STAFF REPORT
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A	14	12/06/19
		PRC 4908.1
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ASSIGNMENT AND AMENDMENT OF LEASE

LESSEE/ASSIGNOR:
Equilon Enterprises LLC dba Shell Oil Products US

ASSIGNEE:
Martinez Refining Company LLC

AREA, LAND TYPE, AND LOCATION:
19.6 acres, more or less, of sovereign land in the Carquinez Strait, Martinez, Contra Costa County.

AUTHORIZED USE:
The continued operation and maintenance of an existing approximately 1,850-foot-long, 150-foot-wide, concrete marine oil terminal wharf with mooring dolphins at each end, two active berths (#1 and #2) on the outer (north) side, two inactive berths (#3 and #4) on the inner (south) side, one crane rig and control shack for product transfer equipment and hoses at each of berths #1 and #2, and a single-story control building at the middle; an approximately 1,900-foot-long, 16-foot-wide, pile-supported wood approach trestle with an approximately 40-foot-wide, pile-supported pipe rack paralleling the trestle; and the remnants of an approximately 250-foot long, 55-foot-wide, pile-supported warehouse structure adjacent to the west side of the approach trestle.

LEASE TERM:
30 years, beginning August 1, 2009.

CONSIDERATION:
$402,914 per year, with the State adjusting the annual rent for each year by the application of the Consumer Price Index.

PROPOSED AMENDMENT:
Amend the lease to:

- Increase the security amount from $2 million to $15 million, with 5-year adjustments based on the California Consumer Price Index.

- Authorize acceptance of a corporate guaranty by PBF Holding Company LLC, to guaranty the performance of lease obligations in the event the Assignee fails to do so.

- Eight years after the effective date of the amendment, the Assignee will hire a 3rd party engineering firm to assess the costs to decommission lease improvements and restore the site. The chosen firm and methodology to assess the decommissioning and restoration costs are subject to staff approval and all data collected will be shared with staff to assess potential liabilities associated with the operation of the lease. The assessment shall be completed within 120 days of the eighth anniversary of the amendment.

- 10 years after the effective date of the amendment the sufficiency of the security will be reviewed using the decommissioning and restoration cost assessment, pursuant to the terms of the lease, and the security may be amended to ensure that all liabilities associated with lease premises and site restoration are fully secured.

All other terms and conditions of the lease shall remain in effect without amendment.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

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

Public Trust and the State's Best Interests Analysis:

Shell Oil Products US (Shell) and its predecessors-in-interest (all Shell companies) have operated a wharf for the transfer of petroleum products adjacent to its upland refinery in Martinez since approximately 1915. The Commission originally authorized a lease for this purpose effective August 1, 1948, as Industrial Lease No. PRC 543.1 (Item 4, October 5, 1950).

On April 24, 1974, the Commission authorized issuance of Lease 4908.1 (also identified as Lease No. PRC 4908.1), a General Lease – Industrial Use, to Shell for the maintenance of a wharf, causeway, and necessary dolphins, and pilings and pipelines for the transmission of petroleum products (Item 18, April 24, 1974). Lease 4908.1 had an initial term of 15 years beginning August 1, 1974 and included three 10-year renewal options. The first 10-year renewal option was exercised in 1989.

In 1999, after the second renewal option was exercised, the Commission conditioned the granting of a longer-term lease on the development of an

Environmental Impact Report (EIR). Preparation of the EIR began in 2004, but complications in the preparation process delayed its completion until 2011. On June 23, 2011, the Commission authorized a General Lease – Industrial Use (Lease) to Shell, for a term of 30 years, beginning August 1, 2009 (Item 42, June 23, 2011). On June 28, 2019, the Commission authorized a revision of rent from $389,121 to $402,914 per year, effective August 1, 2019 (Item 34, June 28, 2019).

On June 11, 2019, Shell executed a Sale and Purchase Agreement with PBF Holding Company LLC (PBF) for the Shell Martinez Refinery, including the marine oil terminal authorized under Lease 4908.1, located on the south shore of the Carquinez Strait. Under the sales arrangement, all of Shell's rights and obligations under the Lease will be assigned to Martinez Refining Company LLC (MRC), a wholly owned subsidiary of PBF. The Assignee will be the owner and operator of the Shell Martinez Refinery and marine oil terminal. MRC plans to utilize the facilities without substantial changes, retaining the existing employee base and operations consistent with Shell's historical use of the Shell Martinez Refinery.

