

**CALENDAR ITEM  
C23**

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10/13/16  
PRC 6201.9  
A. Franzoia

**AMENDMENT OF LEASE**

**LESSEE:**

Las Gallinas Valley Sanitary District

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

Tide and submerged sovereign land in and adjacent to San Pablo Bay, near the city of San Rafael, Marin County.

**AUTHORIZED USE:**

Construction and maintenance of a wastewater disposal project combined with agriculture, wildlife enhancement, and open space preservation uses.

**LEASE TERM:**

49 years, beginning August 26, 1982.

**CONSIDERATION:**

The public use and benefit; with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests.

***PROPOSED AMENDMENT:***

Amend the Lease to:

1. Delete Section 3 Land Description and replace with Exhibit A Land Description and Exhibit B Site and Location Map (for reference purposes only), attached and by this reference made a part hereof.
2. Modify and supplement Section 1 of Basic Provisions, to include the following:

**LAND USE OR PURPOSE:** Management of wildlife habitat, open space preservation, public access, and drainage improvements, as required in the existing bed of Miller Creek.

CALENDAR ITEM NO. **C23** (CONT'D)

As to Parcel One only: Installation and maintenance of a cattle exclusion fence atop the west levee of Lower Miller Creek.

3. Amend Section 2 of the lease to add the following paragraphs:
  - Lessee's use of the Lease Premises and any Improvements thereon is at Lessee's sole and exclusive risk.
  - Lessee shall notify Lessor immediately in case of any accident, injury, or casualty on the Lease Premises.
  - Lessee shall submit an application for an amendment to this lease for any Miller Creek drainage maintenance project on State marsh land adjacent to the Lease Premises including copies of all applications, permits, and approvals from all other agencies with jurisdiction.

All other terms and conditions of the lease shall remain in effect without amendment.

**BACKGROUND:**

In the early 1980s, the Las Gallinas Valley Sanitary District (District) sought to acquire approximately 384 acres of land adjacent to San Pablo Bay to construct wastewater disposal improvements. The owner of record was the Catholic Youth Organization of the Archdiocese of San Francisco (CYO). However, due to the known presence of historic sloughs and rivulets, many of which had been filled in, Commission staff asserted a claim to the sovereign land within the property.

On August 26, 1982, the Commission authorized Lease No. PRC 6201.9, a 49-year General Lease – Public Agency Use, to the District to construct and maintain a wastewater disposal project along with agriculture, wildlife enhancements, and open space preservation on approximately 384 acres ([Calendar Item 12, August 26, 1982](#)). Because the extent and precise location of the State's sovereign interest in the land was not known, the lease was issued without prejudice to either party regarding claims of title that may be asserted then or in the future. The lease area is depicted as Parcel 2 on the attached Exhibit B, Site and Location Map.

In 1983, the District acquired title to the 384 acres, subject to the State's claim and the Commission's lease.

On July 22, 1988, the Commission was contacted by the CYO to determine the State's interest in approximately 880 acres adjacent to the lease parcel and San

CALENDAR ITEM NO. **C23** (CONT'D)

Pablo Bay. After staff examined the historic title records, surveys, and depictions of the physical conditions of the property (including historic sloughs and rivulets that had been filled) and lengthy negotiations, the Commission authorized a title settlement agreement (AD 222) on December 21, 1994 ([Calendar Item 32, December 21, 1994](#)). The settlement agreement involved an exchange where the State received an 8-acre parcel (Parcel One on Exhibit B) for the historic sloughs and rivulets within swamp and overflowed patents that were filled and marsh lands along the Bay (a portion of which is Parcel Three on Exhibit B). Parcel One is situated along the west side of the lease parcel, while Parcel Three is located on the east side of the lease parcel.

Miller Creek runs along the northerly and easterly boundary of Parcel One, then along the southerly edge of Parcel Two, and flows across Parcel Three into San Pablo Bay.

The Lessee has determined that it has an immediate need to improve drainage flows from Miller Creek to the Bay. The drainage improvement project will take place within Miller Creek on that portion of Parcel Two near the easterly boundary of Parcel One. However, the proposed drainage improvement project is consistent with the previously authorized maintenance provisions of Lease No. PRC 6201.9 for improved flood and sediment conveyance to protect existing operations and facilities from stream and coastal flood hazards. The Lessee estimates 9,450 cubic yards of sediment will be removed from an approximately 2,655-foot-long section of Miller Creek upstream of an existing reclamation bridge and will be reused on levees and as fill at the existing gravel parking area at Lessee's facilities.

