

**CALENDAR ITEM
C17**

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06/22/17
PRC 7235.1
M. Schroeder

**TERMINATION AND ISSUANCE OF A
GENERAL LEASE – PUBLIC AGENCY USE**

LESSEE/APPLICANT:
City of Petaluma

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Petaluma River, adjacent to 781 Baywood Drive, city of Petaluma, Sonoma County.

AUTHORIZED USE:

Continued use, maintenance, and operation of an existing public marina, known as the Petaluma Marina, consisting of 220 uncovered berths, pilings, gangways, fuel dock and pump, launching ramp, restrooms, harbormaster's office, bank protection, and six security vessels.

LEASE TERM:

20 years, beginning July 1, 2017.

CONSIDERATION:

Marina Facility: \$13,480 per year, with an annual Consumer Price Index adjustment; and the State reserving the right to fix a different rent on the 10th anniversary of the lease term, as provided in the lease.

Bank Protection: 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.

SPECIFIC LEASE PROVISIONS:

1. 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.

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2. The lease also contains a provision for the attrition of seven current liveboard tenants within 2 years of the effective date of the lease.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

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

Public Trust and State's Best Interests Analysis:

On August 10, 1988, the Commission authorized a 30-year General Lease – Public Agency Use with a renewal option of one successive period of 10 years to the City of Petaluma, for proposed construction and operation of a public marina known as the Petaluma Marina; bank protection; dredging of a maximum of 300,000 cubic yards of minerals other than oil, gas and geothermal to facilitate construction of the marina; and annual maintenance dredging of 13,000 cubic yards of material ([Calendar Item 37, August 10, 1988](#)). On December 7, 1995, the Commission authorized an amendment of the lease to include a fuel dock and pump within the existing lease premises ([Calendar Item C39, December 7, 1995](#)).

On June 28, 2010, the Commission authorized an amendment of lease to increase the annual maintenance dredge amount from 13,000 cubic yards to 38,303 cubic yards ([Calendar Item C49, June 28, 2010](#)). The Commission approved numerous rent revisions throughout the lease term, most recently on April 23, 2015, the Commission authorized a revision of the minimum rent from \$8,078 per year to \$14,184 per year ([Calendar Item C26, April 23, 2015](#)). The lease will expire on June 30, 2018. The Applicant is applying for termination of the existing lease effective June 30, 2017 and issuance of a new lease.

Applicant owns the upland adjoining the lease premises. The subject marina directly promotes Public Trust needs. The subject public marina facilities accommodate, promote, and support recreational boating, public access and enjoyment of the State's sovereign land. Recreational boating is a water-dependent use that is generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private recreational boating facilities as an authorized use of Public Trust lands (Pub. Resources Code, § 6503.5). The adjacent upland is privately owned and developed as a commercial office complex, and is available for use by the general public.

The Petaluma Marina is a large marina covering nearly 14 acres. The marina is vulnerable to theft and property destruction and has experienced

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vandalism, accidents, and other on-the-water problems, requiring immediate action for the overall safety and security of the facility and the public. These factors support a limited and controlled presence of navigable vessels to be occupied on a 24-hour basis for security purposes. Taking into account the size and design of the marina, staff is recommending that no more than six navigable vessels be used for security purposes. These vessels will be located in strategically designated slips subject to the approval of Commission staff. The security vessels will be required to leave the marina waters at least once every 90 days for a minimum of 6 hours, and the Applicant is required to maintain an annual log to be made available to Commission staff upon request.

Presently, the marina includes 13 liveaboard vessels. A 2-year attrition plan will be implemented for the removal of the residential use for seven of these vessels. The lease includes a provision requiring the Applicant to provide quarterly progress reports to staff to monitor compliance with the attrition provision.

The bank protection is consistent with the common law Public Trust Doctrine because it serves as an aid to navigation by providing reinforced structural support to the banks of the waterway and limiting potentially harmful erosion of the bank into the waterway. The bank protection also confers benefits to the upland owner by ensuring sufficient sublateral support to the adjoining properties.

The subject harbormaster office is consistent with the common law Public Trust Doctrine because it is used to aid in water-dependent commerce and navigation. The facility is used for marina security and general marina business. The harbormaster office provides a necessary and convenient service to regional boaters thereby facilitating public navigation, fishing, and water-related recreation. The proposed new lease will allow for the continued operation of the marina and appurtenant facilities. The Applicant has decided not to include maintenance dredging of up to 38,303 cubic yards of material as part of the lease renewal at this time. If in the future, maintenance dredging is needed, the Applicant must submit an application to amend the lease and allow for maintenance dredging.

