

**STAFF REPORT
C42**

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04/05/19
PRC 8594.1
V. Caldwell

**AUTHORIZE TERMINATION OF A GENERAL LEASE – COMMERCIAL USE;
ISSUANCE OF A GENERAL LEASE – OTHER; AND CONSIDER AN AGREEMENT
AND CONSENT TO ENCUMBRANCING OF LEASE**

LESSEE/APPLICANT:

Waldo Point Harbor, LLC

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Partially filled and unfilled sovereign land at Waldo Point Harbor, in Richardson Bay, County of Marin.

AUTHORIZED USE:

Public access: for walking, bicycling (shoreline path), public park to include public pier, landscaping, seating, signage, 10 public parking spaces with lighting, fencing, trash containers, and utilities.

Open water areas are to be utilized for visual access and to be maintained as open water.

LEASE TERM:

Existing: beginning April 1, 2005, and ending March 18, 2024.
Proposed: 25 years, beginning April 1, 2019.

CONSIDERATION:

\$44,327 per year, with an annual Consumer Price Index adjustment; and the State reserving the right to fix a different rent on the 10th and 20th anniversaries of the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

Liability insurance in an amount no less than \$5 million per occurrence.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

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

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Public Trust and State's Best Interests Analysis:

Waldo Point Harbor is a houseboat marina located in Richardson Bay, located to the northwest of the city of Sausalito. On February 17, 2005, the Commission authorized the issuance of a General Lease – Commercial Use to Waldo Point Harbor, LLC. ([Item C37, February 17, 2005](#)). The lease is the result of a condition contained in the April 5, 2004 Commission action authorizing an amendment to the Settlement Agreement and Land Exchange in Case entitled *Waldo Point Harbor v. State of California, et al.* (Marin County Superior Court; Case No. 137916) ([Item C44, April 5, 2004](#)). The prior lease contained provisions to relocate all houseboats off of sovereign land. Staff has confirmed the relocation of houseboats and related improvements off sovereign land. The Applicant is now applying for a General Lease – Other for uses including a shoreline path, public park including a public pier, landscaping, fencing, trash containers, utilities, as well as open water areas for navigation and view corridors.

On June 21, 2013, the Commission authorized an Agreement and Consent to Encumbrancing of Lease in favor of Bank of Marin for a total encumbrance of the lease premises in an amount not to exceed \$12 million ([Item C27, June 21, 2013](#)).

The Applicant is in the process of obtaining adding \$4.5 million to their current \$12 million loan in favor of the Bank of Marin not to exceed \$16.5 million. The increase in the loan amount is due to construction cost overruns and additional costs associated with the relocation of water and sewer utilities.

The encumbrance of the lease would be implemented through the document, "Agreement and Consent to Encumbrancing of Lease," that includes protections for the State land associated with the lease. These protections include the following requirements:

1. No subsequent encumbrancing of the lease shall be allowed without prior written consent of the Commission.
2. Any transfer of the lease to a third party shall be subject to prior written approval and consent of the Commission.
3. If the Secured Party-Lender forecloses on the lease, it shall be bound by all terms and conditions of the lease.

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4. The duration of the encumbrancing agreement is limited to the term of the lease.

The Applicant has requested termination of the existing lease and is applying for a new lease for the continued use and maintenance of the existing authorized facilities. Staff recommends termination and issuance of a new lease with a longer term, and consent to the encumbrancing agreement.

The subject facilities do not significantly alter the land and the lease does not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 25-year term, does not grant the lessee exclusive rights to the lease premises, and reserves an open water area to the public for Public Trust-consistent uses. Upon termination of the lease, the lessee may be required to remove all improvements from State land. Based on the information above, staff believes that the subject facilities will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease.

The proposed lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred as a result of the lessee's activities thereon. 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, will directly affect the entire San Francisco Bay region. Staff considered the high emissions scenario that models the energy sector throughout the 21st century using the most recent scientific findings. The high emissions scenario closely adheres to present-day emission levels and provides a conservative approach to planning and minimizing risk. By the end of the century, the high emissions scenario could result in 6.9 feet of sea-level rise.