**STAFF ANALYSIS AND RECOMMENDATION:**

**Authority:**

Public Resources Code sections 6005, 6216, and 6301; California Code of Regulations, title 2, section 2000, subdivision (b).

**Public Trust and State's Best Interests Analysis:**

The existing lease area has been developed into a Reclamation Area (RecArea) consisting of a 20-acre wildlife marsh, 40 acres of storage ponds, a 10-acre saltwater marsh, 20 acres of irrigated landscape, and 200 acres of irrigated pasture. The RecArea is shown on the attached Exhibit B as Parcel Two, and is located immediately east of and adjacent to Parcel One and west of and immediately adjacent to Parcel Three.

CALENDAR ITEM NO. **C23** (CONT'D)

There are approximately 3.5 miles of public access easements along the shore of the storage ponds and around the freshwater marsh. Walking paths atop levees are part of the 500-mile San Francisco Bay Trail.

The saltwater and freshwater marshes provide habitat for wildlife, including many migratory waterfowl. The Audubon Society has catalogued more than 200 bird species within the area. The RecArea is open to the public from 4:00 a.m. to 10:00 p.m. Visitor parking is provided in the gravel lot very near the west entrance to the reclamation bridge with portable restrooms and recycling cans.

The addition of Parcel One and Parcel Three to the lease premises of Lease No. PRC 6201.9 would, expand wildlife habitat and open space preservation areas, and permit installation of a cattle exclusion fence to eliminate disturbance of vegetation both within Lower Miller Creek and on its banks, as currently occurs.

Miller Creek supports a population of federally listed Steelhead and adjacent wetland/marsh areas that potentially support other state and federally listed special status species. The drainage improvement project objectives include minimizing the extent of channel excavation/maintenance that may adversely impact habitats in Lower Miller Creek while maximizing the extent and value of adjacent wetlands.

The wastewater facility is a necessary component of the wastewater system that provides regional sanitation to the general public in the Lessee's service area. Based on the information known to Commission staff at this time, the existing facilities and proposed additional parcels do not interfere with the Public Trust needs and values at this location and for the foreseeable term of the lease.

Sea-level rise (SLR) estimates for purposes of the Lower Miller Creek dredging project were taken from the National Research Council's 2012 report on SLR for the coasts of California, Oregon, and Washington. Using the 2030 projections, which equated to an average annual SLR of 0.187 inch, Lower Miller Creek and surrounding property would experience approximately 2.24 inches of SLR over the life of the lease and is anticipated to have negligible impact on the improvements.

CALENDAR ITEM NO. **C23** (CONT'D)

For all the reasons above, Commission staff believes the amendment of Lease No. PRC 6201.9 is consistent with the common law Public Trust Doctrine and is in the State's best interests.

**OTHER PERTINENT INFORMATION:**

1. This action is consistent with Strategy 1.3 of the Commission's Strategic Plan to protect, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways and Strategy 1.2.4 to prioritize the use of sovereign lands where appropriate for open space, wetlands, riparian habitat and habitat preservation, restoration, and enhancement.
2. Staff recommends that the Commission find that this activity 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 14, section 15301.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300.

3. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon staff's consultation with the persons nominating such lands and through the CEQA review process, it is staff's opinion that the project, as proposed, is consistent with its use classification.

**EXHIBITS:**

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

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

Find that the activity 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 14, section 15301.

CALENDAR ITEM NO. **C23** (CONT'D)

**PUBLIC TRUST AND STATE'S BEST INTEREST:**

Find that the proposed amendment will not substantially interfere with the Public Trust needs and values at this location, is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

**SIGNIFICANT LANDS INVENTORY FINDING:**

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

**AUTHORIZATION:**

Authorize the amendment of Lease No. PRC 6201.9, a General Lease – Public Agency Use, to delete Section 3, Land Description, and replace it with Exhibit A, Land Description, and Exhibit B, Site and Location Map (for reference purposes only), attached and by this reference hereto and made a part hereof; for the installation and maintenance of a cattle exclusion fence and the management of wildlife habitat, open space preservation, public access, and drainage improvements; and provisions addressing the Lessee's use of the Lease Premises and when notice or an application is required from the Lessee; effective October 13, 2016, to Las Gallinas Valley Sanitary District; all other terms and conditions of the lease will remain in effect without amendment.

