

# Staff Report 19

**LESSEE:**

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Verona Marina, Inc., a California Corporation

**APPLICANT:**

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Shingle Springs Band of Miwok Indians

**PROPOSED ACTION:**

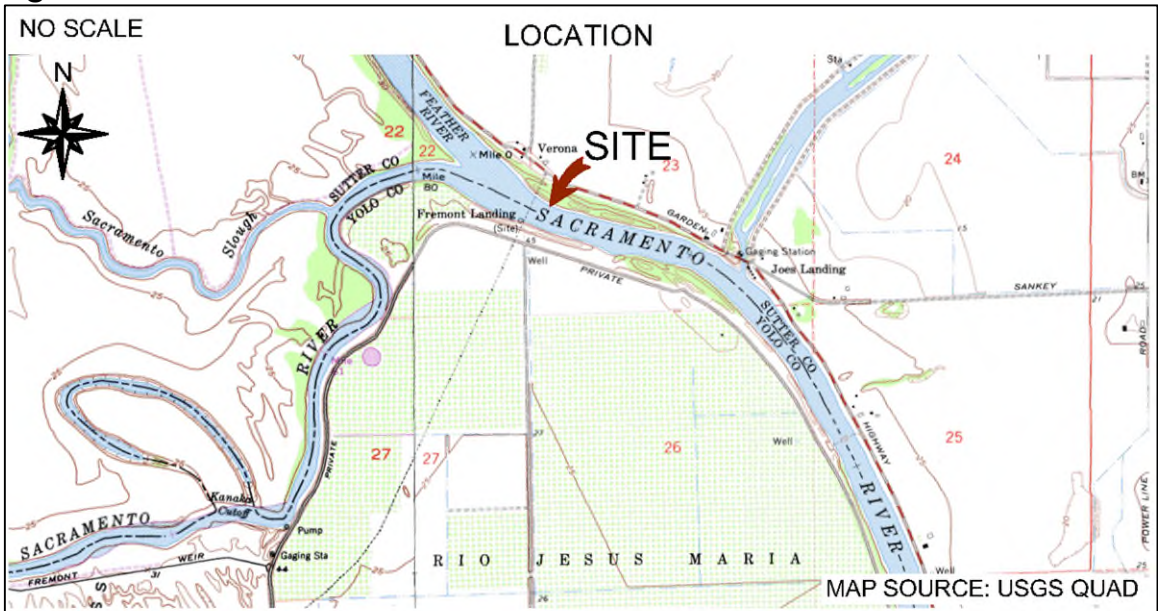
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Termination of Lease Number PRC 7766, a General Lease – Commercial Use; and issuance of a General Lease – Commercial Use.

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

Sovereign land in the Sacramento River, adjacent to 6955 Garden Highway, near Nicolaus, Sutter County (as shown in Figure 1).