These impacts could have potentially devastating economic, environmental, and social consequences in coastal areas due to their wide-ranging scope and scale. To protect Public Trust lands, resources, and values in the face of these threats, the Commission is committed to using the best available sea-level rise and climate change science and policy guidance from the State to inform its decision making on all projects on tidally influenced lands. In addition, adaptation strategies should be implemented that maximize public safety, environmental quality, economic sustainability, and hazard avoidance. The Commission has the

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responsibility to carefully evaluate all project proposals in coastal areas with climate resiliency and the protection of Public Trust lands and resources from sea-level rise and other climate change impacts in mind.

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. 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).

Regular maintenance, as required by the lease, will reduce the likelihood of severe structural degradation or dislodgement to a public park with public pier, landscaping, seating, signage, lighting on 10 public parking spaces, fencing, trash containers, and open water areas. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises are located in an area that may be subject to effects of climate change, including sea-level rise.

Conclusion:

For all the reasons above, staff believes the issuance of this lease is consistent with the common law Public Trust Doctrine and in the best interests of the State.

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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 protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction, and Strategy 1.3 to promote, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.

2. Termination of the lease and consent to encumbrancing of the new lease 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 in 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 issuance of a new 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.

EXHIBITS:

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

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 termination of the lease, issuance of a new lease and consent to encumbrancing of the new 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

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foreseeable 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 effective March 31, 2019, of Lease No. PRC 8594.1, a General Lease – Commercial Use, issued to Waldo Point Harbor, LLC.
2. Authorize issuance of a General Lease – Other to Waldo Point Harbor, LLC, beginning April 1, 2019, for a term of 25 years, for public access: for walking, bicycling (shoreline path), public park to include public pier, landscaping, seating, signage, 10 public parking spaces with lighting, fencing, trash containers, utilities, and open water areas, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; annual rent in the amount of \$44,327, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$5,000,000 per occurrence.
3. Authorize the Executive Officer or her designee to execute the document titled “Agreement and Consent to Encumbrancing of Lease,” allowing Lessee’s right, title, and interest in Lease No. PRC 6427.1 to be pledged as partial security for a loan in the principal amount not to exceed \$16.5 million in favor of the Secured-Party Lender in substantially the same form as that on file in the Sacramento office of the Commission, effective upon signature by all parties, and to execute, acknowledge, accept, and record all related documents as may be reasonably necessary to complete the transaction.
4. Authorize the Executive Office or her designee to give approval on behalf of the Commission of prospective purchasers during a foreclosure sale and make any other approvals required of the Commission under the Agreement.

EXHIBIT A

PRC 8594.1

LAND DESCRIPTION

Nine (9) parcels of filled and unfilled tide and submerged land situate in the County of Marin, State of California, being a portion of Parcels 1 and 2 as described in the Grant Deed, recorded June 10, 1983 as Document Number 83027255 Official Records of Marin County and Parcels 1, 2, and 3 as described in the Grant Deed recorded December 23, 1992 as Document Number 92-102398 Official Records of Marin County and shown on Marin County Department of Public Works (Marin Co. DPW) map entitled "Record of Survey Map of a Portion of Map No.1 Salt Marsh and Tide Lands Situate in the County of Marin Dated 1870 Marin County California" dated November 1965 and recorded December 21, 1965 in Book 4 of Official Surveys at Page 81 in said county and more particularly described as follows:

Parcel 1 (Southwesterly part of Lot 244):

BEGINNING at the southwesterly corner of Lot 244 as delineated on that certain said Marin Co. DPW map, said point being the intersection of the northerly line of Donahue Avenue with the easterly line of Waldo Street, said point bears North 19°44'59" East 1133.27 feet from the monument at the northwest corner of Lot 100 as shown on that certain said Marin Co. DPW map; thence northeasterly along said easterly line of Waldo Street, North 51°45'03" East 119.43 feet; thence leaving said easterly line of Waldo Street, South 38°14'57" East 96.08 feet; thence South 51°45'03" West 119.43 feet more or less to the northerly line of Donahue Avenue heretofore mentioned; thence along said northerly line of Donahue Avenue, North 38°14'57" West 96.08 feet more or less to the point of beginning.

Containing 11,475 square feet, more or less.

Parcel 2 (Portion of Lot 243):

All of Lot 243 as delineated on that certain said Marin Co. DPW map.

