

Staff Report 10

LESSEE:

Faces, Inc.

APPLICANT:

Verona Village, LLC, a California limited liability company

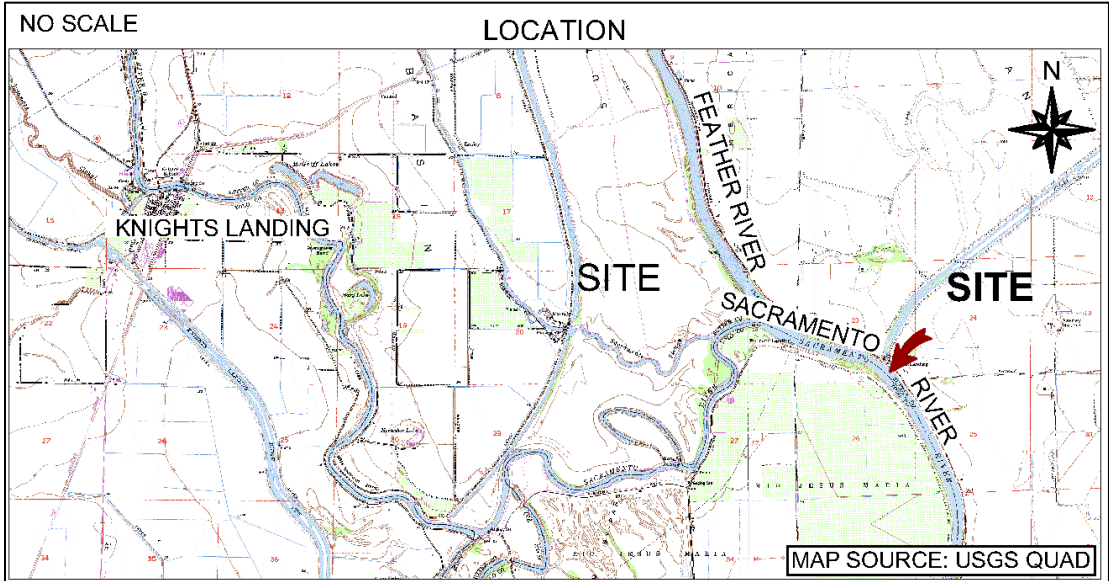
PROPOSED ACTION:

Termination of Lease Number PRC 2216, a General Lease – Commercial Use; waiver of rent, penalty, and interest; void Invoice Numbers 53294, 53625, 56050, and 58875; and issuance of a General Lease – Commercial Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Sacramento River, adjacent to 6985 Garden Highway, near Nicolaus, Sutter County (as shown in Figure 1).

