

STAFF REPORT

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10/24/19
Lease 7326.1
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R. Collins

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GENERAL LEASE – RIGHT-OF-WAY

APPLICANT:

The Abalone Farm, Inc.

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Pacific Ocean, near Cayucos, San Luis Obispo County.

AUTHORIZED USE:

Use and maintenance of an abandoned 8-inch-diameter PVC ocean saltwater intake pipeline, two existing 18-inch-diameter PVC intake pipelines, one existing 10-inch-diameter PVC intake pipeline, and one existing 8-inch-diameter PVC intake pipeline; all encased in concrete.

LEASE TERM:

20 years, beginning October 1, 2019.

CONSIDERATION:

\$556 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.
- Surety Bond in the amount of \$250,000.
- Applicant shall conduct external inspections of the Improvements at least once every 5 years.
- Upon expiration or sooner termination of Lessee's upland ground lease, lessee shall have 2 years to submit a plan for the Commission's review and approval to restore the lease premises and shall complete such restoration no later than one year following lessor's approval of the plan.

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STAFF ANALYSIS AND RECOMMENDATION:

Authority:

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

Public Trust and State's Best Interests Analysis:

On August 30, 1989, the Commission authorized a General Lease – Right-of-Way Use, Lease 7326.1, for one intake pipeline and two discharge pipelines for a mariculture facility to The Abalone Farm, Inc. ([Item 11, August 30, 1989](#)). The lease expired on September 30, 2019. The Applicant is applying for a new General Lease – Right-of-Way Use.

The Applicant operates the Abalone Farm, Inc., which is the oldest continuously operating abalone culture facility in the state of California. The proposed lease encompasses an area of coastal tidelands which is the site of the ocean saltwater intake pipelines. The original ocean saltwater pipelines were constructed in 1968 and convey seawater to the aquaculture facility. Staff has reviewed stamped as-built plans provided by the Applicant's licensed California surveyor identifying all existing improvements on sovereign land. The Applicant is proposing a lease for an abandoned 8-inch-diameter PVC intake pipeline, two existing 18-inch-diameter PVC intake pipelines, one existing 10-inch-diameter PVC intake pipeline, and one existing 8-inch-diameter PVC intake pipeline. All the intake pipelines are encased in concrete and extend approximately 200 feet seaward from the mean high tide line. Normal flow is approximately 1,000 gallons per minute (gpm) in the 8-inch and 10-inch pipelines, and 4,000 gpm in the 18-inch pipelines. Each pipeline terminates on its seaward end in a diffuser made of 36-inch PVC pipe with 3/8-inch or smaller slots.

The Applicant leases the upland from a third party and has 2 years remaining on the current upland lease with an option to extend the lease for another 5 years. The proposed lease requires that the Applicant maintain the right to utilize the upland throughout the lease term. The intake pipelines are privately owned and maintained. While the ocean saltwater intake pipelines are not uses typically associated with the Public Trust Doctrine, they do not interfere with public access or impair the public rights to navigation and fishing at this location and at this time. The shoreline at this location is steep rock bluffs.

The proposed lease does not alienate the State's fee simple interest, or permanently impair public rights. The lease is limited to a 20-year term and does not grant the lessee exclusive rights to the lease premises.

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Upon termination of the lease, the lessee may be required to remove all improvements from State land and restore the lease premises to their original condition.

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. Finally, the lease requires a surety bond in the event the improvements must be removed.

Climate Change:

Climate change impacts, including sea-level rise, more frequent and intense storm events, and increased flooding and erosion, affect open coastal areas in California. The lease area is located adjacent to an abalone farm on Villa Creek Road near Cayucos in San Luis Obispo County, 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 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. Commission staff evaluated the "high emissions," "medium-high risk aversion" scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. The Port San Luis tide gauge was used for the projected sea-level rise scenario for the lease area as listed in Table 1.

Table 1. Projected Sea-Level Rise for Port San Luis¹

Year	Projection (feet)
2030	0.7
2040	1.2
2050	1.8
2100	6.7

Source: Table 19, State of California Sea-Level Rise Guidance: 2018 Update

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

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, drought, and storms (especially when coupled with sea-level rise). The combination

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of these conditions will likely result in increased wave run-up, storm surge, and flooding in coastal areas. Climate change and sea-level rise will further influence coastal areas by changing erosion and sedimentation rates as beaches and coastal landscapes are exposed to increased wave force.