EXCEPTING THEREFROM: COMMENCING at the northwesterly corner of heretofore said Lot, said point being the intersection of the southerly line of Railroad Avenue with the easterly line of Myrtle Street, said point bears North 19°44'59" East 1133.27 feet from the monument at the northwest corner of Lot 100 as shown on that certain said Marin Co. DPW map; thence southwesterly along said easterly line of Myrtle Street, South 51°45'03" West 120.60 feet to the TRUE POINT OF BEGINNING; thence leaving said easterly line of Myrtle Street, South 38°14'57" East 76.83 feet; thence South 51°45'03" West 196.67 feet; thence North 38°14'57" West 43.40 feet; thence North 51°45'03" East 23.77 feet; thence North 38°14'57" West 33.43 feet more or less to said easterly line of Myrtle Street; thence northeasterly along said easterly line, North 51°45'03" East 172.90 feet to the point of beginning.

ALSO EXCEPTING THEREFROM: COMMENCING at the northeasterly corner of theretofore said Lot, said point being the intersection of the southerly line of Railroad Avenue with the westerly line of Waldo Street, said point bears North $31^{\circ}12'03''$ East 1026.37 feet from the monument at the northwest corner of Lot 100 as shown on that certain said Marin Co. DPW map; thence southwesterly along westerly line of Waldo Street, South $51^{\circ}45'03''$ West 120.60 feet to the TRUE POINT OF BEGINNING; thence leaving said westerly line of Waldo Street, North $38^{\circ}14'57''$ West 40.89 feet; thence South $51^{\circ}45'03''$ West 160.50 feet; thence South $38^{\circ}15'00''$ East 40.89 feet more or less to a point on the westerly line of Waldo Street; thence northeasterly along said westerly line of Waldo Street, North $51^{\circ}45'03''$ East 160.50 feet to the point of beginning.

ALSO EXCEPTING THEREFROM: The northeasterly 120.60 feet of said Lot 243.

Containing 46,383 square feet, more or less.

Parcel 3 (Portion of Lot 242):

All of Lot 242 as delineated on that certain said Marin Co. DPW map.

EXCEPTING THEREFROM: COMMENCING at the northeasterly corner of heretofore said Lot, said point being the intersection of the southerly line of Railroad Avenue with the westerly line of Myrtle Street, said point bears North $17^{\circ}14'57''$ East 1166.18 feet from the monument at the northwest corner of Lot 100 as shown on that certain said Marin Co. DPW map; thence southwesterly along said westerly line of Myrtle Street, South $51^{\circ}45'03''$ West 120.60 feet to the TRUE POINT OF BEGINNING; thence leaving said westerly line of Myrtle Street North $38^{\circ}14'57''$ West 240.28 feet more or less to a point on the easterly line of Yuba Street; thence southwesterly along the easterly line of Yuba Street, South $51^{\circ}45'03''$ West 279.93 feet to a point on the northerly line of Donahue Avenue, said point being the intersection of the northerly line of Donahue Avenue with the easterly line of Yuba Street, said point bears North $06^{\circ}21'29''$ West 1060.99 feet from the monument at the northwest corner of Lot 100 as shown on that certain said Marin Co. DPW map; thence southeasterly along said northerly line of Donahue Avenue, South $38^{\circ}14'57''$ East 158.77 feet; thence leaving said northerly line of Donahue Avenue North $51^{\circ}45'03''$ East 107.03 feet; thence South $38^{\circ}14'57''$ East 81.51 feet to a point on the westerly line of Myrtle Street; thence northeasterly along said westerly line of Myrtle Street, North $51^{\circ}45'03''$ East 172.90 feet to the point of beginning.

ALSO EXCEPTING THEREFROM: The northeasterly 120.60 feet of said Lot 242.

Containing 8,724 square feet, more or less.

Parcel 4 (Portion of Lot 227):

BEGINNING at the northwesterly corner of Lot 227 as delineated on that certain said Marin Co. DPW map, said point being the intersection of the southerly line of Donahue

Avenue with the easterly line of Grove Street, said point bears North 16°26'40" West 1293.68 feet from the monument at the northwest corner of Lot 100 as shown on that certain said Marin Co. DPW map; thence southeasterly along said southerly line of Donahue Avenue, South 38°14'57" East 34.03 feet; thence leaving said southerly line of Donahue Avenue, South 51°45'03" West 380.55 feet; thence North 38°14'57" West 34.03 feet more or less to a point on the easterly line of Grove Street heretofore mentioned; thence northeasterly along the easterly line of Grove Street, North 51°45'03" East 380.55 feet more or less to the point of beginning.

