

**STAFF REPORT
C57**

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08/23/18
PRC 9309.1
V. Caldwell

**CONSIDER WAIVER OF PENALTY AND INTEREST
AND ASSIGNMENT OF LEASE**

LESSEE/ASSIGNOR:

Hiro R. Kagiyama

APPLICANT/ASSIGNEE:

Thomas H. Schroeder and Karen M. Schroeder

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Mare Island Strait, adjacent to 18 Sandy Beach Road, near Vallejo, Solano County.

AUTHORIZED USE:

Continued use and maintenance of a portion of an existing residence, deck, and appurtenant facilities.

LEASE TERM:

30 years, beginning February 9, 2016.

CONSIDERATION:

\$2,006 per year, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6505.5; California Code of Regulations, title 2, sections 2000 and 2003.

Public Trust and State's Best Interests Analysis:

On February 9, 2016, the Commission authorized a General Lease – Recreational and Residential Use to Hiro R. Kagiyama, for a portion of an existing residence, deck, and appurtenant facilities ([Item C40, February 9, 2016](#)). The lease will expire on February 8, 2046.

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On September 28, 2017, interest in the upland parcel was deeded to the Applicant/Assignee. Staff recommends the assignment be effective concurrent with the transfer of the upland, September 28, 2017. The Assignee agrees to perform and be bound by the terms, conditions, covenants, and agreements contained in the lease.

The lease assignment will not result in a change in the use of, or impacts to, Public Trust resources. Staff believes approval of this assignment will not substantially interfere with the common law Public Trust Doctrine and is in the best interests of the State.

Climate Change:

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. The lease area is located in Mare Island Strait, which is a tidally influenced site vulnerable to flooding at current sea levels and will be at higher risk of flood exposure given projected scenarios of sea-level rise.

The risk of flood exposure for the lease premises is likely to increase with time. The region could see up to 1 foot of sea-level rise (from year 2000 levels) by 2030, 2 feet by 2050, and possibly more than 5 feet by 2100 (National Research Council 2012). Rising sea levels can lead to more frequent flood inundation in low-lying areas and larger tidal events. The subject facilities are also classified within the Federal Emergency Management Agency's Coastal High Hazard Area as an area currently subject to inundation by the 1-percent-annual-chance flood event, with additional hazards due to storm-induced velocity wave action.

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, fire, drought, extreme heat, and storms (especially when coupled with sea-level rise). In rivers and tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris. Climate change and sea-level rise will further influence coastal and riverine areas by changing erosion and sedimentation rates. Near-coastal riverine areas will be exposed to increased wave force and run up, potentially resulting in greater bank erosion than previously experienced. Finally, in rivers and tidally influenced waterways, flooding and storm flow will likely increase scour, decreasing bank stability and structure.

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The lease is a 30-year General Lease – Residential and Recreational Use that began on February 9, 2016 and may be subject to the climate change effects of the projected scenario of 1 to 2 feet of sea-level rise (from year 2000 levels) by 2050 as provided above. Regular maintenance, as required by the terms of the lease, will help reduce the likelihood of severe structural degradation, dislodgement, or hazards from the electrical conduits. Further climate change impact analyses on the leased facilities will be assessed at the time the lease expires in 2046 if an application is submitted for a new lease and would be based on projected sea-level rise scenarios at that time.

Conclusion:

For all the reasons above, staff believes the assignment of this lease will not substantially interfere with the Public Trust needs at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. The Assignor/Lessee has not paid any rent under the terms of this lease. The Assignee and staff have worked to address the past due rent, and as a result the Assignee has paid the past due rent, in the amount of \$6,018, to bring the lease into compliance. Staff believes it is not in the State's best interests to pursue collection of penalty and interest from the Assignor for the period of February 9, 2016, through August 23, 2018, since the Lessee was no longer the upland owner during a substantial portion of this time, and the Assignee has already paid the past due rent. Staff also believes it is not in the State's best interests to levy penalty and interest against the Assignee that accrued because of the Assignor's non-payment of rent.
2. Staff recommends waiving penalty and interest due for the period of February 9, 2016, through August 23, 2018. Staff recommends the Commission accept the payment of past due rent from the Assignee as payment in full for said period.
3. 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.
4. The waiver of penalty and interest and assignment of the lease are not projects as defined by the California Environmental Quality Act because

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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, sections 15378, subdivision (b)(5).