Section 15, subsection (e) of the Lease establishes the factors that the Commission should evaluate when considering whether to authorize an assignment. Approval or disapproval should be determined "according to standards of commercial reasonableness" considering: (1) the proposed assignee's financial strength and reliability; (2) its business experience and expertise; (3) personal and business reputation; (4) managerial and operational skills; (5) ability to comply with the terms and conditions of the Lease; (6) the proposed use and projected rental; and, (7) such other factors that the Commission can demonstrate are relevant.

As part of the assignment review process, staff performed a financial review of the Assignee's assets to ensure performance of the terms of the Lease. MRC is a new entity, created on June 26, 2019 and registered to do business in California on July 1, 2019, and currently has no major assets until the close of the sales transaction with Shell. MRC is a wholly owned subsidiary of PBF, which itself is the parent company of various subsidiaries that own and operate oil refining and transportation facilities elsewhere in the country. Because MRC has no financial history on which to assess the company's financial strength or reliability, its business experience and expertise, or its personal or business reputation, PBF has agreed to execute a parental guaranty to ensure the performance of MRC's lease obligations. Financial analysis shows that PBF has a lower than average industry risk of financial stress, has assets that exceed liabilities by approximately $1.25 billon, and no record of bankruptcy filings or major defaults. Staff believes this reflects financial strength and reliability at or above the industry average.

As to business experience and expertise, PBF is a subsidiary and primary asset of PBF Energy Company LLC, which is itself a subsidiary of PBF Energy Company Inc. (PBF Energy). PBF Energy is a large, independent petroleum refiner and supplier of unbranded transportation fuels, heating oil, lubricants, and other petroleum products in the United States. PBF Energy was founded in 2008, is publicly traded, and currently owns and operates, through PBF, five domestic oil refineries and related assets with a combined processing capacity of approximately 900,000 barrels per day. PBF Energy owns refineries in Torrance, California, as well as Delaware, Louisiana, New Jersey, and Ohio.

MRC intends to operate the upland and leased facilities in the same manner as they are currently being operated. MRC will adopt and continue to implement the Assignor's operations manual for the marine oil 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. MRC has agreed to extend offers of employment to all the Assignor's employees to help provide continuity, safety, and a smooth transition.

The inspection and maintenance of the Shell Marine Oil Terminal wharf are regulated primarily by the Commission through its Marine Environmental Protection Division. The Assignee and operator must comply with the Terminal Inspection and Monitoring requirements (Cal. Code Regs., tit. 2, § 2300 et seq.) and the engineering and structural requirements of 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.). MOTEMS contains comprehensive requirements for assessing Marine Oil Terminal structural, mechanical, and electrical systems, including: audits; above water and underwater inspections; structural evaluation; 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 Shell Marine Oil Terminal wharf 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. The next MOTEMS audit is due in August 2020.

On June 1, 2011 the Shell Martinez Marine Terminal Lease Consideration Environmental Impact Report (EIR) was certified pursuant to the Commission's delegation of authority and the State California Environmental Quality Act (CEQA) Guidelines (Cal. Code Regs., tit. 14, § 15025) (State Clearinghouse No. 2004072114). This EIR analyzed impacts related to continued operation of the Shell Marine Oil Terminal. A Mitigation Monitoring Program (MMP) was prepared in conformance with the provisions of CEQA (Pub. Resources Code, § 21081.6). As of December 2019, the facility is compliant with the MMP. MRC will be required to maintain compliance with the MMP during the term of the Lease.

As with all major industrial lease assignments, staff evaluated the value of the security required under the Lease, currently a $2 million bond, and found it insufficient to guarantee Lease performance in the event of an unanticipated future default. Staff and PBF, on behalf of MRC, negotiated a proposed Lease amendment to increase the security.

Under the proposed amendment, PBF, on behalf of MRC, will secure a $15 million surety, in addition to its corporate guaranty. Every 5 years the security will increase based on the California Consumer Price Index for all urban wage earners, as established by the California Department of Industrial Relations (CPI).