Containing 12,950 square feet, more or less.

Parcel 5 (Easterly Portion of Lot 226):

BEGINNING at the northeasterly corner of lot 226 as delineated on that certain said Marin Co. DPW map, said point being the intersection of the southerly line of Donahue Avenue with the westerly line of Myrtle Street, said point bears, North 02°12'53" West 816.85 feet from the monument at the northwest corner of Lot 100 as shown on that certain said Marin Co. DPW map; thence southwesterly along said westerly line of Myrtle Street, South 51°45'03" West 400.53 feet more or less to a point on the northerly line of Humboldt Avenue, said point being the intersection of the northerly line of said Humboldt Avenue with the westerly line of Myrtle Street, said point bears North 31°20'37" West 665.39 feet from the monument at the northwest corner of Lot 100 as shown on that certain said Marin Co. DPW map; thence northwesterly along said northerly line of Humboldt Avenue, North 38°14'57" West 113.51 feet; thence leaving said northerly line, North 51°45'03" East 351.73 feet; thence South 38°14'57" East 32.00 feet; thence North 51°45'03" East 48.80 feet more or less to a point on the southerly line of Donahue Avenue; thence southeasterly along said southerly line of Donahue Avenue, South 38°14'57" East 81.51 feet to the point of beginning.

Containing 43,903 square feet, more or less.

Parcel 6 (Portion of Lot 225):

All of Lot 225 as delineated on that certain said Marin Co. DPW map.

EXCEPTING THEREFROM: BEGINNING at the southeasterly corner of heretofore said Lot, said point being the intersection of the northerly line of Humboldt Avenue with the westerly line of Waldo Street, said point bears North 25°43'47" West 369.06 feet from the monument at the northwest corner of Lot 100 as shown on that certain said Marin Co. DPW map; thence northwesterly along said northerly line of Humboldt Avenue, North 38°14'57" West 65.03 feet; thence leaving said northerly line of Humboldt Avenue, North 22°52'04" East 56.31 feet; thence North 51°45'03" East 112.44 feet; thence South 38°14'57" East 92.23 feet more or less to a point on the westerly line of Waldo Street; thence southwesterly along said westerly line of Waldo Street, South 51°45'03" West 161.75 feet to the point of beginning.

Containing 81,992 square feet, more or less

Parcel 7 (Westerly Portion of Lot 224):

BEGINNING at the northwesterly corner of Lot 224 as delineated on that certain said Marin Co. DPW map, said point being the intersection of the southerly line of Donahue Avenue with the easterly line of Waldo Street, said point bears North 38°14'57" West 300.28 feet from the monument at the northwest corner of Lot 100 as shown on that certain said Marin Co. DPW map; thence southeasterly along said southerly line of Donahue Avenue, South 38°14'57" East 96.08 feet; thence leaving said line, South 51°45'03" West 400.53 feet more or less to a point on the northerly line of Humboldt Avenue; thence northwesterly along said line, North 38°14'57" West 40.36 feet; thence leaving said northerly line of Humboldt Avenue, North 36°43'21" East 167.48 feet; thence North 38°14'57" West 12.29 feet more or less to a point on the easterly line of Waldo Street; thence northeasterly along said line, North 51°45'03" East 238.78 feet to the point of beginning.

Containing 32,982 square feet, more or less.

Parcel 8 (Northeastern quarter of Lot 113):

COMMENCING at the northeast corner of Lot 113 as delineated on that certain said Marin Co. DPW map, said point being the intersection of the southerly line of Humboldt Avenue with the westerly line of Waldo Street, said point bears North 38°14'57" West 360.28 feet from the monument at the northwest corner of Lot 100 as shown on that certain said Marin Co. DPW map; thence northwesterly along said southerly line of Humboldt Avenue, North 38°14'57" West 20.90 feet to the TRUE POINT OF BEGINNING; thence leaving said line, South 22°52'04" West 27.59 feet; thence parallel with the easterly line of Waldo Street, South 51°45'03" West 196.54 feet; thence North 38°14'57" West 117.07 feet; thence North 51°45'03" East 220.70 feet more or less to a point on the southerly line of Humboldt Avenue; thence along said line, South 38°14'57" East 103.74 feet to the point of beginning.

Containing 25,676 square feet, more or less.