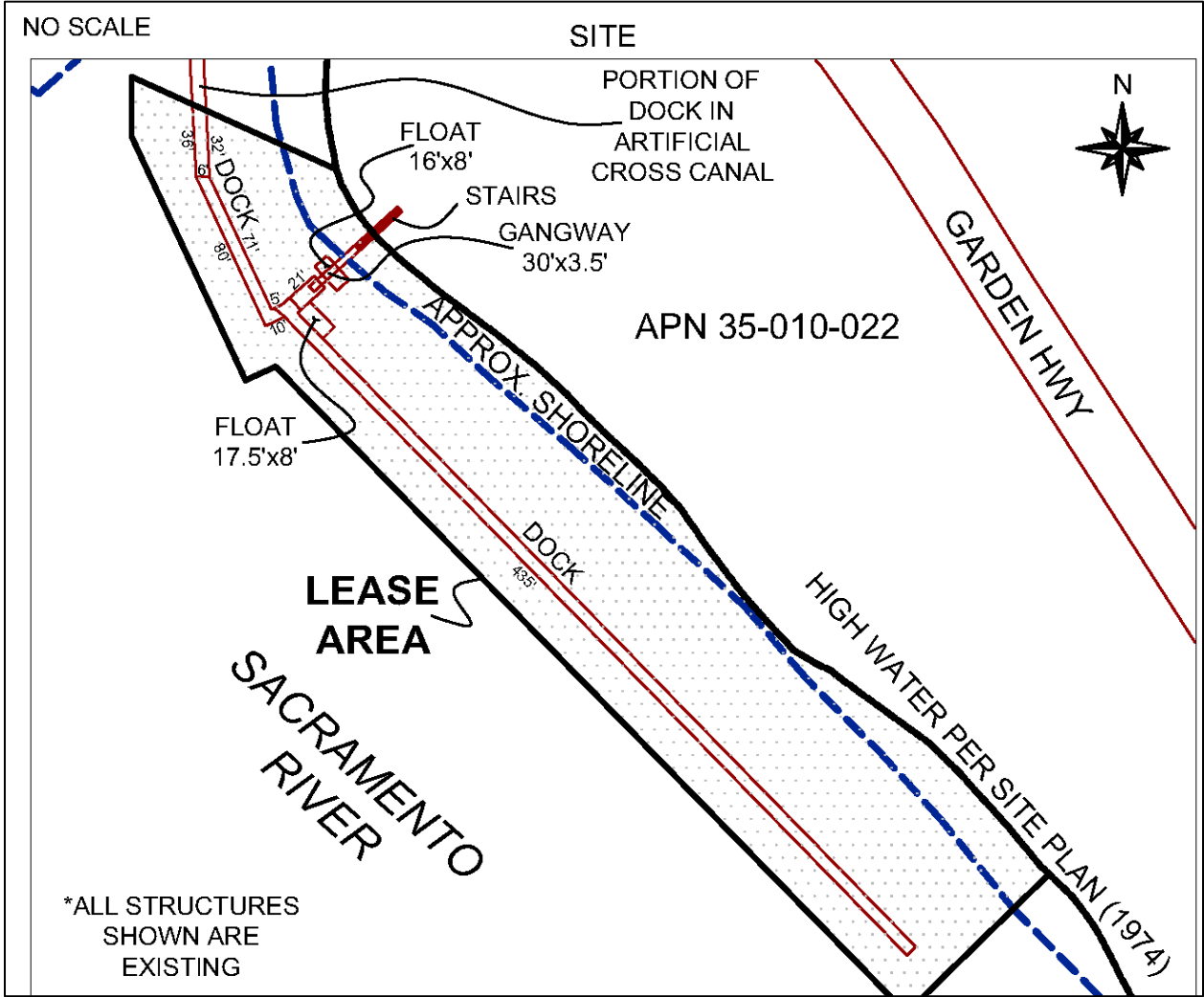
Figure 1. Location



AUTHORIZED USE:

Operation and use of an existing commercial marina, known as Verona Village River Resort, consisting of an existing boat dock used for side tie berthing, an accommodation dock, a portion of a dock, two floats, 13 pilings, electrical and water utility outlets, and a gangway (as shown in Figure 2).

Figure 2. Site Map



NOTE: This depiction of the lease premises is based on unverified information provided by the Applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

TERM:

20 years, beginning June 7, 2024.

CONSIDERATION:

A minimum annual rent of \$1,261, against 5 percent of gross income; and the State reserving the right to fix a different rent periodically during the lease term, as provided for in the lease; and \$969 to compensate for the unauthorized occupation of state sovereign land for the existing facilities for the period prior to June 7, 2024.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$2,000,000 per occurrence.
- Surety in an amount of \$30,000.
- Lessee shall submit an annual report for the current reporting period including but not limited to, gross income from operations and activities authorized under this Lease to be conducted on or from the Lease Premises.
- 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.
- Lessee or its operators may issue, without Lessor's prior approval, individual berthing subleases in conjunction with normal commercial marina subleasing practices for terms of one year or less.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

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

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On September 20, 2013, the Commission authorized a 20-year General Lease – Commercial Use to Faces, Inc. dba Verona Village River Resort, for the operation, use, and maintenance of an existing commercial marina on 1.04 acres in the Sacramento River, adjacent to 6985 Garden Highway, near Nicholas, Sutter County ([Item 17, September 20, 2013](#)). The authorized improvements consist of a boat dock

used for side tie berthing, an accommodation dock, two floats, 13 pilings, electrical and water utility outlets, and a gangway. On August 23, 2018, the Commission authorized a revision of annual rent from \$1,715 to \$1,775, effective September 20, 2018 ([Item 07, August 23, 2018](#)). On August 31, 2023, the upland and marina facilities sold to Verona Village LLC. The Applicant is applying for a new General Lease – Commercial Use for the operation and use of an existing commercial marina in the Sacramento River.

