

**STAFF REPORT
C37**

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02/04/19
PRC 3371.1
J. Holt

GENERAL LEASE – PUBLIC AGENCY USE

APPLICANT:

Contra Costa Water District

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Pacheco Creek, near Martinez, Contra Costa County.

AUTHORIZED USE:

Continued maintenance, inspection, and testing of an existing buried non-operational 21-inch-diameter steel and concrete water pipeline.

LEASE TERM:

10 years, beginning July 21, 2019.

CONSIDERATION:

\$125 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee agrees and acknowledges hazards associated with sea-level rise may require additional maintenance or protection strategies regarding the improvements on the lease premises.
- The Lessee shall bring the pipeline back into use prior to the expiration of the lease, in accordance with special provisions in Paragraph 2 of Section 2; or submit a new application two years prior to the expiration of the lease, for the removal of the existing pipeline from the lease premises.

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.

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Public Trust and State's Best Interests Analysis:

On September 23, 1965, the Commission authorized a 49-year permit to Contra Costa Water District (CCWD) ([Item 5, September 23, 1965](#)). That lease expired on July 20, 2014. On June 19, 2014, the Commission authorized a 5-year lease to CCWD, for continued maintenance of existing lease facilities ([Item C53, June 19, 2014](#)). That lease will expire on July 20, 2019. The Applicant is now applying for a General Lease – Public Agency Use, for continued maintenance, inspection, and testing of an existing buried non-operational 21-inch-diameter steel and concrete water pipeline that passes under Pacheco Creek. Approximately 210 feet of pipeline are located on sovereign land. The Applicant is evaluating optimal uses of the subject pipeline, which may include the transportation and distribution of recycled water. The proposed lease contains special provisions in Section 2, which require submission of all applicable documentation and compliance review as deemed necessary by Commission staff, prior to reactivation of the pipeline.

The current lease requires the Lessee to conduct all maintenance and inspection work safely and indemnify the Commission in the event of any liability resulting from its actions. The pipeline historically provided a valuable public benefit in water transportation and distribution, which contributed to public health and sanitation. The non-operational 21-inch-diameter pipeline has existed at this location for many years. The lease facilities are buried under Pacheco Creek and thus do not impair navigation or other Public Trust uses. Staff has no knowledge of commercial navigation or recreational boating at this location.

The proposed lease is limited to a 10-year term and does not grant the lessee exclusive rights to the lease premises. The Applicant has agreed to continue its maintenance and oversight duties associated with the subject facilities. Upon termination of the lease, the lessee may be required to remove all improvements from State land.

The recommended action will not substantially interfere with the Public Trust needs at this time and at this location. The issuance of a new lease will not change the use of the lease premises.

Climate Change:

The lease area consists of a portion of Pacheco Creek and adjacent leveed marshlands and is a tidally influenced site vulnerable to flooding at current sea levels. 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.

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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).

The combination of these projected conditions could have the potential for more frequent and stronger storm events that may expose the lease area to higher flood risks and cause structures to be damaged or dislodged, presenting hazards to public safety, as well as dangers for navigation. Conversely, prolonged drought conditions could lower water levels exposing previously submerged structures to the elements. According to the Applicant, the existing pipeline is buried below the bed of Pacheco Creek at variable depths. The pipeline at greater depth is unlikely to be affected by flooding or drought conditions that may occur within the lease area given future projected scenarios of sea-level rise; however, the pipeline at shallower depth may be affected by these scenarios, becoming more exposed and, therefore, potentially hazardous.

The subject lease will require periodic depth-of-burial surveys to maintain an accurate record of pipeline location and depth-of-burial, and to monitor potential exposure and vulnerabilities of the pipeline for hazards (among other required inspections). Regular monitoring and maintenance as

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required by the terms of the lease, will reduce the likelihood of structural pipeline degradation and potential hazards.

Conclusion:

For all the reasons above, staff believes the issuance of this lease 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 protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
2. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (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 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 foreseeable term of the lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

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AUTHORIZATION:

Authorize issuance of a General Lease – Public Agency Use to the Applicant beginning July 21, 2019, for a term of 10 years, for the continued maintenance, inspection, and testing of an existing buried non-operational 21-inch-diameter steel and concrete water pipeline, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration of \$125 per year, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 3371.1

LAND DESCRIPTION

A STRIP OF LAND 10 FEET IN WIDTH EXTENDING FROM THE ORDINARY HIGH WATER MARK ON THE WEST BANK OF PACHECO CREEK TO THE ORDINARY HIGH WATER MARK ON THE EAST BANK OF PACHECO CREEK AND LYING 5 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OR EXTENSIONS THEREOF:

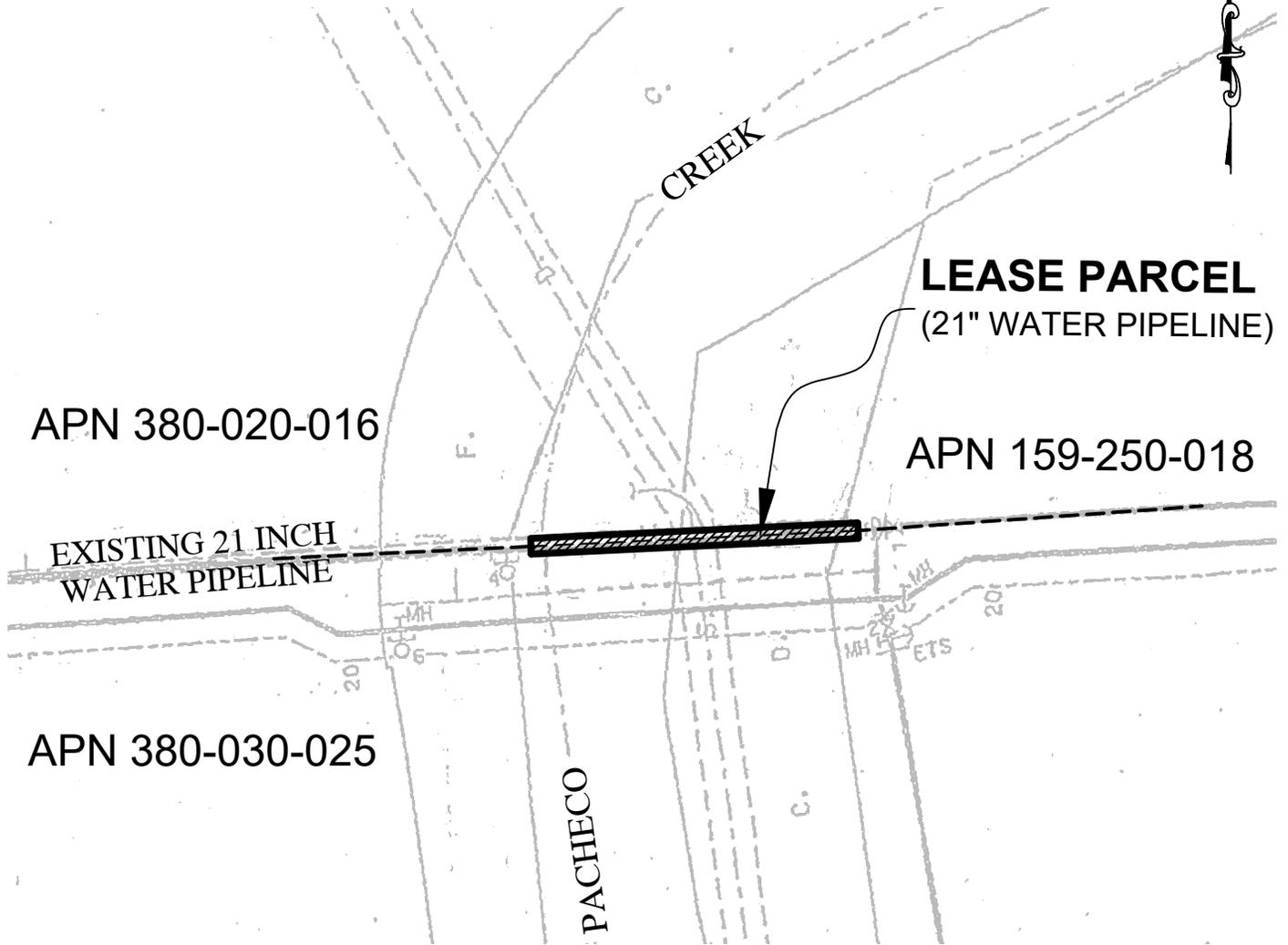
BEGINNING AT A POINT ON THE WESTERLY BANK OF PACHECO CREEK, WHICH POINT BEARS N. 18° 30' W., 458.70 FEET FROM THE SOUTHEAST CORNER OF SWAMP AND OVERFLOWED LANDS SURVEY NO. 268, AND WHICH POINT ALSO BEARS S. 64° 38' 02" E., 12,525.85 FEET FROM U.S.C. & G.S. TRIANGULATION STATION DESIGNATED "SUISUN NO. 2, 1922"; AND RUNNING N. 85° 45' E., 210 FEET, MORE OR LESS, TO A POINT ON THE EASTERLY BANK OF THE SAID PACHECO CREEK.

END OF DESCRIPTION

The above description is based on that original description prepared by CSLC Boundary Unit on September 23, 1965 as found in PRC 3371 file, Calendar Item 5.

NO SCALE

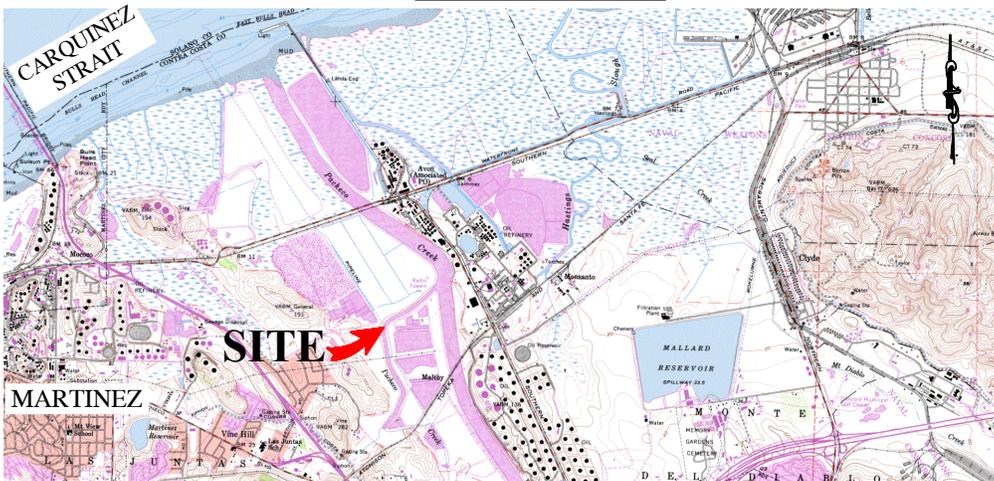
SITE



PACHECO CREEK, NEAR MARTINEZ

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 3371.1
 CONTRA COSTA WATER DISTRICT
 APNs 159-250-018,
 380-030-025 & 380-020-016
 GENERAL LEASE -
 PUBLIC AGENCY USE
 CONTRA COSTA 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.