The proposed lease includes certain provisions protecting the public use of the proposed lease area, including a limited lease term of 20 years, and a non-exclusive use provision. The marina and appurtenant facilities have existed for many years at this location; 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.

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Upon termination of the lease, the lessee may be required to remove any improvements and restore the lease premises to their original condition. The proposed lease 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, are not limited to the open coast and may involve increased wave activity, storm events, and flooding. The existing structures within the proposed lease area are located along the Petaluma River within a tidally-influenced region identified.

By 2030, California's coast could see up to 1 foot of sea-level rise (from year 2000 levels), 2 feet by 2050, and possibly over 5 feet by 2100 (National Research Council 2012). This effect could increase the Petaluma River's inundation levels within the lease area. In addition, as stated in *Safeguarding California* (California Natural Resources Agency 2014), climate change is projected to increase the frequency and severity of natural disasters related to flooding, drought, and storms (especially when coupled with sea-level rise).

The combination of these projected conditions could potentially raise the likelihood of damage 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 structures 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 potentially leading to increased wear and tear on the pilings and dock, reduce navigability of the channel thereby increasing hazards, and impact the function and utility of the lease area structures. The floating boat docks, fuel dock, and any adjustable gangways are adaptable to variable water levels, allowing them to rise and fall with storms and droughts and increasing their resiliency to some climate change impacts, but may require more frequent maintenance to ensure continued function during and after storm seasons and to avoid dislodgement of dock facilities. The fixed features may need to be reinforced to withstand higher levels of flood exposure because these features would not be able to rise and fall with storms and droughts. The bank is heavily vegetated and has varying levels of bank protection in the form of riprap. The vegetation and riprap, which provides stability and reduces the amount of erosion and scour pressure, may experience increased stress and forces acting upon them

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during future events. These features remain at risk of accelerated deterioration from currents and floods. Regular maintenance, as required by the terms of the lease, will reduce the likelihood of severe structural degradation or dislodgement.

Conclusion:

For all the reasons above, staff believes the termination of the existing lease and issuance of this lease is consistent with the common law Public Trust Doctrine, will not substantially interfere with Public Trust needs at this location, at this time, or for the foreseeable term of the proposed lease, 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, and Strategy 1.3 to protect, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
2. 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).

3. 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 14, section 15301.

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

4. 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.

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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 14, section 15301.

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, or 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.

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:

1. Authorize termination of Lease No. PRC 7235.1, a General Lease – Public Agency Use, effective June 30, 2017, issued to the City of Petaluma.
2. Authorize issuance of a General Lease – Public Agency Use to the City of Petaluma beginning July 1, 2017, for a term of 20 years, for the continued use, maintenance, and operation of an existing commercial marina known as Petaluma Marina, consisting of 220 uncovered berths, pilings, gangways, fuel dock, and pump, launching ramp, restrooms, harbormaster's office, bank protection, and six security vessels, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration for the marina facilities: annual rent in the amount of \$13,480, with an annual Consumer Price Index adjustment and the State reserving the right to fix a different rent on the 10th anniversary of the Lease term, as provided in the Lease; consideration for the bank protection: the

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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.

EXHIBIT A

PRC 7235.1

LAND DESCRIPTION

Being portions of the land described in Deed No. 9789 and Deed No. 17660, recorded February 19, 1953 and January 27, 1956 in Books 1189 and 1410 of Official Records, pages 305 and 451, Sonoma County Records, and being a portion of the Petaluma Ranch in Townships 4 and 5 North, Range 7 West, M.D.B.&M., more particularly described as follows:

PARCEL 1

Commencing at the easterly terminus of the curve with an arc length of 785.9 feet, as described in that Deed to Northwestern Pacific Railroad Company, a corporation, recorded October 24, 1916 in Book 345 of Deeds, page 266, Sonoma County Records, said point lying on the southerly line of the Northwestern Pacific Railway right-of-way, said point of commencement being indicated as Point "C" on that Record of Survey recorded in Book 185 at page 15 of Maps, Sonoma County Records; thence southeasterly on a tangent to said curve South 76° 59' 12" East 785.10 feet to the Point of Beginning of the herein described parcel;

thence South 10° 09' 03" West 560.70 feet;

thence South 09° 07' 21" East 127.39 feet;

thence South 61° 06' 16" East 248.49 feet;

thence South 07° 18' 10" West 130.65 feet;

thence South 54° 52' 52" West 142.34 feet;

thence South 67° 44' 27" West 100.44 feet;

thence South 50° 53' 43" West 406.86 feet;

thence North 42° 34' 57" West 369.13 feet;

thence North 30° 57' 48" West 554.14 feet;

thence South 41° 04' 00" East 121.55 feet;

thence South 03° 56' 00" West 143.43 feet;

thence South 86° 04' 00" East 77.00 feet;

thence North 26° 12' 53" East 123.30 feet;

thence North 15° 42' 15" East 93.94 feet;

thence North 05° 09' 40" East 140.00 feet;

thence North 10° 16' 45" East 278.00 feet;