Staff is requesting compensation from the Applicant for the unauthorized occupation of State land in the amount of \$969 for the period prior to June 7, 2024. Staff recommend waiving any rent, penalty, and interest associated with invoices due from the Lessee (prior owner); and voiding Invoice Numbers 53294 (\$1,909.39), 53625 (\$121.70), 56050 (\$2,050.57), and 58875 (\$2,161.13) for Lease PRC 2216. These invoices pertain to the prior upland owner who transferred title to the Applicant thereby abandoning the lease premises in the Sacramento River. Further, staff believes that the long-term cost of collection measures will exceed the rental balance due. Staff is requesting termination of the existing lease issued to Faces, Inc., because the Lessee did not notify staff of the sale of the upland parcel nor sign a lease quitclaim. The date of proposed termination is August 31, 2023, to align with the title transfer date. The proposed lease will require the Applicant to indemnify the State for the entire period of occupation from August 31, 2023, to June 6, 2024, ensuring the State is protected. In addition, the compensation ensures that the State is made whole for the Lessee's occupation.

The subject commercial marina directly promotes Public Trust uses. The marina facilities accommodate, promote, and foster the public's need for maritime services and the public's enjoyment of the State's waterways. Recreational boating is a water-dependent use that is generally consistent with the common law Public Trust Doctrine. The adjacent upland is developed as a commercial marina.

The proposed lease includes certain provisions and BMPs intended to protect the public use of the proposed lease area, including a limited lease term of 20 years. The facilities have existed at this location for many years; 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. Furthermore, the lease requires that the lessee insure the lease premises and provide a performance surety in the amount of \$30,000. The lease also requires the payment of annual rent to

compensate the people of the State for the occupation of the public land involved.

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 facilities are located on the Sacramento River, in a tidally influenced site vulnerable to flooding at current sea levels and at a 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 region as listed in Table 1.

Table 1. Projected Sea Level Rise for San Francisco

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

This effect could increase the Sacramento River’s inundation levels within the lease area. In addition, as stated in the [Safeguarding California Plan: 2018 Update](#) (California Natural Resources Agency 2018), climate change is projected 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. Flooding and storm flow, as well as runoff, will likely increase scour and decrease bank stability at a faster rate.

The floating docks, floats, and gangway are adaptable to higher water levels allowing them to rise and fall with storms and droughts and increasing their resiliency to some climate change impacts, but they may require more frequent maintenance or replacement to ensure continued function during and after storm seasons and to avoid dislodgement of the facilities. The pilings and utility outlets are fixed and therefore more vulnerable to sea level rise and more frequent flood events. These structures may need additional fortification or repair and maintenance to ensure they do not become dislodged or degraded, as they could pose risks to public safety and navigation.

Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland are located in an area that may be subject to the effects of climate change, including sea level rise.

CONCLUSION:

For all the reasons stated above, staff believes that issuance of 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, at this time, and for the term of the proposed lease; is consistent with the Public Trust Doctrine; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application 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. The lessee has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Meeting Evolving Public Trust Needs, and "Leading Climate Activism" Strategic Focus Area of the [Commission's 2021-2025 Strategic Plan](#).
3. Termination of the lease is not a project as defined by the California Environmental Quality Act (CEQA) 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, section 15378, subdivision (b)(5).

4. 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.

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, at this time, and for the term of the lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize termination of Lease Number PRC 2216, a General Lease - Commercial Use, issued to Faces, Inc., effective August 31, 2023.
2. Waive rent, penalty, and interest due from the Lessee for the period of September 20, 2021, to June 6, 2024, and void annual rent Invoice Numbers 53294, 53625, 56050, and 58875 issued for Lease PRC 2216.
3. Authorize acceptance of compensation from the Applicant in the amount of \$969 for the unauthorized occupation of state sovereign land for the period prior to June 7, 2024.
4. Authorize issuance of a General Lease – Commercial Use to the Applicant beginning June 7, 2024, for a term of 20 years, for the operation and use of an

existing commercial marina known as Verona Village River Resort consisting of an existing boat dock used for side tie berthing, an accommodation dock, a portion of a dock, two floats, 13 pilings, electrical and water utility outlets, and a gangway; a minimum annual rent of \$1,261 against 5 percent of gross income; and the State reserving the right to fix a different rent periodically during the lease term, as provided for in the lease; liability insurance in an amount no less than \$2,000,000 per occurrence; and a surety in the amount of \$30,000.