Eight years after the amendment is effective, MRC will hire a firm to conduct a cost assessment for decommissioning of the lease improvements and restoration of the lease premises, with the results shared with staff. The chosen firm and methodology to assess those costs are subject to staff approval. Under the amendment, staff will have the opportunity to reassess the sufficiency of the security 10 years after the effective date of the amendment. The 10-year reassessment will be informed by the results of the decommissioning cost assessment. In the event of a default of a lease term by MRC, staff would seek performance of the obligation by PBF first. If PBF also failed to timely cure the default staff would then seek recovery from the retained bond.

Overall, staff believes MRC, through the parental guaranty and shared management of PBF, meets the requirements for assignment and should be able to fully perform its regulatory and Lease obligations. The Lease facilities will operate under the same staff and within the same operational guidelines as the Assignor. Further, the proposed amendment will ensure that the security required under the Lease and guaranty by PBF is adequate to protect the State from future decommissioning liability in the event of an unanticipated default.

The public's right to use California's waterways for commerce, navigation, fishing, boating, natural habitat protection and other water-oriented activities is protected by the common law Public Trust Doctrine. The existing marine oil terminal wharf is consistent with the common law Public Trust Doctrine because it is used to facilitate commerce and navigation by providing oil tankers a safe mooring location while transferring oil and petroleum products to and from shore. The assignment and amendment of the Lease do not alter the land or alienate the State's fee simple interest, nor do they 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 Assignee to insure and indemnify the State for any liability incurred as a result of the Assignee's activities thereon. Overall, the lease assignment and amendment will not result in a change in the use of, or impacts to, Public Trust resources.

Environmental Justice Analysis:

Consistent with the Commission's adopted Environmental Justice Policy, staff evaluated the location of the subject Leased lands in order to determine whether nearby communities bear a disproportionate share of environmental burdens and, if so, to engage with environmental justice groups for comments and ideas about the proposed assignment and any related impacts that can be lessened or avoided on those communities. Using the CalEnviroScreen program, managed by the California Office of Environmental Health Hazard Assessment, staff identified the census tract covering the Leased lands along with adjacent tracts bearing environmental burdens, in certain categories, larger than most other census tracts in the State. Namely, the regional risks associated from transportation of hazardous materials and solid wastes contributed to a high potential for releases that could affect groundwater and air quality. The population within these tracts were also afflicted with higher rates of asthma than most other areas of the State.

Based on the identified environmental burdens, staff initiated outreach to environmental justice groups seeking input on the proposed assignment. Staff initiated a comment period from August 2, 2019, to September 1, 2019. During that time staff contacted, via letter, email, and telephone, 49 different individuals and representatives of more than 15 different environmental justice organizations providing notification of the assignment application and soliciting comments. As of late-November 2019, staff has received no comments regarding the proposed Lease assignment.

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 along the Carquinez Strait, which is a tidally influenced site vulnerable to flooding at current sea levels; therefore, this area will likely be at a higher risk of flood exposure given future projection scenarios of sea-level rise. For this assessment, staff considered the high emissions, medium-high risk aversion scenario in order to apply a conservative approach to planning and minimize the most risk based on the existing lease location and proposed structures. Projected sea-level rise scenarios for the Carquinez Strait (San Francisco tide gauge) are listed in Table 1.

Table 1. Projected Sea-Level Rise for San Francisco[1]

Year	Projection (feet)
2030	0.8
2050	1.9
2100	6.9

Source: Table 13, State of California Sea-Level Rise Guidance: 2018 Update
Note: [1] Projections are with respect to a 1991 to 2009 baseline.

Rising sea levels can lead to more frequent flood inundation in low-lying areas and larger tidal events. 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 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 areas will be exposed to increased wave force and run-up, potentially resulting in greater bank erosion than previously experienced. Finally, in tidally influenced waterways, flooding and storm flow will likely increase scour, decreasing bank stability and structure.

This increase in sea-level combined with more frequent and stronger storm events will likely expose the lease area structures to higher flood risks, comprised of greater total water levels for longer periods of time. The lease area may be subject to the climate change effects of the projected sea-level rise scenario provided above.

