

**STAFF REPORT
C30**

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12/03/18
PRC 2546.1
N. Lavoie

**CONSIDER FINDING OF DEFAULT; AUTHORIZATION OF TERMINATION OF A
GENERAL LEASE – COMMERCIAL USE; AND AUTHORIZATION TO TAKE ALL
STEPS NECESSARY, INCLUDING LITIGATION OR ACCEPTANCE OF A LEASE
QUITCLAIM DEED, RECOVERY OF BACK RENT, THE REMOVAL OF
IMPROVEMENTS, AND THE RESTORATION OF THE LEASE PREMISES**

LESSEE:

Crockett Marine Service, Inc.

AREA, LAND TYPE, AND LOCATION:

6.24 acres, more or less, of sovereign land in the Carquinez Strait adjacent to 501 Port Street, Crockett, Contra Costa County.

AUTHORIZED USE:

Continued use and maintenance of an existing commercial marina, restaurant, boat repair facility, and appurtenant facilities.

LEASE TERM:

10 years, beginning June 19, 2014.

CONSIDERATION:

\$18,575 annually with annual CPI adjustments commencing on the second anniversary of the lease term as described in Lease Paragraph 13 of Section 2, Special Provisions; consideration to be paid on a monthly basis and shall be pre-paid one month in advance of occupation of the Lease Premises.

BACKGROUND:

The Lease Premises has been used as a marina with appurtenant facilities, including marine repair and a restaurant, since at least the 1940s. On September 25, 1984, the Commission authorized an assignment of Lease No. PRC 2546.1 from California and Hawaiian Sugar Company to Crockett Marine Service, Inc., (CMS) ([Item C12, September 25, 1984](#)) for an existing boat harbor, marine repair, restaurant, and Sea Scout facility. The lease expired on August 19, 2009, but CMS continued to occupy the Lease Premises adjacent to 501 Port Street, Crockett, Contra Costa County. In the 1990s and 2000s, CMS fell into financial difficulty and stopped making lease payments. The marina fell into disrepair.

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At its April 6, 2011 meeting, the Commission found that CMS was in trespass and unlawfully occupying sovereign land and authorized staff and the Office of the Attorney General to take all action necessary to collect payment of back rent, address the ongoing trespass on State property, and seek restoration of the Lease Premises ([Item C57, April 6, 2011](#)).

Subsequent to the April 6, 2011 meeting, CMS and the Commission entered into a Release and Settlement Agreement (January 8, 2013) concerning the occupation of the Lease Premises, including but not limited to payment of rent, nuisance, ejectment, trespass, and maintenance of the Lease Premises. As part of this mediated settlement, the Commission agreed to consider a new lease application from CMS.

On June 19, 2014, the Commission authorized a new General Lease – Commercial Use to Crockett Marine Service, Inc. ([Item C56, June 19, 2014](#)), which consists of portions of a restaurant, marina, boat repair facility, and appurtenant facilities. The lease authorized a sublease of a portion of the Lease Premises to Carver Enterprises, Inc., for operation of a restaurant (dba the Nantucket) and to Marine Pollution Control, Inc., for oil spill/pollution cleanup and other marine operations. Under this new lease, CMS agreed to take the steps necessary to remove or restore the improvements within the lease area and to provide specific performance assurance.

CMS initially took steps to clean the Lease Premises by removing some pilings, debris, and sunken vessels. However, in 2016, staff received a public complaint about the condition of the facilities. After investigating the complaint, staff sent a letter to CMS on July 29, 2016, identifying numerous material breaches. Since that time, staff has expended significant resources to work cooperatively with CMS and its legal counsel to find solutions. Staff sent additional letters dated October 21, 2016, August 21, 2017, and November 9, 2018, notifying CMS of these material breaches. After several years, staff has seen very little effort or progress from CMS to address any of staff's concerns. The proposed action is a result of that lack of progress.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

California Public Resources Code sections 6005, 6106, 6216, 6220, 6301, 6302, 6302.3.

Public Trust and State's Best Interests Analysis:

Many of the facilities within the Lease Premises were originally used for traditional Public Trust consistent uses. The marina, boat repair facility, pier, and appurtenant facilities were all originally used to support maritime

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uses. However, all these facilities have fallen so deeply into disrepair that there is no longer any economic value in repairing them. The only facility still in use is the restaurant. CMS spent several years trying to sell its improvements but could not find a buyer willing to take on the liability and cost associated with the dilapidated facilities.

