

**STAFF REPORT
C26**

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S 2

12/03/18
PRC 1584.1
M. Schroeder

**CONSIDER WAIVER OF RENT, PENALTY, AND INTEREST
AND ISSUANCE OF A GENERAL LEASE – RECREATIONAL USE**

APPLICANT:

Tolowa Dee-ni' Nation

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Smith River, adjacent to 200 Salmon Harbor Road, near Smith River, Del Norte County.

AUTHORIZED USE:

Continued use and maintenance of an existing boat ramp, rock jetty with fish cleaning station, and six concrete pilings.

LEASE TERM:

10 years, beginning December 3, 2018.

CONSIDERATION:

\$236 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.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

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

Public Trust and State's Best Interests Analysis:

On October 16, 2008, the Commission authorized a General Lease – Recreational Use for an existing boat ramp, rock jetty with fish cleaning station, and six concrete pilings to Ned Burgess and Mary Burgess ([Item C28, October 16, 2008](#)). That lease expired on October 15, 2018.

The Lessee paid annual rent through October 15, 2017. Commission staff sent an annual rent invoice to prior lessee for the 2017-2018 lease period. The Lessee did not pay this invoice.

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On November 30, 2016, ownership of the upland parcel was deeded to the Applicant. Staff believes it is not in the State's best interests to pursue collection of rent, penalty, and interest from the prior lessee for the period of October 16, 2017, through December 2, 2018, since they were no longer the upland owner and the Applicant has already agreed to be responsible for rent during this time. The Applicant is applying for issuance of a new lease for the continued use and maintenance of the existing boat ramp, rock jetty with fish cleaning station, and six concrete pilings.

Therefore, staff recommends waiving the rent, penalty, and interest due under invoice number 42860. Staff recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$268 for the period beginning October 16, 2017, through December 2, 2018, the day before the proposed new lease would become effective.

The Applicant owns the upland adjoining the lease premises. The subject boat ramp, rock jetty with fish cleaning station, and six concrete pilings accommodate, promote, and support recreational boating and provide access to the adjacent State waterways. Recreational boating is a water-dependent use that is generally consistent with the common law Public Trust Doctrine. The subject facilities are privately owned and maintained. The California Legislature has identified private recreational boating facilities as an authorized use of Public Trust land (Pub. Resources Code, § 6503.5).

The subject facilities have existed for many years at this location. The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 10-year term and does not grant the lessee exclusive rights to the lease premises. Upon termination of the lease, the lessee may be required to remove all improvements and restore the lease premises to their original condition. Based on the foregoing, staff believes the subject facilities will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease.

The proposed lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred as a result of the lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved.

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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 subject facilities are located near the mouth of the Smith River, in a tidally influenced site vulnerable to flooding at current sea levels and at a higher risk of flood exposure given projected scenarios of sea-level rise. The area is protected by a large sand spit to the west. The lease premises consist of a boat ramp, rock jetty with a fish cleaning station, and six concrete pilings. The beach and rock jetty are heavily cobbled.

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. Sea-level rise could increase the Smith River’s inundation levels within the lease area. Therefore, Commission staff evaluated the “high emissions,” “low risk aversion” scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. The Crescent City tide gauge was used for the projected sea-level rise scenario for the associated coastal region as listed in Table 1.

Table 1. Projected Sea-Level Rise for Crescent City¹

Year	Projection (feet)
2030	0.5
2040	0.9
2050	1.5
2100	5.9

Source: Table 1, State of California Sea-Level Rise Guidance: 2018 Update

Note: ¹ Projections are with respect to a 1991 to 2009 baseline.

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). In rivers and tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris as well as decreased bank stability and structure. Conversely, climate-change induced droughts could decrease river levels and flow for extended periods of time. Climate change and sea-level rise will further influence riverine areas by changing erosion and sedimentation rates. Flooding and storm flow, as well as

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runoff, will likely increase scour and decrease bank stability at a faster rate.

The combination of these projected conditions could increase 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 facilities 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. Lowered water levels could also reduce navigability of the channel, thereby increasing hazards and impacting the function and utility of the lease area structures.

All of the facilities within the lease area are considered fixed features, and portions of the rock jetty, concrete piles, and boat ramp could be vulnerable to future flooding events. However, the fish cleaning station is located on a raised portion of the jetty and is unlikely to be affected by sea-level rise within the lease term. Regular maintenance, as required by the terms of the lease, will reduce the likelihood of severe structural degradation or dislodgement.

Pursuant to the proposed lease, the applicant acknowledges that the lease premises and adjacent upland (not within the lease area) are located in an area that may be subject to effects of climate change, including sea-level rise.

Conclusion:

For all the reasons above, staff believes the issuance of this lease will not substantially impair 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.

