

**STAFF REPORT
C27**

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11/29/17
PRC 4769.1
V. Caldwell

**RESCISSION OF ASSIGNMENT AND CORRECTION,
AND ASSIGNMENT OF LEASE**

LESSEE/ASSIGNOR:

Plains Products Terminals LLC

ASSIGNEE:

TransMontaigne Operating Company L.P.

AREA, LAND TYPE, AND LOCATION:

14.04 acres, more or less, of filled and unfilled sovereign land in Suisun Bay and Pacheco Slough, adjacent to Waterfront Road, near the city of Martinez, Contra Costa County.

AUTHORIZED USE:

Continued use and maintenance of an existing marine oil terminal (Martinez Terminal) consisting of a 40-foot-wide by 100-foot-long concrete wharf connected to land by a 1,700-foot-long trestle supporting an 11-foot-wide roadway and pipe rack; an existing 12-inch-diameter petroleum pipeline; filled land along Waterfront Road; and annual dredging of up to 6,000 cubic yards of material.

LEASE TERM:

20 years, beginning January 1, 2005.

CONSIDERATION:

\$330,210 per year, with an annual Consumer Price Index adjustment.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6303, 6501.1, 6804, 8757, and 8758; California Code of Regulations, title 2, section 2000, subdivision (b).

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Public Trust and State's Best Interests Analysis:

A marine oil terminal is generally considered a Public Trust consistent use as it facilitates waterborne commerce. The Lessee/Assignor owns the uplands adjoining the lease premises. The Assignee will own the uplands adjoining the lease premises at the close of purchase, but no later than June 30, 2018. The close of purchase is currently anticipated to occur around December 31, 2017; however, due to the nature and complexity of this type of transfer, staff recommends allowing additional time for the close of purchase to occur.

On August 8, 2005, the Commission authorized a 20-year General Lease – Industrial Use to Shore Terminals LLC for the existing Martinez Terminal ([Item C47, August 8, 2005](#)). The lease will expire December 31, 2024. At the same meeting, the Commission authorized the assignment of the lease to Pacific Atlantic Terminals LLC (Pacific) ([Item C49, August 8, 2005](#)).

When the lease was assigned to Pacific, Pacific was a subsidiary of Pacific Energy Partners, L.P. Subsequently, pursuant to a purchase agreement, Pacific Energy Partners, L.P.; Pacific Energy GP, LP; and Pacific Energy Management LLC entered into an Agreement and Plan of Merger dated June 11, 2006, with Plains All American Pipeline, L.P.; Plains AAP, L.P.; and Plains All American GP LLC. The effective date of the merger was November 15, 2006, and was authorized by the Commission ([Item C41, June 24, 2008](#)). Pacific was subsequently renamed Plains Products Terminals LLC (Plains).

On December 6, 2016, the Commission authorized an assignment of the lease and revision of rent ([Item C24, December 6, 2016](#)). The proposed assignment was to Valero East Bay LLC (Valero). That proposed assignment was conditional upon the Lessee and Valero obtaining all required approvals for the transfer and the closing of the sale transaction no later than March 31, 2017. On April 6, 2017, the Commission authorized a correction item to allow for the closing of the sale transaction to happen any time before December 31, 2017 ([Item C29, April 6, 2017](#)).

A condition of closing the sales transaction was to receive clearance under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (Public Law 94-435, known commonly as the HSR Act) from the U.S. Federal Trade Commission (FTC). After an extensive investigation, the FTC elected not to pursue any regulatory action with respect to the proposed transaction, but upon the conclusion of the FTC's investigation, the Office of the Attorney General for the State of California filed suit in U.S. District

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Court for the Northern District of California, seeking to block the transaction.

On September 18, 2017, Lessee and Valero issued a joint statement that it was in their best interests to terminate the transaction rather than endure the continued uncertainty that a lengthy trial would create for the California-based employees and customers of the terminals, as well as the considerable expense associated with defending a lawsuit. Staff recommends rescinding the prior authorizations (authorization items two and three of [Item C24, December 6, 2016](#), and [Item C29, April 6, 2017](#)) as they relate to assignment of lease, but to maintain the approval of the revision of rent (authorization item one of [Item C24, December 6, 2016](#)).