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the waiver of penalty and interest and the proposed assignment will not impact 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; and is in the best interests of the State.

AUTHORIZATION:

1. Waive penalty and interest due for the period of February 9, 2016 through August 23, 2018.
2. Authorize the assignment of Lease No. PRC 9309.1, a General Lease – Recreational and Residential Use, of sovereign land as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof, from Hiro R. Kagiya to Thomas H. Schroeder and Karen M. Schroeder; effective September 28, 2017.

EXHIBIT A

PRC 9309.1

LAND DESCRIPTION

A parcel of submerged land situate in Mare Island Strait, City of Vallejo, County of Solano, State of California, lying adjacent to and within the external boundaries of Parcel 23 as shown on that certain Record of Survey titled "Sandy Beach Cabin Sites", filed February 14, 1944 in Book 1 of Maps, at Pages 1 and 2, Solano County Records, and being more particularly described as follows:

BEGINNING at the most northerly corner of said parcel; thence southwesterly along the northwesterly boundary and the southwesterly prolongation thereof, 53.3 feet; thence leaving said prolongation in a southeasterly direction to a point on a line parallel with and 1.9 feet perpendicular to said prolongation; thence southwesterly along said line 60.3 feet; thence leaving said line in a southeasterly direction perpendicular to said line to a point on the southwesterly prolongation of the southeasterly boundary of said parcel; thence in a northeasterly direction along said prolongation and southeasterly boundary 116.1 feet to the easterly corner of said parcel; thence in a northwesterly direction along the northeasterly boundary of said parcel to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion lying landward of the ordinary low water mark of Mare Island Strait.

END OF DESCRIPTION

Prepared 03/20/2018 by the California State Lands Commission Boundary Unit.