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)

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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 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 2, section 2905, subdivision (a)(2).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that issuance of 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.

AUTHORIZATION:

1. Waive annual rent, penalty and interest due for the period of October 16, 2017, through December 2, 2018, and void annual rent invoice number 42860 issued to Ned Burgess and Mary Burgess.
2. Authorize acceptance of compensation in the amount of \$268 for unauthorized occupation of State lands for the period beginning October 16, 2017, through December 2, 2018, from the Applicant.
3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning December 3, 2018, for a term of 10 years, for the continued use and maintenance of an existing boat ramp, rock jetty with fish cleaning station, and six concrete pilings, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof;

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annual rent in the amount of \$236, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 1584.1

LAND DESCRIPTION

A PARCEL OF TIDE AND SUBMERGED LAND SITUATE WITHIN THE COUNTY OF DEL NORTE, STATE OF CALIFORNIA, LAYING IN THE BED AND HISTORIC BED OF THE SMITH RIVER, ADJACENT TO PARCEL TWO AS DESCRIBED IN THAT CERTAIN GRANT DEED, RECORDED NOVEMBER 30, 2016 UNDER DOCUMENT NO. 20164952, OFFICIAL RECORDS OF DEL NORTE COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT LAYING ON THE SOUTHEASTERLY LINE OF SAID PARCEL TWO, SAID POINT BEING ALSO THE MOST NORTHERLY CORNER OF PARCEL 5, AS DESIGNATED AND SHOWN ON THAT CERTAIN PARCEL MAP FILED IN THE OFFICE OF THE DEL NORTE COUNTY RECORDER IN BOOK 8 OF PARCEL MAPS, AT PAGES 111 AND 112; THENCE ALONG THE COMMON LINE BETWEEN SAID PARCEL TWO AND SAID PARCEL 5, AND ITS SOUTHWESTERLY EXTENSION, SOUTH 41°08'06" WEST 608.36 FEET TO THE POINT OF BEGINNING; THENCE FROM SAID POINT OF BEGINNING AND LEAVING SAID COMMON LINE, THE FOLLOWING SEVEN (7) COURSES:

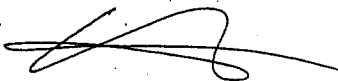
- 1) NORTH 48°09'32" WEST 367.68 FEET; TO THE SOUTHWESTERLY EXTENSION OF THE NORTHWESTERLY LINE OF SAID PARCEL TWO; THENCE ALONG SAID LINE,
- 2) NORTH 46°15'14" EAST 397.27 FEET; THENCE LEAVING SAID LINE,
- 3) SOUTH 24°46'48" EAST 122.50 FEET,
- 4) SOUTH 83°16'27" EAST 45.67 FEET,
- 5) NORTH 81°36'35" EAST 81.11 FEET,
- 6) SOUTH 43°22'27" EAST 130.65 FEET, TO SAID COMMON LINE BETWEEN PARCEL TWO AND PARCEL 5; THENCE ALONG SAID COMMON LINE AND ITS SOUTHWESTERLY EXTENSION,
- 7) SOUTH 41°08'06" WEST 425.23 FEET, TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ANY PORTIONS LAYING LANDWARD OF THE ORDINARY HIGH WATER MARK OF THE SMITH RIVER.

BEARINGS BASED ON AND IDENTICAL WITH SAID PARCEL MAP FILED IN BOOK 8 OF PARCEL MAPS, AT PAGES 111 AND 112, DEL NORTE COUNTY RECORDS.

PREPARED ENTIRELY FROM RECORD DATA BY:

KILLOPS LAND SURVEYING



MARK E. KILLOPS, P.L.S. 5927
L.J.C. EXP. 12/31/18

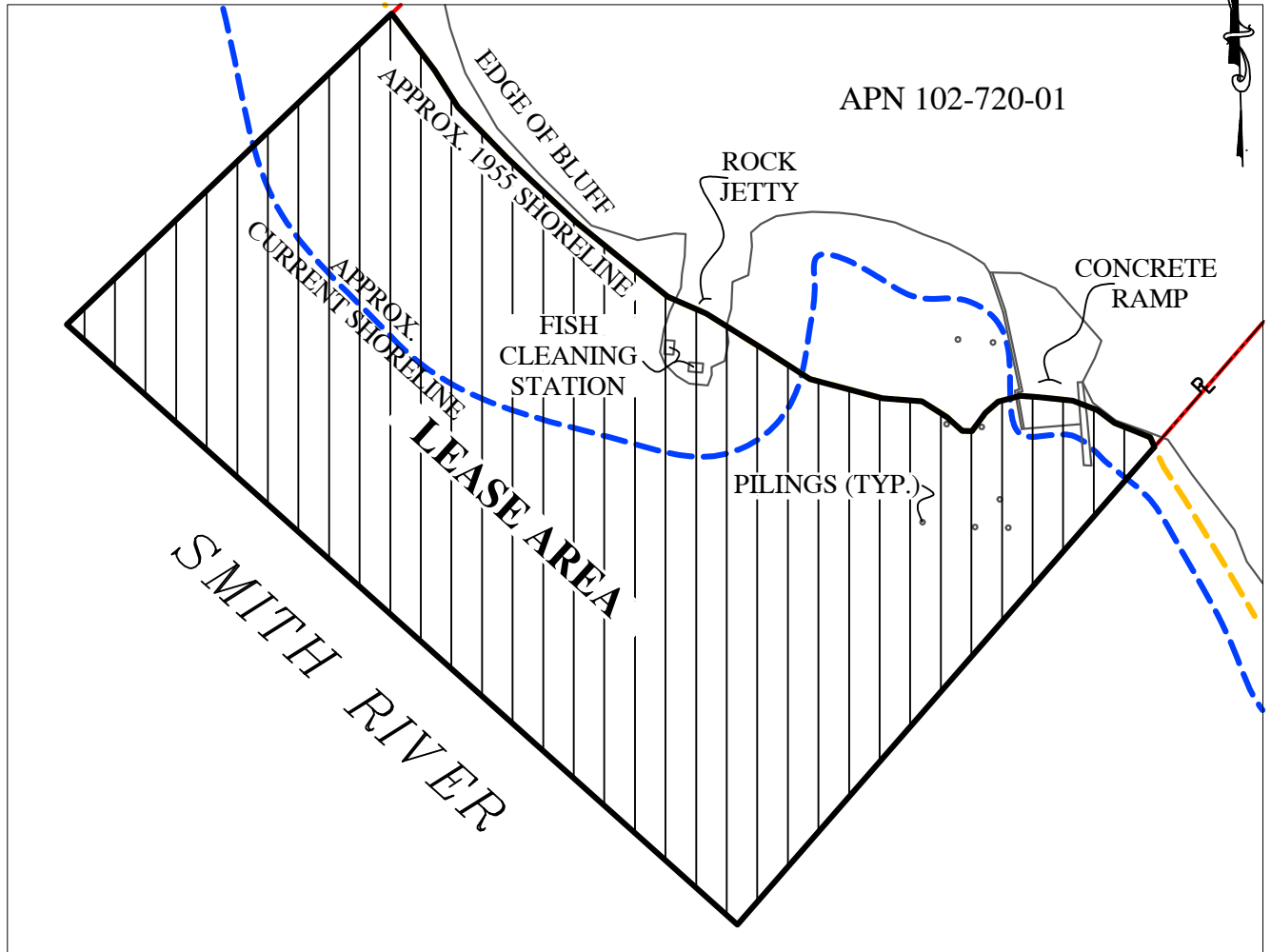


DATED: JANUARY 31, 2018

SALMON HARBOR

NO SCALE

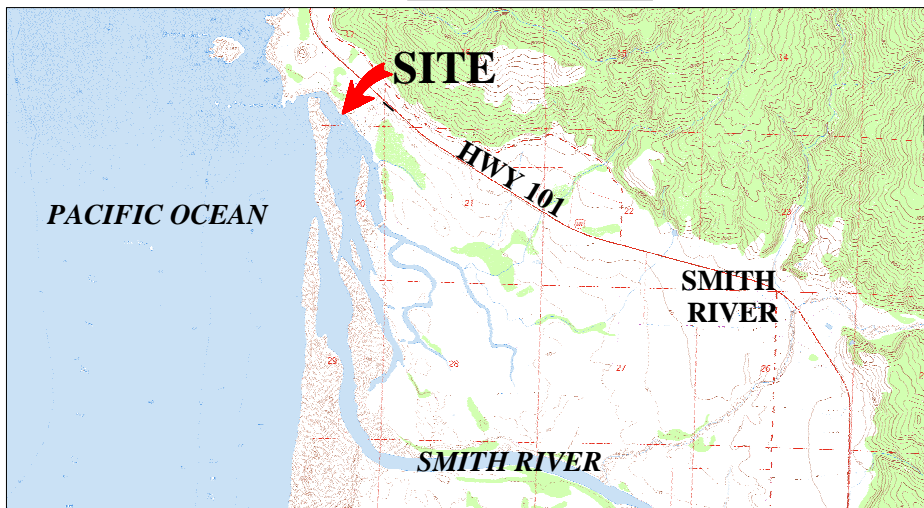
SITE



200 Salmon Harbor Road, Smith River

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 1584.1
 TOLOWA DEE-NI' NATION
 APN:102-720-01
 GENERAL LEASE -
 RECREATIONAL USE
 DEL NORTE 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.