The new proposed Assignee is the primary operating subsidiary of TransMontaigne Partners L.P., a public company traded on the New York Stock Exchange. TransMontaigne Partners L.P. is a provider of terminal, storage, and transportation services for petroleum and other liquid products, and operates 48 terminal facilities with more than 800 storage tanks. They have over a decade of experience owning and operating such facilities in the eastern half of the United States. On November 1, 2017, an affiliate of the assignee and TransMontaigne Partners L.P., TLP Management Services, LLC, assumed full operation, under an operating agreement with Seaport Midstream Partners, LLC, of two large-scale waterborne terminal facilities in Seattle, Washington and Portland, Oregon. While those two facilities represent the company's first operations on the west coast, the proposed acquisition and lease assignment will be the company's first acquisition of a facility on the west coast.

The Assignee serves as the operator of all terminal facilities, pipelines, and associated assets owned by TransMontaigne Partners L.P. and is the legal asset owner for the majority of the terminal facilities. In addition, the Assignee is the legal entity that holds all state and federal operator permits, licenses, and authorization. As part of the assignment review process, staff performed a financial review of the Assignee's assets, in addition to the assets of the parent organization, to ensure its performance of the terms of the lease. Staff determined that the parent organization carries sufficient assets to guarantee the performance of the terms of the lease. TransMontaigne Partners L.P. has been made aware that a parent guarantee will be required of the parent company upon the close of purchase to guarantee performance of all obligations of the Assignee under the lease.

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Upon closing of the purchase, the Assignee intends to operate the upland and leased facilities in the same manner as they are currently being operated. The Assignee will adopt and continue to implement the Assignor's operations manual for the Martinez Terminal, subject only to minor changes to reflect the change in ownership. The same oil spill prevention training and certification programs will continue to be implemented as they have under the Assignor. The Assignee has agreed to extend offers of employment to all the Assignor's employees at the Martinez Terminal. Additionally, the Assignor and Assignee will enter into a transition service agreement, whereby the Assignor will provide certain transition services related to the operation of the Martinez Terminal to the Assignee to help provide continuity, safety, and a smooth transition.

The engineering, inspection, and maintenance of the Martinez Terminal are regulated primarily by the Commission through the Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS), codified in the California Building Code, Chapter 31F – Marine Oil Terminals (Cal. Code Regs., tit. 24, § 3101F et seq.). To prevent oil spills and protect public health, safety, and the environment, these comprehensive standards contain requirements for assessment of the structural, mechanical, and electrical systems at marine oil terminals, including audits, above water and underwater inspections, structural evaluations, seismic analyses, berthing and mooring, geotechnical, fire prevention, detection and suppression, piping/pipelines, mechanical and electrical equipment, and electrical systems.

Since MOTEMS became effective in 2006, the Martinez Terminal has completed three MOTEMS audit and inspection cycles to evaluate the fitness-for-purpose of the facility. Several deficiencies were identified during these audits and inspections, which have been corrected or are in the process of being addressed for compliance purposes.

As a condition of issuing the current lease in 2005, the Martinez Terminal has been required to adhere to a mitigation monitoring program. As of December 2016, the facility is compliant with the majority of the requirements of that program and is in the process of addressing the remaining requirements, none of which are significant.

Assignment of the lease to the Applicant does not significantly alter the land or alienate the State's fee simple interest, nor does it permanently impair public rights. The assignment is limited to the remaining term of the lease. The lease requires the payment of annual rent to compensate the people of the State for the use of public land. The lease requires the

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Assignee to insure and indemnify the State for any liability incurred as a result of the Assignee's activities thereon. The assignment also requires a parent guarantee to further ensure the complete performance of all lease terms.

Climate Change:

The impacts of sea-level rise, including increased wave activity, storm events, and flooding, are not limited to the open coast. The Martinez Terminal is located in the Carquinez Strait within a tidally-influenced region; the Martinez Terminal is, therefore, at higher risk of flood exposure given future projection scenarios of sea-level rise. By 2030, California's coast could see up to one foot of sea-level rise (from year 2000 levels), two feet by 2050, and possibly more than five feet by 2100 (National Research Council 2012). 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).

Tools exist to actively monitor the changing conditions brought about by climate change and sea-level rise. Approximately 1.25 miles to the west of the Martinez Terminal are National Oceanic and Atmospheric Administration tide and current monitoring stations that track the speed of the current and sea state, including high tides and king tide conditions. These monitors are used to make tidal predictions and can be viewed at <http://tidesandcurrents.noaa.gov>, station ID 9415102. Data from these stations are archived for use in monitoring trends and in considering improvements to the Martinez Terminal as well as vessel mooring and loading limitations.