Parcel 9 (Easterly half of Lot 114):

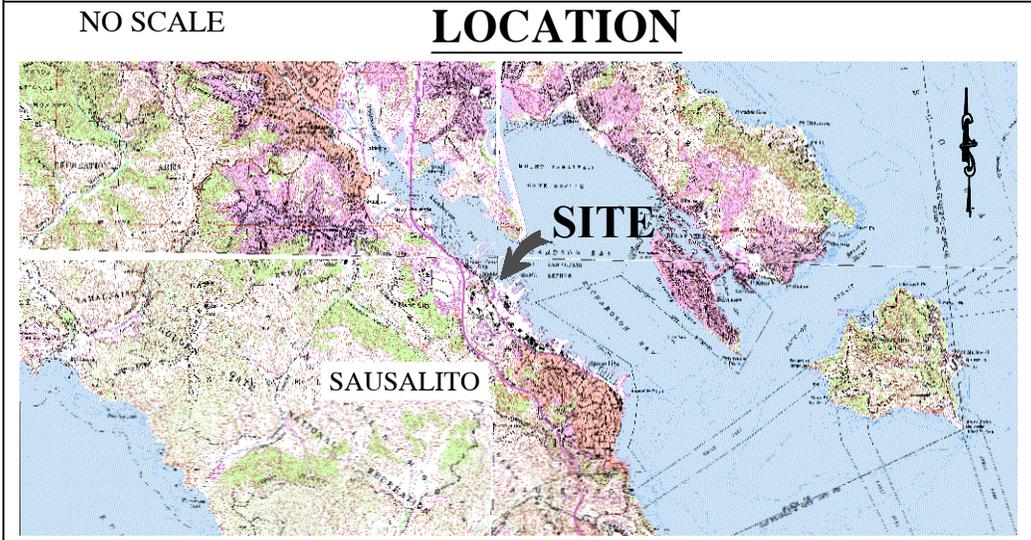
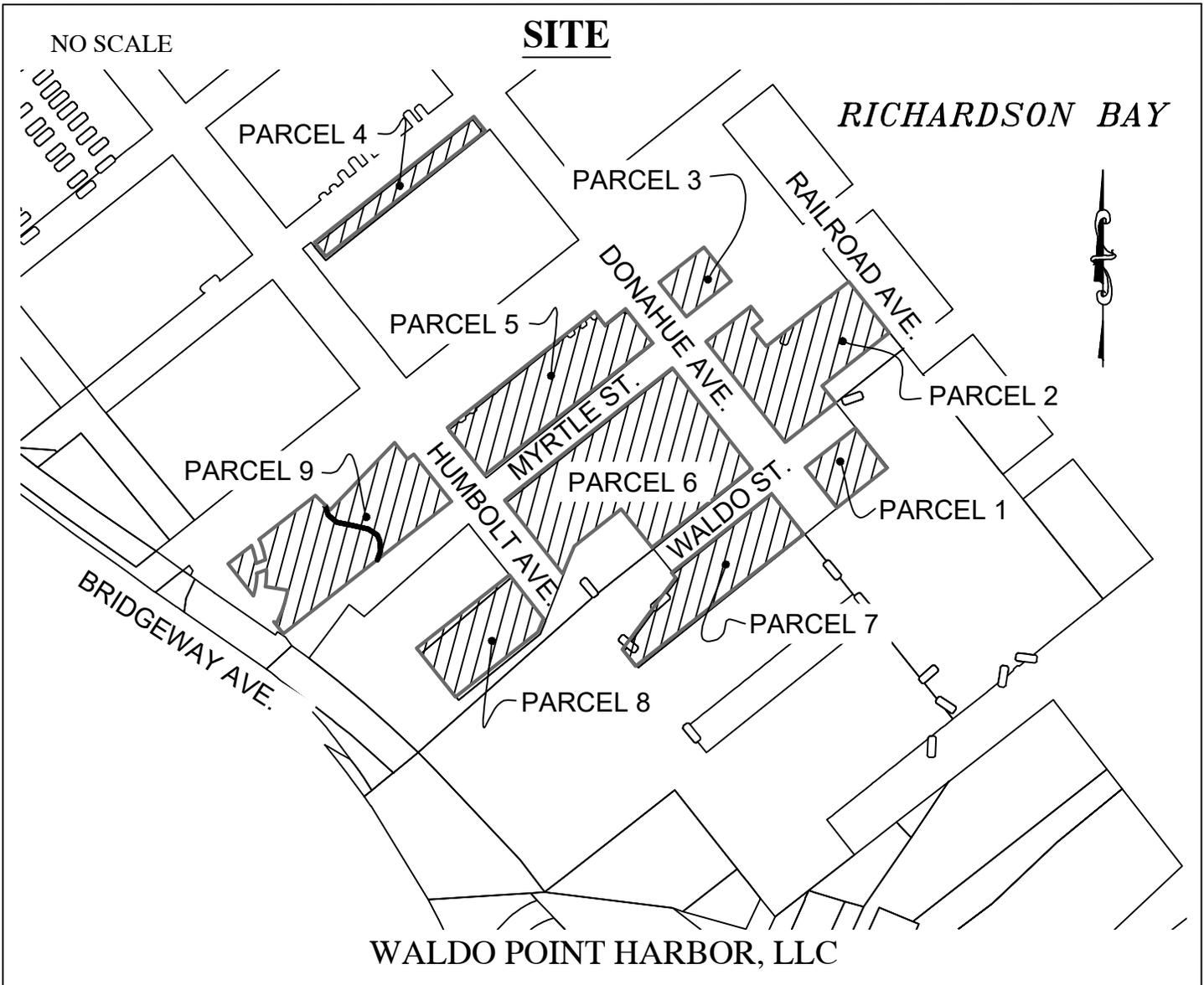
BEGINNING at the northeast corner of Lot 114 as delineated on that certain said Marin Co. DPW map, said point being the intersection of the southerly line of Humboldt Avenue with the westerly line of Myrtle Street, said point bears North 38°14'57" West 660.56 feet from the monument at the northwest corner of Lot 100 as shown on that certain said Marin Co. DPW map; thence southwesterly along the westerly line of Myrtle Street, South 51°45'03" West 400.53 feet more or less to a point on the northerly line of Petaluma Street, said point being the intersection of the northerly line of Petaluma Street and the westerly line of Myrtle Street, said point bears North 69°28'47" West 772.50 feet from the monument at the northwest corner of Lot 100 as shown on that