## EXHIBIT A

PRC 6201.9

### LAND DESCRIPTION

Three (3) parcels of submerged lands, tidelands and sovereign lands situate near the City of San Rafael, adjacent to the protracted Sections 2, 3, 10, 11 and 15 of Township 2 North, Range 6 West, MDM as shown on the Official Government Township Plat, approved July 24<sup>th</sup>, 1871, County of Marin, State of California, and more particularly described as follows:

#### Parcel 1 (PARCEL ONE - AD 122)

That parcel of land as described in "EXHIBIT 1" of that grant deed to the State of California by the Catholic Youth Organization of the Archdiocese of San Francisco, recorded on March 18, 1998 in Document No. 98-016821, Official Records of said county.

#### Parcel 2

BEGINNING at the Northeast corner of that certain parcel of land described in the deed from Saint Vincent's Roman Catholic Orphan Asylum of San Francisco for Boys to the Las Gallinas Valley Sanitary District recorded December 20, 1965 in Book 2009 at Page 464, Marin County Records, said point being also on the line designated "Limit of Jurisdiction of the Tide Land Commissioners" as shown on that certain map entitled "Map No. 3, Salt Marsh and Tide Lands" surveyed by G. F. Allardt in 1870, running thence from said POINT OF BEGINNING along said Limit of Jurisdiction line the following courses and distances: North 62°22'08" East 243.27 feet, North 63°43'08" East 869.88 feet, North 65°27'08" East 732.60 feet, North 67°03'08" East 723.36 feet, North 68°36'08" East 714.78 feet, North 69°26'03" East 74.64 feet, North 70°12'39" East 632.83 feet, North 71°41'26" East 671.22 feet; thence leaving said Limit of Jurisdiction line and running North 15°27'17" West 162.12 feet, North 47°24'01" East 118.19 feet, North 31°19'43" East 134.63 feet, North 22°22'48" East 110.31 feet, North 3°04'49" West 223.32 feet, North 9°52'36" West 227.37 feet, North 44°05'26" West 44.55 feet, North 76°10'17" West 401.64 feet, North 15°31'27" West 112.09 feet, North 56°20'01" East 273.06 feet to a point hereinafter referred to as Point "A", running thence North 17°42'39" East 294.29 feet, North 26°54'40" East 2,428.24 feet, North 1°44'58" East 2,593.49 feet, more or less, to the boundary line between the lands of St. Vincent's School For Boys and the United States Government Hamilton Air Force Base, said point hereinafter referred to as Point "B", running thence westerly along said boundary line North 88°41'18" West 1,900.46 feet, thence leaving said boundary line and running South 2°04'31" East 3,067.31 feet, South 89°50'22" West 1,161.52 feet, South 0°09'38" East 1,924.24 feet, North 82°46'32" West 357.84 feet, South 2°28'18" West 920.86 feet, South 87°21'32" West 850.83 feet, South 34°01'26" West 703.78 feet, South 67°03'08" West 1,279.46 feet, more or less to the West boundary of Survey No. 130 of Swamp and Overflow Lands, Marin County, California, running thence southerly along said westerly boundary, South 1°10'38" West 907.26 feet, more or less, to the most northerly corner of said lands of the Las Gallinas Valley Sanitary District (2009 OR 464); running

thence along the northeasterly boundary of said lands of the Las Gallinas Valley Sanitary District South  $51^{\circ}14'08''$  East 430.15 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM all those validly patented tidelands and swamp and overflowed lands falling within the boundaries of the above described "Parcel 2"

**Parcel 3 (Portion of PARCEL TWO – AD 122)**

That parcel of land as described in "EXHIBIT 1" of that quitclaim deed to the State of California by the Catholic Youth Organization of the Archdiocese of San Francisco, recorded on March 18, 1998 in Document No. 98-016820, Official Records of said county.

EXCEPTING THEREFROM all those lands lying northerly of the following described line:

BEGINNING at a point which bears North  $17^{\circ}42'39''$  East 294.29 feet from the above described "Point A"; thence East to the easterly line of the above described parcel in "EXHIBIT 1".

BASIS OF BEARING of the above description "Parcel 2" is CCS27, Zone 3. All distances are ground distances.

The above description, "Parcel 2" is taken from that original description by Boundary and Title Unit, Leroy Weed, Supervisor on August 2, 1982 as found in Section 3 of Lease No. PRC 6201.9 authorized on August 26, 1982.