Under Section 3103F.5.3.4 of MOTEMS, terminal operators are required to consider the effect of sea-level rise on the Martinez Terminal over the expected life of the facility. Representatives of the Assignor have indicated that sea-level rise data and projections are factored into current and ongoing projects at the Martinez Terminal. In addition, regulations under the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Pub. Resources Code, § 8570 et seq.) require the Martinez Terminal to operate safely and ensure that crude oil and refined product conveyances remain above the waterline at all times. Compliance with these regulations will minimize the effects of sea-level rise on the Martinez Terminal and its operations.

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Conclusion:

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

OTHER PERTINENT INFORMATION:

1. The Martinez Terminal operations are regulated primarily by the Commission through its lease and a Mitigation Monitoring Program adopted by the Commission in August 2005, Commission regulations (Cal. Code Regs., tit. 2, § 2300 et seq.), and the Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS).
2. This activity 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 1.5 to ensure the highest level of environmental protection and public safety in the production and transportation of oil and gas resources.
3. Staff conducted a review of the performance deposit called for in the lease and recommends the deposit be revised from \$2,000,000 to \$2,589,415, to reflect economic inflation.
4. Rescinding the previous lease assignment authorization and authorizing the current lease assignment are not projects as defined by the California Environmental Quality Act 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).

EXHIBITS:

- A. Land Description
- B. Site and Location Map
- C. Proposed Parental Guarantee

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RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the assignment of the existing lease will not 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.

AUTHORIZATION:

1. Rescind the previous authorizations to assign Lease No. PRC 4769.1, a General Lease – Industrial Use, on December 6, 2016 (authorization items two and three), and on April 6, 2017, to Valero East Bay LLC.
2. Approve the revision of performance deposit for Lease No. PRC 4769.1 from \$2,000,000 to \$2,589,415, effective January 1, 2018.
3. Authorize the assignment of Lease No. PRC 4769.1, a General Lease – Industrial Use, of sovereign land as described on Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof, from Plains Products Terminals LLC, to TransMontaigne Operating Company L.P.; effective on the close of purchase but no later than June 30, 2018.
4. Approve the Parental Guarantee of TransMontaigne Partners L.P., in a form substantially similar to that set forth in the attached Exhibit C.

Exhibit "A"

Description of Lands Covered by Lease No. PRC 4769.1

Real property situated in Contra Costa County State of California described as follows:

Parcel One:

A parcel of tide and submerged land lying within Suisun Bay, near the city of Martinez, being more particularly described as follows:

COMMENCING at a 2" X 2" hub numbered 29, as shown on that Record of Survey recorded January 26, 1954 in Book 16 of Licensed Land Surveyors' Maps at page 14, Contra Costa County Records; thence South 79° 09' East along the northern line of Swamp and Overflow Survey No. 424, 83.16 feet to the TRUE POINT OF BEGINNING, said point also being on the line common to Sections 8 and 9, Township 2 North, Range 2 West, Mount Diablo Base Line and Meridian; thence North 00° 51' 00" East along said section line 2789.00 feet; thence leaving said section line North 71° 51' 00" East, 35.00 feet; thence North 10° 00' 00" West, 27.21 feet; thence North 33° 10' 09" West, 1490.20 feet; thence South 62° 47' 18" West, 259.56 feet; thence South 79° 58' 49" West 235.64 feet; thence North 27° 12' 42" West, 180.00 feet; thence North 62° 47' 18" East, 995.00 feet; thence South 27° 12' 42" East, 180.00 feet; thence South 45° 55' 59" West, 240.21 feet; thence South 62° 47' 18" West, 226.89 feet; thence South 33° 10' 09" East, 601.81 feet; thence North 56° 49' 51" East, 40.00 feet; thence South 33° 10' 09" East, 85.00 feet; thence South 56° 49' 51" West, 40.00 feet; thence South 33° 10' 09" East, 840.00 feet; thence North 71° 51' 00" East, 4.53 feet; thence South 00° 51' 00" West, 2841.06 feet to the northern line of said Swamp and Overflow Survey No. 424; thence North 79° 09' 00" West along the northern line of said Survey No. 424, 101.54 feet to the TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM any validly patented interest in that land covered by Tideland Survey No. 207 patented to J.M. Keith pursuant to that certain Tideland Patent recorded November 22, 1901 in Book 4 of Patents, page 402, Contra Costa County Official Records.