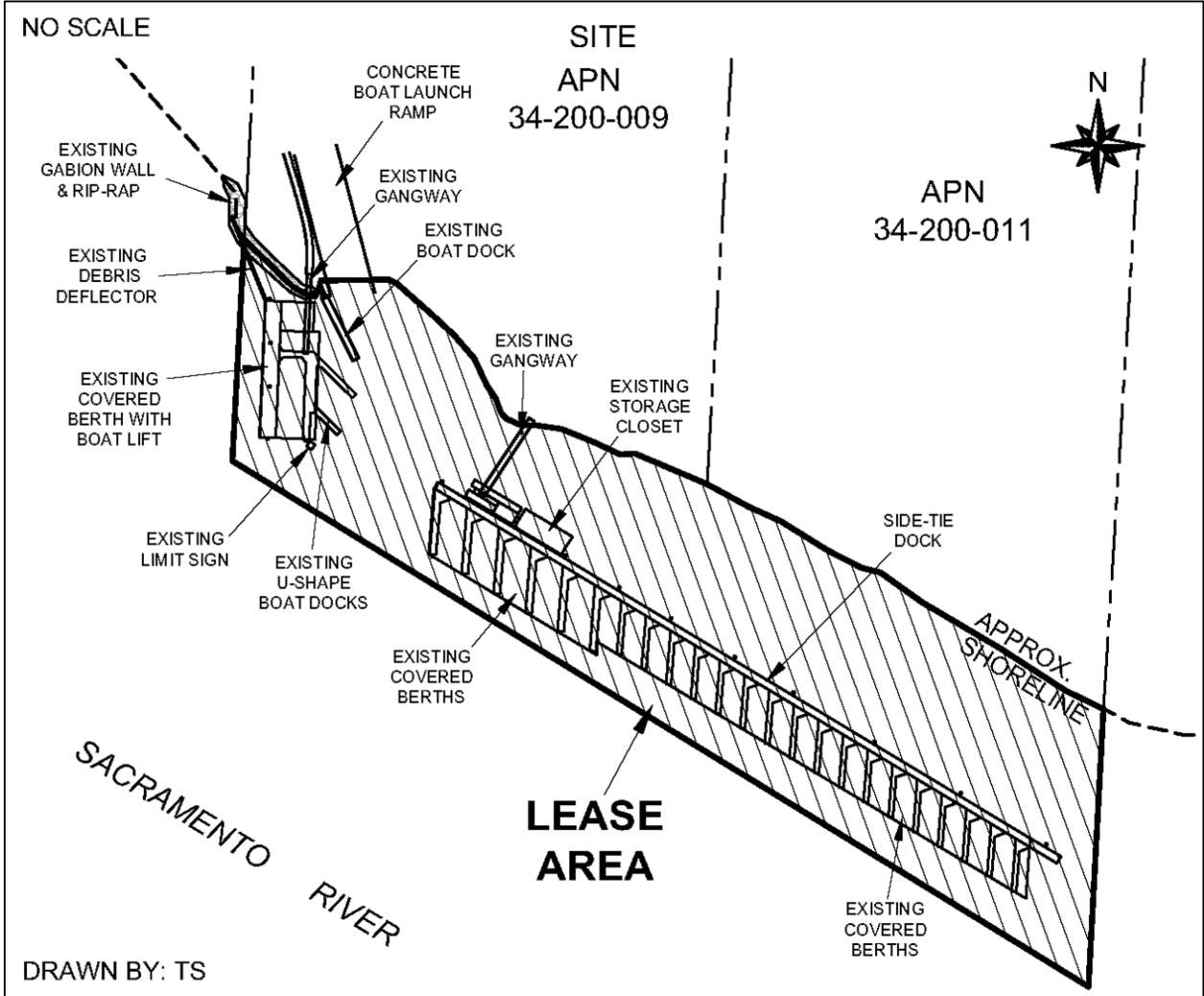
**Figure 1. Location**



**AUTHORIZED USE:**

Operation and use of an existing commercial marina, known as Verona Marina, consisting of an existing U-shaped boat dock, concrete boat launch ramp, signage, boat dock, two gangways, 23 covered berths, 454 lineal feet of side-tie dock, electrical and water hookups, debris deflector, gabion wall and rip rap bank protection, covered berth with boat lift, and storage closet (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 December 6, 2023.

**CONSIDERATION:**

\$6,458 per year, with an annual Consumer Price Index adjustment, with the State reserving the right to fix a different rent periodically during the lease term, as provided for in the lease.