certain said Marin Co. DPW map; thence northwesterly along said line of Petaluma Street, North 38°14'57" West 28.68 feet; thence leaving said northerly line of Petaluma Street, South 61°45'27" East 4.94 feet; thence along a non-tangent curve concave northeasterly with a radius of 197.37 feet from a radial bearing of North 61°45'27" West through a central angle of 19°00'43" 65.49 feet; thence leaving said curve North 80°46'10" West 42.00 feet; thence along a non-tangent curve concave northeasterly with a radius of 155.37 feet from a radial bearing of North 80°46'10" West through a central angle of 11°40'19", 31.65 feet; thence leaving said curve South 69°21'19" West 19.08 feet; thence along a non-tangent curve concave southwesterly with a radius of 137.37 feet from a radial bearing of North 89°57'15" West through a central angle of 17°44'06" 42.52 feet to a point on the northerly line of Petaluma Street; thence northwesterly along said line of Petaluma Street, North 38°14'57" West 75.82 feet; thence North 51°45'03" East 55.22 feet; thence along a non-tangent curve concave southeasterly with a radius of 137.37 feet from a radial bearing of South 67°51'11" West through a central angle of 14°20'46", 34.40 feet; thence leaving said curve North 69°23'10" East 18.40 feet; thence along a non-tangent curve concave northwesterly with a radius of 155.37 feet from a radial bearing of South 80°41'37" West through a central angle of 14°44'53", 39.99 feet; thence leaving said curve North 51°45'03" East 133.94 feet; thence South 45°37'03" East 39.22 feet; thence North 43°40'31" East 174.45 feet; thence South 38°14'57" East 39.90 feet; thence North 51°45'03" East 14.97 feet more or less to a point on the southerly line of Humboldt Avenue; thence southeasterly along said southerly line, South 38°14'57" East 113.35 feet to the point of beginning.

Containing 57,594 square feet, more or less

Revised by the California State Lands Commission Boundary Unit 12/21/2018. Original description prepared by Irving Louis Schwartz on 2/17/2005 as found in PRC 8594 file.





MAP SOURCE: USGS QUAD

Exhibit B

PRC 8594.1
WALDO POINT
HARBOR, LLC
GENERAL LEASE - OTHER
MARIN 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.