Parcel Two:

A parcel of tide and submerged land lying in the bed of Pacheco Creek (also know as Walnut Creek), approximately 2 miles northeast of the City of Martinez, Contra Costa County, State of California, being more particularly described as follows:

COMMENCING at State Lands Monument "AVON" having CCS 27, Zone 3 coordinates of X=1,545,386.26, Y=561,570.34; thence North 18° 39' 30" West, 231.00 feet; thence South 71° 20' 30" West, 239.53 feet to the ordinary high water mark of the east bank of Pacheco Slough and being the TRUE POINT OF BEGINNING; said ordinary high water mark being described in Boundary Line Agreement No. 7 between Tidewater Associated Oil Company and the State Lands Commission as recorded on March 15, 1951, in Volume 1732, page 35, Official Records of Contra Costa County; thence along said boundary line North 59° 02' 55" West, 65.65 feet; thence leaving said boundary line South 71° 20' 30" West, 141.64 feet to the ordinary high water mark of the west bank of the Pacheco Slough; said ordinary high water mark described in Boundary Line Agreement No. 8 between the United Towing Company and the State Lands Commission as recorded on March 15, 1951, in Volume 1732, page 37, Official Records of Contra Costa County; thence along said boundary line South 64° 08' 41" East, 71.32 feet; thence leaving said boundary line North 71° 20' 30" East, 133.33 feet to the TRUE POINT OF BEGINNING.

Parcel Three:

A parcel of submerged land lying in the bed of Suisun Bay, near the city of Martinez, being more particularly described as follows:

COMMENCING at the most westerly corner of the above described parcel one, thence South 62° 07' 14" West, 74.38 feet to the TRUE POINT OF BEGINNING; thence North 27° 01' 01" West, 165.00 feet to a line parallel with and 150 feet Southeast of the Bullshead Channel Centerline; thence along said parallel line North 62° 58' 59" East, 1187.50 feet; thence leaving said parallel line South 27° 01' 01" East, 160.00 feet; thence South 25° 44' 31" West, 210.00 feet; thence South 62° 54' 38" West, 896.06 feet; thence North 72° 15' 29" West, 175.00 feet to the TRUE POINT OF BEGINNING.

Parcel Four:

All that sovereign land lying in Parcels "F" and "H" of AD 238, recorded March 14, 1996 in Document Number 96 46533 of Contra Costa County Recorders Office, and more particularly described as follows:

A strip of land eight (8) feet wide, the centerline of which is an existing 12 inch diameter petroleum pipeline, said existing pipeline lying parallel with and 46 feet northerly of the south lines of said Parcels "F" and "H".

The sidelines of side strip shall be extended or shortened so as to terminate at the northeasterly line of Parcel "F" and the southwesterly line of Parcel "H".

END OF DESCRIPTION

Parcel One revised by the California State Lands Commission Boundary Unit December 15, 2004.

Parcel Two prepared by the California State Lands Commission Boundary Unit, 1998.

Parcels Three and Four prepared by the California State Lands Commission Boundary Unit July 19, 2004.

The above described Parcel Three was based on "Hydrographic Survey of Shore Terminals Martinez, CA. Pier". Surveyed 03-06-2004. Prepared by Connexsys Eng. Inc. Richmond, CA. The survey is on file with the California State Lands Commission.