CMS has failed to perform the following Lease obligations for a period of 12 months or more:

- **Rent:** Failure to pay 14 months of rental payments with a past due rental balance of \$23,813. The total amount due and owed as of December 3, 2018, is \$23,813.50 in principal, plus \$4,397.52 in penalty and interest for a total of \$28,211.02. Failure to pay rent is an immediate default of the lease.
- **Surety:** The lease requires a \$200,000 surety; however the lease allows CMS to make monthly installment payments into a bank account to build up to \$200,000. CMS has not made a payment to the surety account in over 3 years, which has resulted in the account being underfunded. The current account balance is approximately \$52,184, of which the majority came from the initial settlement in 2013.
- **By December 1, 2014, removal of “All derelict and/or near derelict vessels docked at the marina”:** As required by Section 2, Paragraph 2 (B): On August 2, 2016, the Contra Costa County Sheriff cited vessels, which are still at the marina, for having expired or unknown registration (three vessels), being abandoned (one vessel), and as marine debris (two vessels). While these may not all have been the same vessels that were required to be removed by December 1, 2014, CMS is required to “keep and maintain the Lease Premises, including all Improvements, in good order and repair and in a clean, safe, sanitary, and orderly condition” under Section 3, Paragraph 5 (c)(1).
- **By December 1, 2014, a written plan for the dilapidated Army Pier was required to be submitted to Commission staff, followed by annual reports on the progress of the repairs as Required by Section 2, Paragraph 3:** All repairs were required to be completed by January 1, 2018. No written plan for the Army Pier, located along the western boundary of the lease premises, has been received by the Commission and repairs have not been completed.

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- **By January 1, 2016, rehabilitation of the floating docks and dolphins at the marina was to be complete as required by Section 2, Paragraph 4:** No apparent attempt has been made to address the rehabilitation of the marina facilities, nor has a plan been received by staff.

- **“Residential Use of the Lease Premises is strictly prohibited”: as required by Section 2, Paragraph 8:** Although this provision allows for one on-site security detail to reside on or adjacent to the Lease Premises, it has been reported to staff many times that people have been allowed to live on vessels in the marina and on the adjacent upland. It is the responsibility of CMS to ensure the Lease Premises are not used for residential purposes.

- **The marina and boat repair facilities are in violation of the following Lease provisions:**
 - Section 2, Paragraph 5 – By January 1, 2018, rehabilitation of structures/buildings housing the marina’s office and boat repair facilities was required to be complete. There has been no apparent attempt to rehabilitate the structures, nor has a plan to do so been received by staff.

 - Section 2, Paragraph 24 – “Lessee agrees to maintain Best Management Practices within the marina.” This includes disposal “of all solid wastes in accordance with local, state, and federal laws and regulations.”

 - Section 3 – General Provisions, Paragraph 5 (c)(2) – CMS is required to make all repairs required by any Regulatory Agency. On March 30, 2017, staff received a Notice of Intent to Record a Notice of Pending Nuisance Abatement Proceeding from a Contra Costa County Code Enforcement Officer. Additionally, staff received a call from the Fire Department on October 22, 2018, that there had been a small structure fire in the boat repair facility; that a building inspector was on site to “red tag” the building; and that the fire department was ordering the boarding up of the building for public health and safety.

 - The same events described in the above paragraph are also a breach of Section 3 – General Provisions, Paragraph 12 (a)(5) – CMS is required to maintain the Lease Premises in compliance with

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“any applicable provisions” of any Regulatory Agency or Environmental Law (defined in Paragraph 2 to include “local environmental, health, and safety laws”). Failure to do so “shall immediately and without further notice constitute a Default of this Lease.” (Paragraph 12.)

In addition, a recent search of the Secretary of State’s website found that CMS has not maintained its Certificate of Good Standing with the Secretary of State’s Office and is not in good standing with the Franchise Tax Board, as required by law. Staff has worked diligently with CMS to come up with solutions that would allow CMS to meet the terms of its lease while continuing to operate. The 2013 settlement was intended to give CMS another opportunity to rectify its behavior and rehabilitate the facilities, but the pattern of non-performance has continued. Extensive experience over the past 20 years has proven that CMS is not willing or able to fulfill the terms of the lease. CMS has no plan to repair, remove, or bring any of the derelict facilities into compliance with local, state, or federal requirements. Instead of making headway, CMS has been losing ground. The rent and surety requirements are becoming further delinquent, and the condition of the Lease Premises is getting worse. The existing marina, boat repair facility, pier, and appurtenant facilities pose a nuisance and hazard to the public and the environment. The greater public need to abate the hazards outweighs CMS’s interest in the lease area.

Based on CMS’s continued failure to cure the defaults described above, staff recommends that the Commission authorize staff to terminate the Lease and eject CMS from the Lease Premises. This recommendation includes taking all steps necessary, including litigation, to seek the removal of all improvements from the Lease Premises; restoration of the Lease Premises to their original condition; and recovery of other damages to which the Commission is entitled.

In administering the Commission’s Public Trust responsibilities, the Commission may exercise its discretionary authority to accommodate the changing needs of the public. Additionally, it is in the State’s best interests to enforce the terms of the leases, particularly those terms that are designed to protect the State and its resources and assets.