**END OF DESCRIPTION**

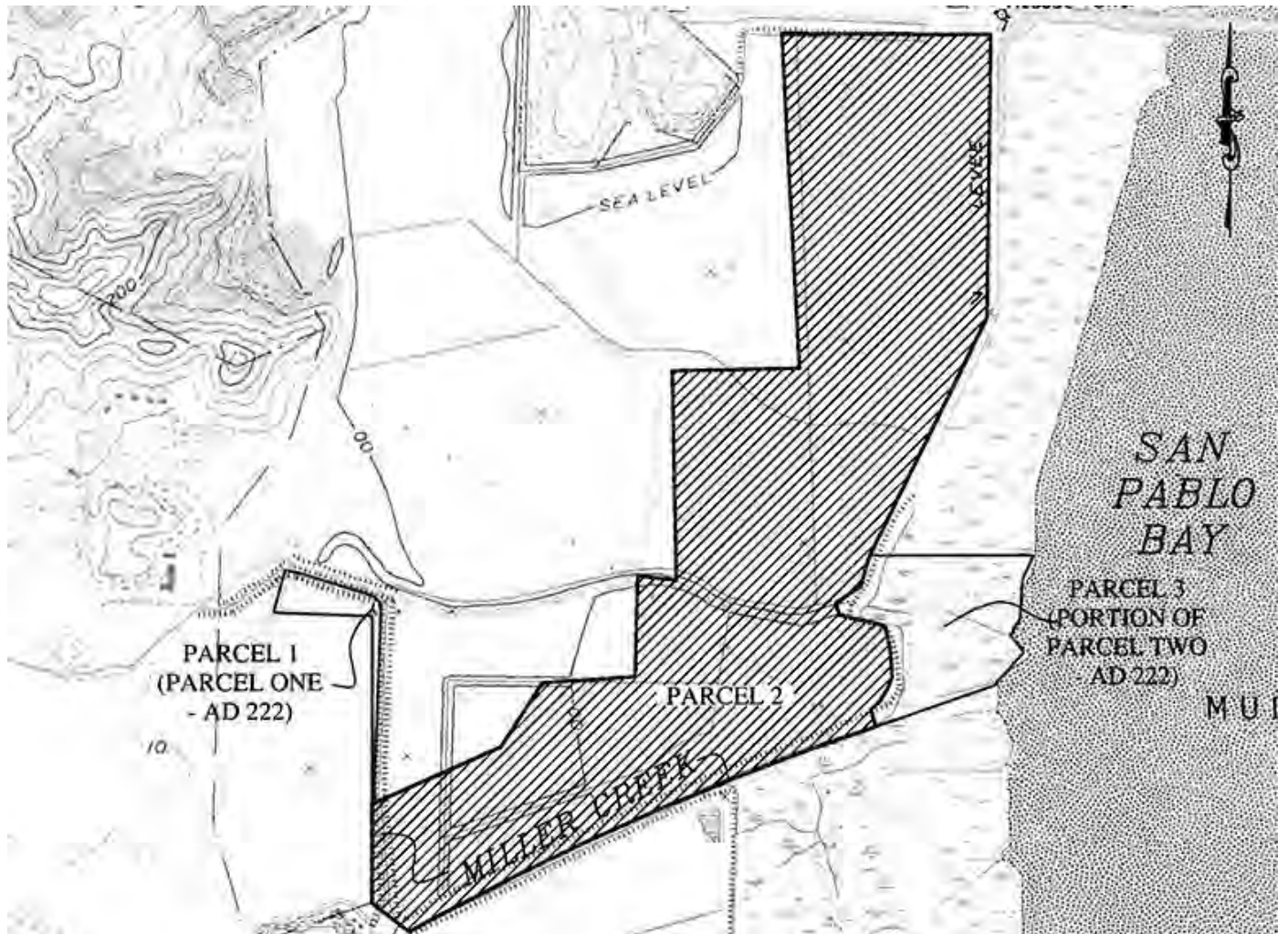
PREPARED 9/30/16 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT





NO SCALE

### SITE



MILLER CREEK, NEAR SAN RAFAEL

NO SCALE

### LOCATION



MAP SOURCE: USGS QUAD

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 6201.9  
LAS GALLINAS VALLEY  
SANITARY DISTRICT  
GENERAL LEASE -  
PUBLIC AGENCY USE  
MARIN COUNTY



MJF 9/30/16