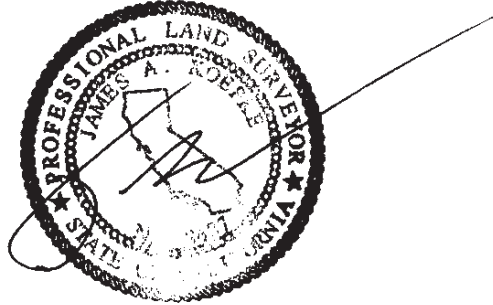
thence North 14° 34' 00" East 196.00 feet;
thence South 76° 59' 12" East 30.00 feet to the Point of Beginning, containing 7.527
acres more or less.

PARCEL 2

Commencing at the easterly terminus of that curve with an arc length of 785.9 feet, as described in that Deed to Northwestern Pacific Railroad Company, a corporation, recorded October 24, 1916 in Book 345 of Deeds, page 266, Sonoma County Records, said point lying on the southerly line of the Northwestern Pacific Railway right-of-way, said point of commencement being indicated as Point "C" on that Record of Survey recorded in Book 185 at page 15 of Maps, Sonoma County Records; thence along said curve to the left with a radius of 352.20 feet, through a central angle of 71° 24' 08", an arc length of 438.91 to the Point of Beginning of the herein described parcel; thence South 41° 04' 00" East 362.99 feet;
thence North 48° 56' 00" East 203.43 feet;
thence South 41° 04' 00" East 221.00 feet;
thence South 03° 56' 00" West 33.00 feet;
thence South 48° 56' 00" West 83.50 feet;
thence South 41° 04' 00" East 292.00 feet;
thence North 48° 56' 00" East 91.00 feet;
thence South 86° 04' 00" East 28.50 feet;
thence South 41° 04' 00" East 24.45 feet;
thence South 30° 57' 48" West 554.14 feet;
thence South 42° 34' 57" East 45.98 feet; thence a curve to the right with a radius of 145.00 feet, through a central angle of 17° 56' 47", for an arc length of 45.42 feet; thence North 24° 38' 10" West 696.54 feet; thence along a curve to the left with a radius of 255.00 feet, through a central angle of 08° 16' 47", for an arc length of 36.85 feet; thence North 32° 54' 57" West 214.09 feet; thence along a curve to the right with a radius of 145.00 feet through a central angle of 08° 16' 47" for an arc length of 20.95 feet; thence North 24° 38' 10" West 67.50 feet to a point on the previously described curve with a radius of 352.20 feet; thence along said curve in a northeasterly direction from a tangent which bears North 21° 46' 00" East, through a central angle of 09° 50' 40" for an arc length of 60.51 feet to the Point of Beginning, containing 6.457 acres, more or less.