At the Commission’s direction, staff is prepared to request CMS to voluntarily surrender its interest in the lease back to the State. Staff believes a lease quitclaim deed is the most efficient method for terminating the Lease because once voluntarily filed, it is immediate and not subject to contest. It also allows the Commission and staff to

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immediately enter the property and commence any necessary safety procedures. The filing of a lease quitclaim deed does not release CMS from its obligations to restore the Lease Premises to a natural state, nor is CMS relieved from liability stemming from a breach of the lease at the time of the quitclaim.

Upon termination, by quitclaim or by direct action of the Commission, CMS will be relieved of many obligations under the Lease including operation. However, CMS's obligation to restore the Lease Premises will continue. Staff believes that CMS is currently, or will soon be, insolvent. Should this be the case, CMS will be unable to perform its post-termination obligations, and the Commission will likely need to abate the derelict facilities. Staff anticipates coordination with San Francisco Bay Conservation and Development Commission, CalRecycle, neighboring property owners, the community of Crockett, and Contra Costa County to develop a plan to secure the site and address the dilapidated structures.

Since the lease allows CMS 90 days to vacate the Lease Premises and 180 days to restore the Lease Premises, staff recommends that the Commission grant the Executive Officer the authority to terminate the Lease immediately. This is intended to provide staff with the earliest opportunity, in 90 days, to enter and secure the lease in the event a lease quitclaim deed becomes unreasonably delayed or is not signed.

Conclusion:

For all the reasons above, staff believes the termination of this lease, by quitclaim or by direct action of the Commission, is consistent with the Public Trust needs at this location, at this time; 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. Authorizing the termination of Lease No. PRC 2546.1 is not a project as defined by CEQA because it is an administrative action that will not result in direct or indirect physical changes to the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

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EXHIBIT:

- A. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

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

AUTHORIZATION:

1. Find that CMS has failed to make sufficient good faith efforts to cure its nonperformance of lease obligations as described in this staff report and noticed to CMS in letters dated June 19, 2014, July 29, 2016, October 21, 2016, August 21, 2017, and November 9, 2018.
2. Find that CMS's failure to cure its nonperformance constitutes a default under Lease No. PRC 2546.1.
3. Delegate authority to the Executive Officer, or her designee, to terminate Lease No. PRC 2546.1 and to serve notice or execute any instruments necessary to effectuate the termination of the Lease.
4. Authorize the Executive Officer, or her designee, to enter upon the Lease Premises to secure the existing boat harbor, marine repair building, restaurant, and appurtenant facilities in order to prevent harm to human health or the environment.
5. Order CMS, upon filing of a lease quitclaim deed or termination by the Executive Officer, to commence performance of its obligations to fully restore the Lease Premises to their natural state.
6. Authorize the Executive Officer, or her designee, to coordinate with public and private entities to develop a plan for restoration of the Lease Premises to their natural state; to solicit funding and proposals for the restoration; negotiate a fair and reasonable price for the restoration; and award and execute contracts for restoration of the Lease Premises.