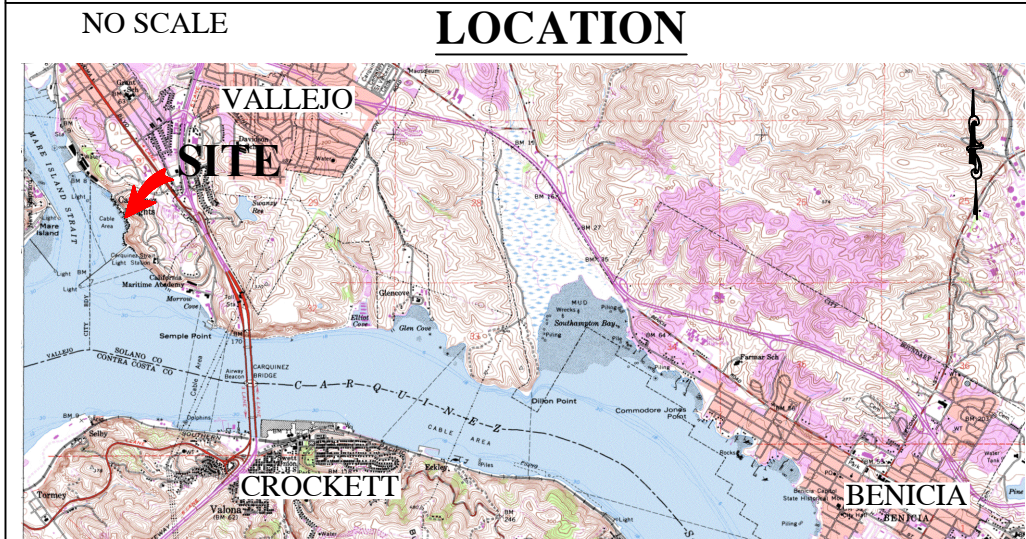
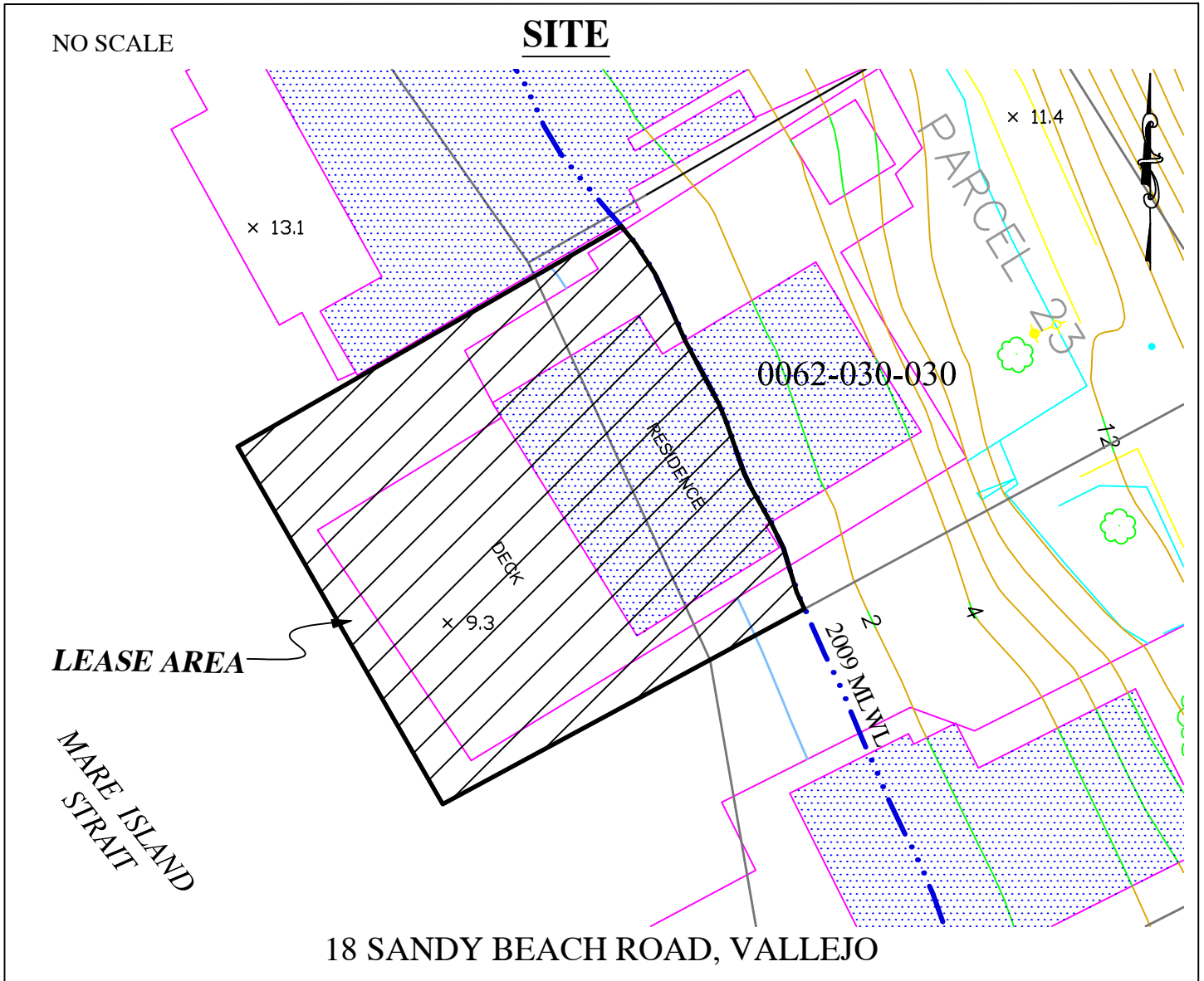


Exhibit B
 PRC 9309.1
 SCHROEDER
 APN 0062-030-030
 GENERAL LEASE -
 RESIDENTIAL &
 RECREATIONAL USE
 SOLANO COUNTY



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.