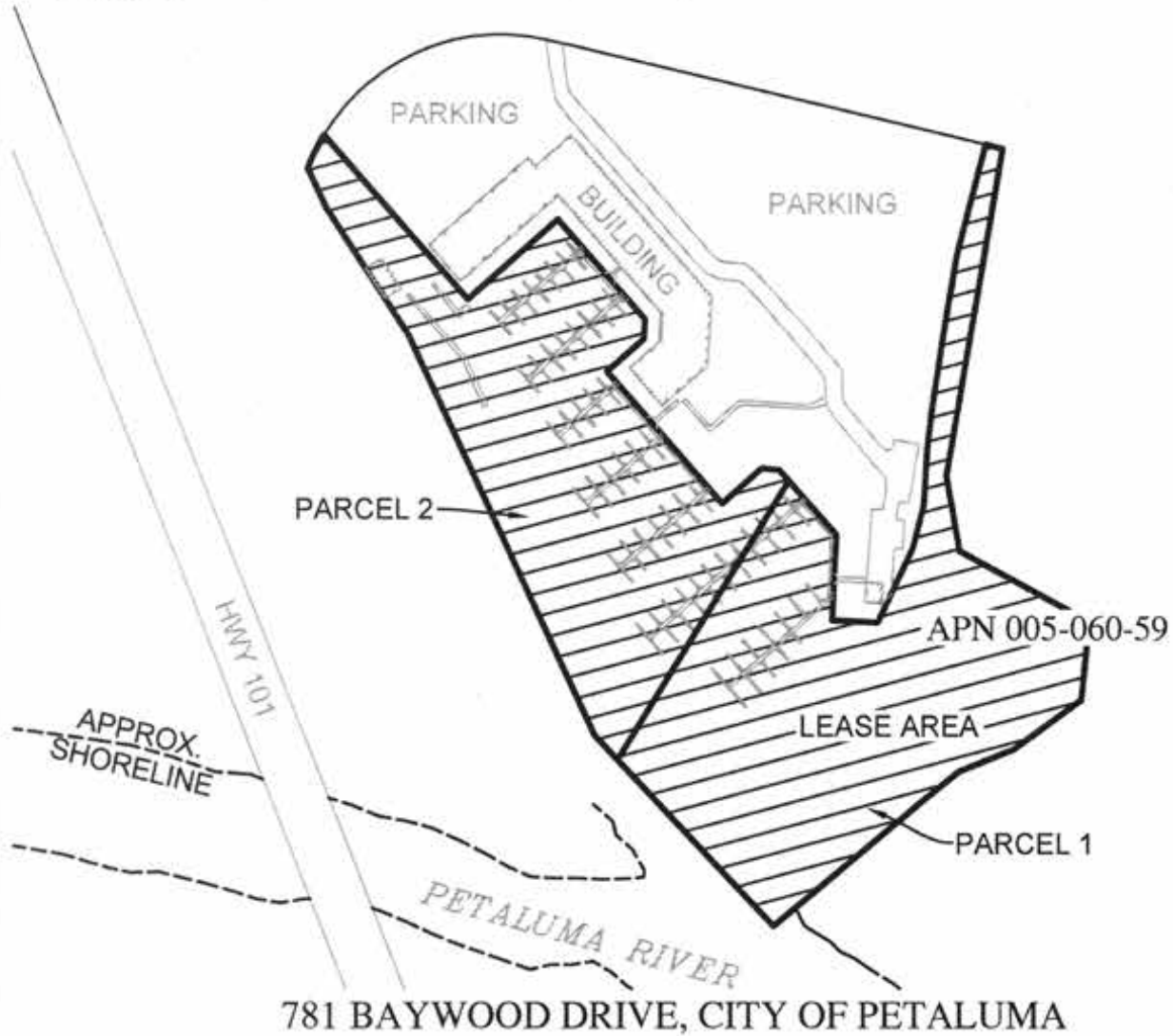
END OF DESCRIPTION

Prepared 08/30/2016 by the California State Lands Commission Boundary Unit.



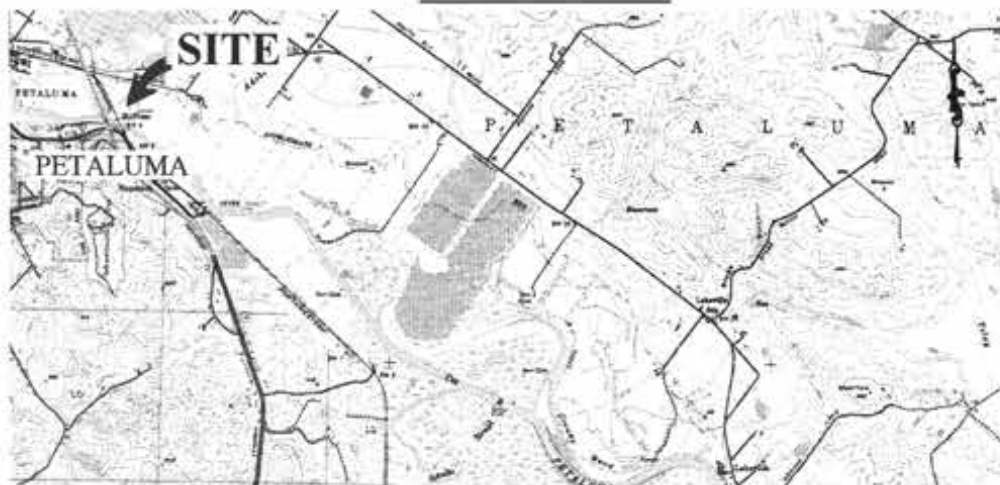
NO SCALE

SITE



NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 7235.1
 CITY OF PETALUMA
 APN 005-060-59
 GENERAL LEASE -
 PUBLIC AGENCY USE
 SONOMA COUNTY



RGB 08/30/16

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.