These projected conditions could increase the likelihood of damage to the pipelines within the lease premises during the term of the lease. The pipelines are located in an intertidal and subtidal zone, and currently experience tidal and wave action on a daily basis, as well as storm surge during the winter months. The pipelines are mostly underwater, and are completely submerged at high tide, partially exposed at most low tides, and completely exposed at extreme low tides. A modest rise in sea level would allow for better pumping conditions and therefore less stress overall on the pipelines. However, increased storm frequency and intensity could cause potential damage to the concrete cap, which is easily repairable. 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 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 interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Applicant may be required to remove the existing ocean saltwater intake pipelines and restore the premises to their original condition. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.
2. 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

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protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.

3. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) 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.

APPROVALS OBTAINED:

Central Coast Regional Water Quality Control Board

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 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:

Authorize issuance of a General Lease – Right-of-Way Use to the Applicant beginning October 1, 2019, for a term of 20 years, for use and maintenance of an abandoned 8-inch-diameter PVC ocean saltwater intake pipeline, two existing 18-inch-diameter PVC intake pipelines, one existing 10-inch-diameter PVC intake pipeline, and one existing 8-inch-diameter PVC intake pipeline; all encased in concrete, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached

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and by this reference made a part hereof; rent in the amount of \$556 per year, with an annual Consumer Price Index adjustment; liability insurance in an amount no less than \$1,000,000 per occurrence; and surety in the amount of \$250,000.

EXHIBIT A

LEASE 7326.1

LAND DESCRIPTION

Three parcels of tide and submerged land situate in the Pacific Ocean lying adjacent to fractional Section 34, Township 28 South, Range 9 East, MDM., as shown on Official Government Township Plat approved February 17, 1868, County of San Luis Obispo, State of California, described as follows:

PARCEL ONE

A strip of land ten (10) feet wide, the centerline of which is described as follows:

BEGINNING at a point lying distant S 22°43'52" E 1,623.32 feet from NGS Monument HARBOR (PID FV1735), thence the following two (2) courses:

- 1) S 4°10'18" W 98.70 feet;
- 2) S 0°33'49" W 116.93 feet to the terminus of said strip.

The sidelines of said strip shall be prolonged or shortened to commence at the intersection of the Ordinary High Water Mark of the Pacific Ocean, and terminate at a line perpendicular to said terminus of said strip.

PARCEL TWO

A strip of land six (6) feet wide, the centerline of which is described as follows:

BEGINNING at a point lying distant S 22°12'42" E 1,642.99 feet from NGS Monument HARBOR (PID FV1735), thence the following four (4) courses:

- 1) S 51°27'08" W 51.98 feet;
- 2) S 42°29'00" W 15.62 feet;
- 3) S 11°14'12" W 15.34 feet;
- 4) S 19°22'25" E 11.97 feet to the terminus of said strip.

The sidelines of said strip shall be prolonged or shortened to commence at the intersection of the Ordinary High Water Mark of the Pacific Ocean, and terminate at the northerly line of the herein below described Parcel Three.

PARCEL THREE

A strip of land six (6) feet wide, the centerline of which is described as follows:

BEGINNING at a point lying distant S 21°30'09" E 1,685.46 feet from NGS Monument HARBOR (PID FV1735), thence the following four (4) courses:

- 1) S 57°56'51" W 24.55 feet;
- 2) S 68°47'16" W 28.00 feet;
- 3) S 56°16'24" W 30.38 feet;
- 4) S 48°48'23" W 14.17 feet to the terminus of said strip.

The sidelines of said strip shall be prolonged or shortened to commence at the intersection of the westerly line of the herein above described Parcel One and terminate at a line perpendicular to said terminus of said strip.

The BASIS OF BEARINGS of this description is the California Coordinate System of 1983, Zone 5 (1991.35). All distances are grid distances.

