it is an administrative action 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, sections 15378, subdivision (b)(5).

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed assignment of the lease will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the

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common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

Authorize the assignment of Lease No. PRC 6855.1, a General Lease – Commercial Use, of sovereign land, as described in Exhibit A, Land Description, and shown on Exhibit B, Site and Location Map (for reference purposes only), attached and by this reference made a part hereof, from Brannan Island, LLC, a California Limited Liability Company, to 5 Bros Marina, LLC, a California Limited Liability Company; effective September 11, 2019.

**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: | |
| 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 B.L.A. 114 line; thence along said B.L.A. 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:

- | | | |
|-----|-----------------------------------------------------------|---------------------------------------------|
| 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.

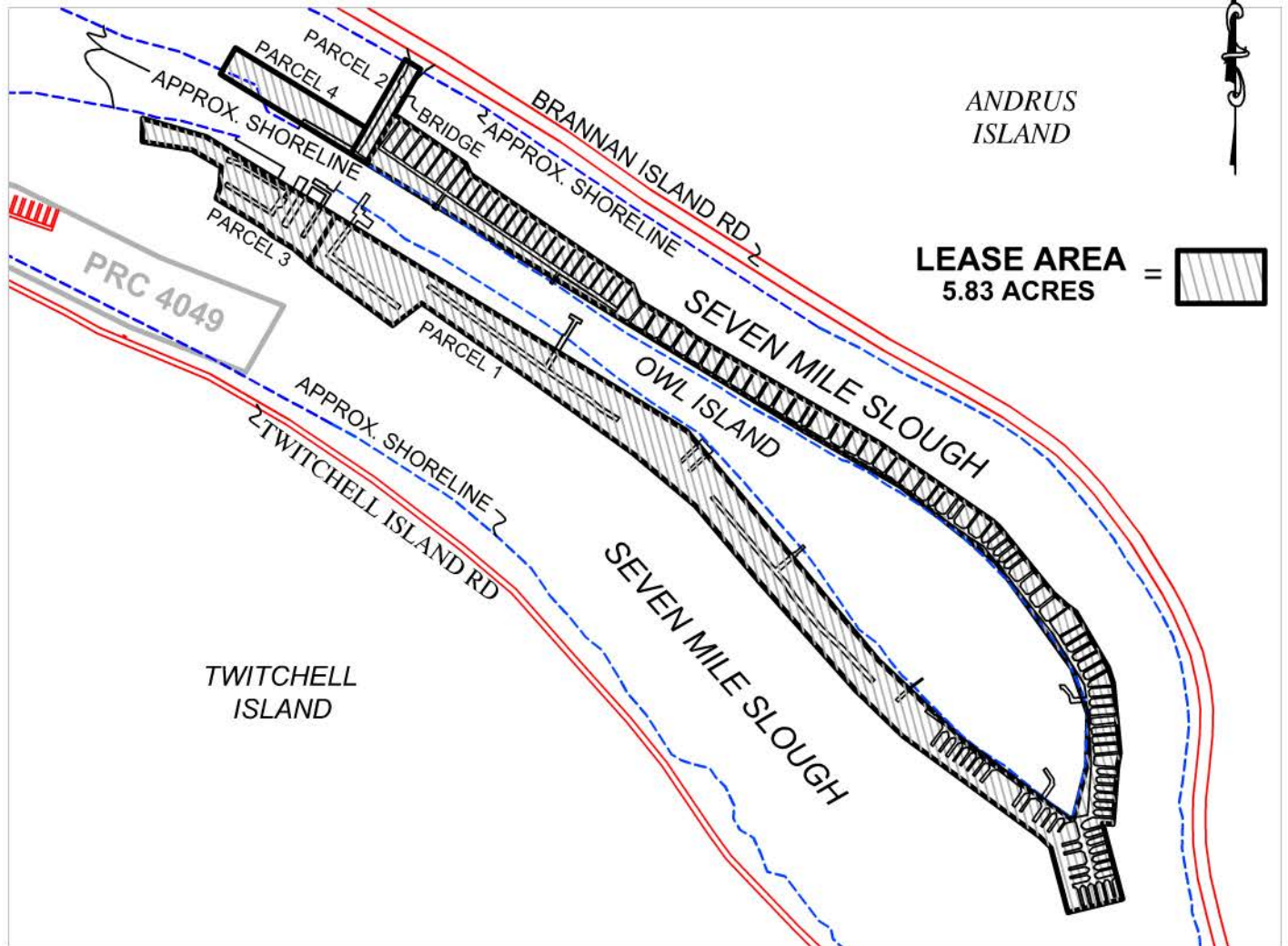
Total of all the parcels = 5.83 acres.

END OF DESCRIPTION



NO SCALE

SITE



1200 W. BRANNAN ISLAND ROAD, ISLETON

NO SCALE

LOCATION



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

PRC 6855.1
5 BROS MARINA LLC
APN 156-0080-047,061
GENERAL LEASE -
COMMERCIAL USE
SACRAMENTO COUNTY



MJF 1/03/20