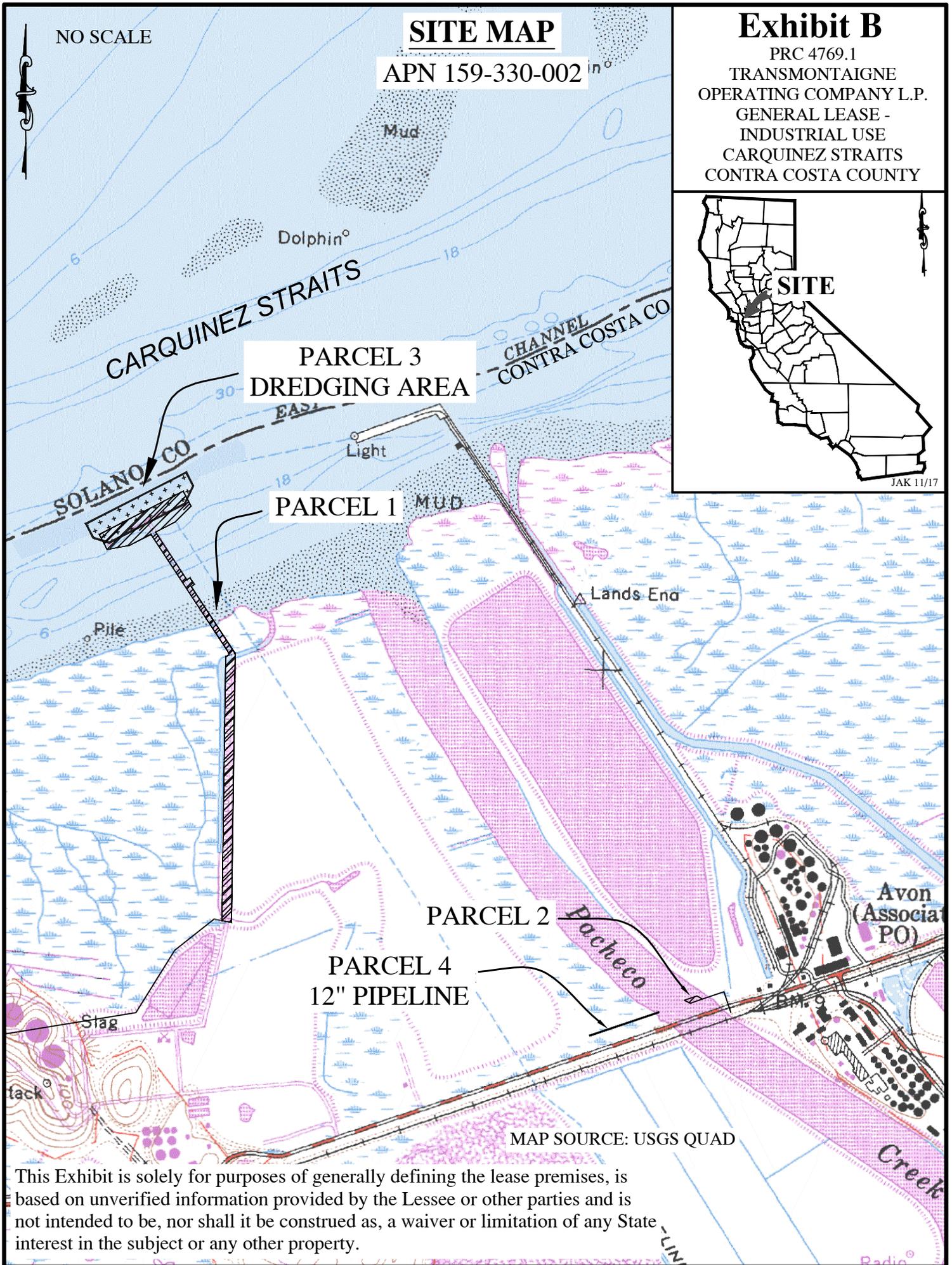
NO SCALE

SITE MAP

APN 159-330-002

Exhibit B

PRC 4769.1
TRANSMONTAIGNE
OPERATING COMPANY L.P.
GENERAL LEASE -
INDUSTRIAL USE
CARQUINEZ STRAITS
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.

EXHIBIT C

PRC 4769.1

GUARANTY

For valuable consideration, the receipt of which is hereby acknowledged, TransMontaigne Partners L.P. ("TLP"), unconditionally guarantees to the State of California, acting by and through the State Lands Commission ("State"), the full performance by TransMontaigne Operating Company L.P., a Delaware limited partnership ("TOC"), of all of TOC's obligations under Lease Number PRC 4769.1.

The rights afforded the State under this Guaranty are personal and not transferable by State.

This Guaranty shall be construed under and governed by the laws of the State of California.

TLP represents and warrants that this Guaranty is a legal, valid and binding obligation of TLP, enforceable against TLP in accordance with its terms except as limited by bankruptcy or other laws of general application.

TLP agrees that any amendments, modifications, alterations or changes made in the leases covered by this guarantee or the giving by the State of any extension of time for the performance of any of the lease terms, or the giving of any other forbearance on the part of the State or TOC, to the other, shall not in any way release TLP, its successors or assigns, from any liability arising hereunder and notice to TLP of any such amendments, modifications, alterations or changes is hereby waived.

This Guaranty shall automatically terminate when 1) the lease terminates or when the lease has been assigned from TOC to a party approved by the State and, as part of the assignment, TOC has been released from its obligations under the leases by the State or 2) TLP sells, assigns or conveys a majority of its interest in TOC to an unaffiliated third party approved by the State.

IN WITNESS WHEREOF, TLP has executed this Guaranty as of this ____ day of _____, 20__.

TransMontaigne Partners L.P.

By: _____

Name: _____

Title: _____

NOTARIZATION OF SIGNATURE TO BE ATTACHED