END OF DESCRIPTION

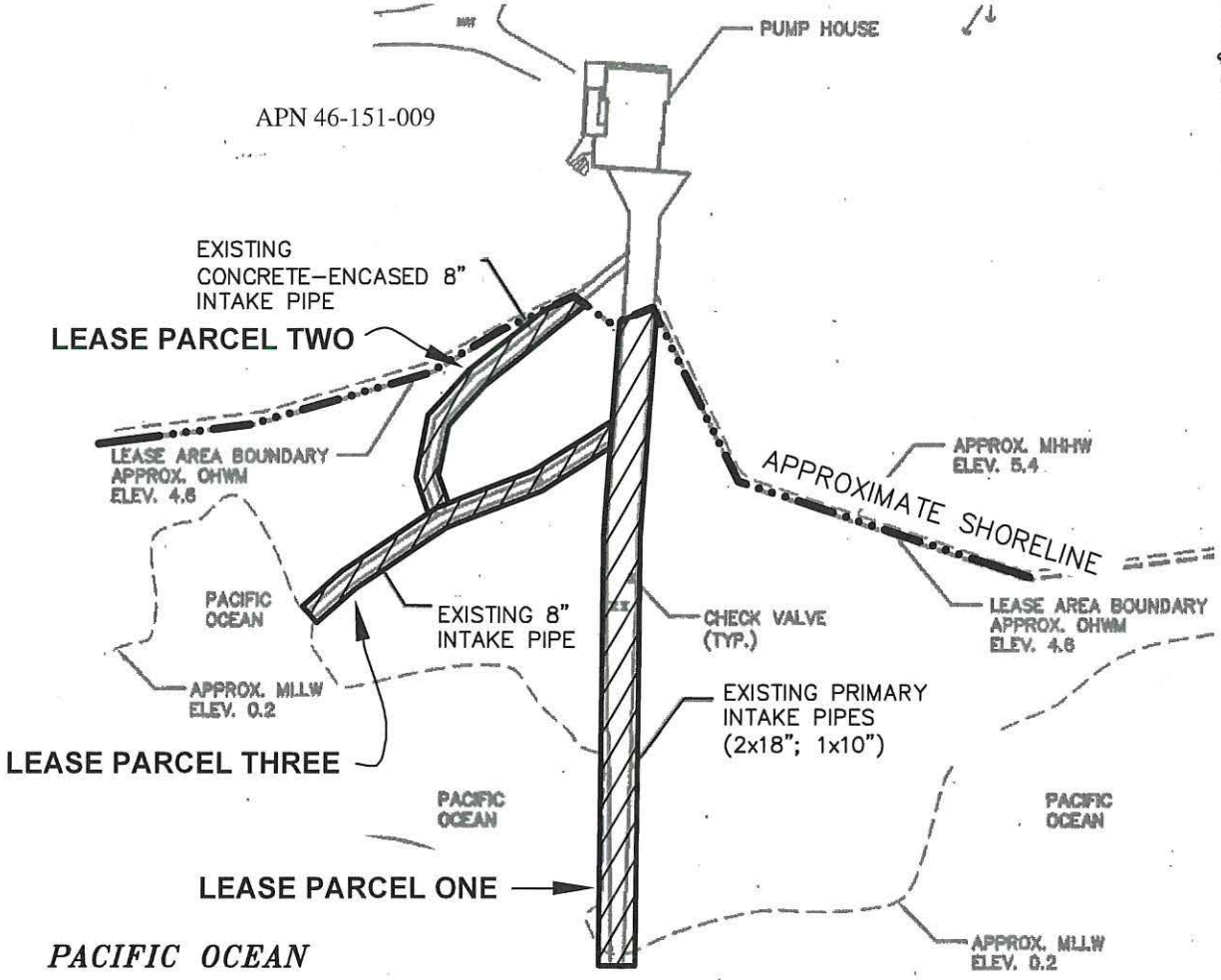
Prepared 9/16/19 by the California State Lands Commission Boundary Unit.

Written By: Dan Frink
Checked By:



NO SCALE

SITE



PACIFIC OCEAN, NEAR CAYUCOS

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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 B

LEASE 7326.1
 THE ABALONE FARM, INC.
 APN 46-151-009
 GENERAL LEASE -
 RIGHT - OF - WAY USE
 SAN LUIS OBISPO COUNTY



DJF 09/16/19