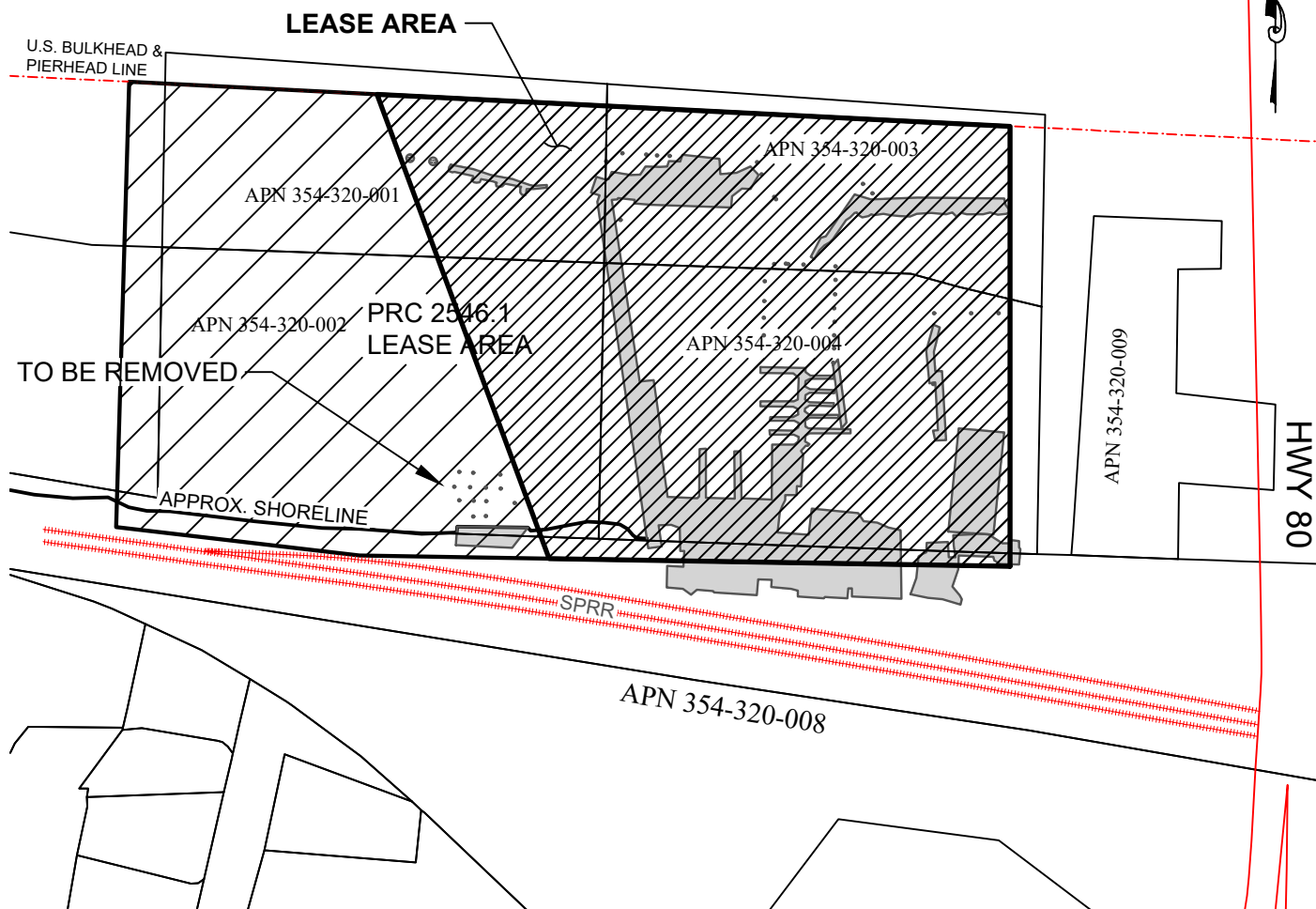
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7. Authorize the Executive Officer, or her designee, in cooperation with the Office of the Attorney General, to take all necessary and appropriate steps, including litigation or acceptance of a lease quitclaim deed, to enforce the termination of Lease No. PRC 2546.1 against CMS and any agents, affiliates, successors, or assigns; to obtain all funds in the surety account required under the Lease; to claim all existing surety funds and use towards restoration of the lease premises; to access the Lease Premises to ensure the health and safety of the people of California and the surrounding environment; to eject trespassers that occupy the Lease Premises; to remove improvements from the Lease Premises; to restore the sovereign land at this location to the satisfaction of the Commission; and to recover the Commission's damages and costs.

NO SCALE

SITE

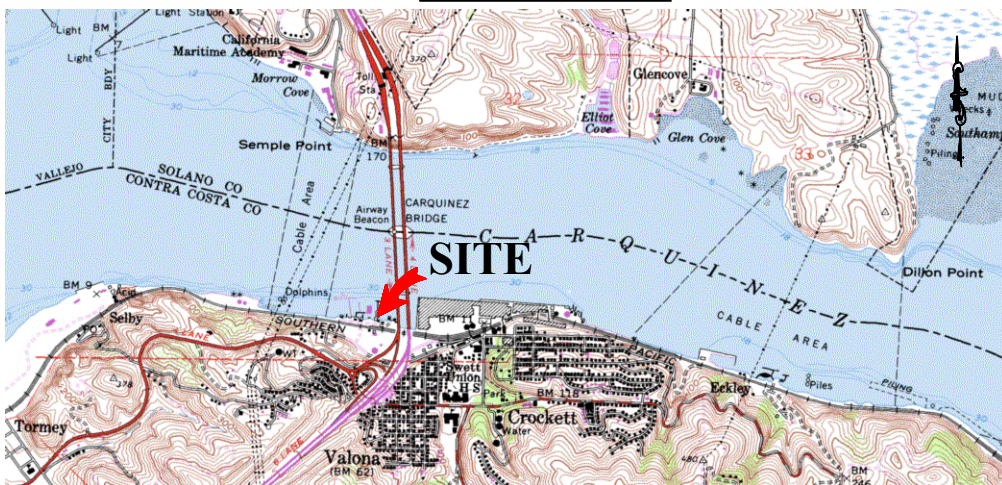
CARQUINEZ STRAIT



501 PORT STREET, CROCKETT MARINE SERVICE

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit A

PRC 2546.1
 CROCKETT MARINE
 SERVICE INC.
 APN 354-320-001, 002, 003, 004
 GENERAL LEASE -
 COMMERCIAL USE
 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.

JAK 11/18