**SPECIFIC LEASE PROVISIONS:**

- Liability insurance in an amount no less than \$2,000,000 per occurrence.
- Surety in an amount of \$100,000.
- 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 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:**

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**AUTHORITY:**

Content 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 December 6, 2016, the Commission authorized a 35-year General Lease – Commercial Use to Verona Marina, Inc., a California Corporation, for the operation, use, and maintenance of an existing commercial marina on sovereign land in the Sacramento River, adjacent to 6955 Garden Highway, near Nicholas, Sutter County ([Item 2, December 6, 2016](#)). At some point, the marina improvements on state land were updated. The updates included removal of the boat diverter and sewage pump out facility; conversion of the harbormaster office into a storage closet; and omission of permanent uncovered berths. Currently, the existing improvements consist of a U-shaped boat dock, concrete boat launch ramp, signage, boat dock, two gangways, 23 covered berths, 454-lineal-feet of side-tie dock, electrical and

water hookups, debris deflector, gabion wall and rip rap bank protection, covered berth with boat lift, and storage closet. On August 5, 2020, the upland and marina facilities sold to the Applicant. The Applicant is applying for a new General Lease – Commercial Use for the operation and use of the existing marina, appurtenant facilities, and concrete boat launch ramp in the Sacramento River.

According to the Commission's accounting records, the annual rent is paid through December 5, 2023. Therefore, staff recommends starting the new lease on December 6, 2023. Staff is requesting termination of the existing lease issued to Verona Marina, Inc., a California Corporation, 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 5, 2020, 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 5, 2020, through December 5, 2023, ensuring the State is protected.

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. Additionally, there is an existing boat launch ramp which is open to the public. The public may use the ramp for a nominal fee.

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 \$100,000. 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 [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 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 that support the facilities, and bank protection. Lowered water levels could also reduce navigability of the channel, thereby increasing hazards and impacting the function and utility of the lease area structures.

Many features of the marina facility and the adjacent upland facilities are adaptable to higher water levels. The 23 covered berths, side-tie dock, and docks all float while secured to fixed pilings. Dock gangways are fixed on one end to the upland bank and are designed to roll up and down with the vertical motion of the dock on the other end. The parts of the dock complex that are most vulnerable to sea level rise and more frequent flood events are those that are fixed and/or may contain contaminated or hazardous materials, such as the storage building and pilings. These structures may need additional fortification or repair and maintenance to ensure they do not become dislodged or degraded. If they are not, they could become hazards that pose risks to public safety and navigation.

There is existing rip rap bank protection near the gabion wall. The riverbank immediately landward of the marina contains vegetation, but is at risk of scouring, loss of backfill, slope failure, and accelerated deterioration from sea level rise, currents, floods, and increased precipitation. As sea levels rise, the area with bank protection will also provide less defense against flood waters, increasing the vulnerability of the upland parcel. Maintaining a wide buffer between the bank and upland improvements will minimize potential impacts from flooding and erosion. The bank may also suffer increased erosion from sea level rise and storm flooding. In the future, if erosion of the bank protection requires modifications to the bank, Commission staff suggest the lessee consider nature-based solutions such as native vegetation to stabilize the sediment. Any future construction or activities on state land would require a separate authorization from the Commission.

The upland parking lots and campgrounds (both outside the leased area) are mostly unpaved, which will reduce the amount of run-off and aid in the absorption of flood waters due to the permeability of these surfaces. The upland restroom facilities are on a moderately elevated foundation, but may need to incorporate additional features, such as inflating door seals, to safeguard against flood damage and prevent the exposure of waste materials.

Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation or dislodgement. 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; and is in the best interests of the State.

**OTHER PERTINENT INFORMATION:**

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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, sections 15060, subdivision (c)(3), and 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 15061 and California Code of Regulations, title 2, section 2905.

## **RECOMMENDED ACTION:**

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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 7766, a General Lease - Commercial Use, issued to Verona Marina, Inc., a California Corporation, effective August 5, 2020.
2. Authorize issuance of a General Lease – Commercial Use to the Applicant beginning December 6, 2023, for a term of 20 years, for the operation and use of an existing commercial marina known as Verona Marina, consisting of an existing U-shaped boat dock, concrete boat launch ramp, signage, boat dock, two gangways, 23 covered berths, 454-lineal-feet of side-tie dock, electrical and water hookups, debris deflector, gabion wall and rip rap bank protection, covered berth with boat lift, and storage closet; annual rent in the amount of \$6,458, with an annual Consumer Price Index adjustment, with 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 \$100,000.