Regular maintenance and implementing best management practices, as required by the terms of the Lease, will help reduce the likelihood of degradation and dislodgement. As required under MOTEMS, all marine oil terminals must consider predicted sea-level rise over the remaining life of the terminal. MRC would be subject to this requirement (Cal. Code Regs., tit. 24, § 3103F.5.3.4). Further climate change impact analyses on the lease area will be assessed at the time the Lease expires in 2039 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, Commission staff believes the assignment and amendment of this Lease will not substantially interfere with the Public Trust needs at this location, at this time, and 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 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.

2. Approval or denial of the assignment, amendment of the Lease, and acceptance of a corporate guaranty 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. Upon expiration or prior termination of the Lease, the lessee has no right to a new lease or to renewal of any previous Lease.

3. The assignment and amendment of the Lease and acceptance of a corporate guaranty are not projects as defined by CEQA 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

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed assignment and amendment 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. Authorize, as conditioned below, the assignment of Lease No. PRC 4908.1, a General Lease – Industrial Use, from Equilon Enterprises LLC dba Shell Oil Products US, to Martinez Refining Company LLC; effective on the close of purchase. This authorization is effective only upon execution of the following:

   a. The amendment of Lease No. PRC 4908.1, a General Lease – Industrial Use, to increase the security and require the future development of a decommissioning cost assessment, with all other terms and conditions of the Lease to remain in effect without amendment; effective following the assignment on the close of purchase.

   b. A corporate parental guaranty by PBF Holding Company LLC, for performance of the obligations associated with Lease No. PRC 4908.1.

2. Failure to execute the amended lease and to provide the corporate parental guaranty, by PBF Holding Company LLC, at the close of purchase from Equilon Enterprises LLC dba Shell Oil Products US, to Martinez Refining Company LLC, before December 6, 2020, shall render the assignment null and void. If the assignment fails, Equilon Enterprises LLC remains responsible for the fulfillment of all lease obligations.

EXHIBIT A

LEASE 4908.1

LAND DESCRIPTION

A PARCEL OF TIDE AND SUBMERGED LAND LYING IN THE BED OF AND ADJACENT TO THE SOUTH BANK OF CARQUINEZ STRAIT, WITHIN THE CITY LIMITS OF THE CITY OF MARTINEZ, CONTRA COSTA COUNTY, STATE OF CALIFORNIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE BOUNDARY BETWEEN STATE SUBMERGED LAND AND SHELL OIL COMPANY TIDELANDS, AS SAID BOUNDARY IS SHOWN UPON THAT CERTAIN MAP ENTITLED "BOUNDARY OF STATE SUBMERGED LANDS, VICINITY OF MARTINEZ" AS RECORDED UNDER NUMBER 48615 ON JUNE 14, 1962, IN VOLUME 20 OF LICENSED SURVEYOR'S MAPS, PAGE 14, OFFICIAL RECORDS OF CONTRA COSTA COUNTY; SAID POINT BEARS N 04° 53' 18" E, 1397.98 FEET FROM A MONUMENT BEING A 3" DIAMETER BRASS CAP IN CONCRETE IN IRON PIPE HAVING COORDINATES OF X = 1,530,983.14 AND Y = 558,754.24; SAID MONUMENT BEING DESIGNATED AS J.C. NUMBER 1, AND SHOWN ON THE AFOREMENTIONED MAP; THENCE FROM SAID POINT OF BEGINNING PROCEEDING WATERWARD N 07° 33' 31" W, 844.02 FEET TO A POINT ON THE U.S.E.D. BULKHEAD LINE AS SHOWN ON THE MAP OF "HARBOR LINES FOR CARQUINEZ STRAIT", U.S. ENGINEERS OFFICE, APPROVED APRIL 22, 1941; THENCE LEAVING SAID BULKHEAD LINE THE FOLLOWING 15 COURSES:

1. N 07° 33' 31" W, 233.36 FEET;
2. S 82° 26' 29" W, 270.00 FEET;
3. N 07° 33' 31" W 82.00 FEET;
4. N 82° 26' 29" E, 226.36 FEET
5. N 08° 53' 21" W, 589.08 FEET;
6. S 58° 16' 45" W, 297.16 FEET;
7. S 31° 32' 44" E, 5.00 FEET;
8. S 58° 16' 45" W, 94.95 FEET;
9. N 31° 43' 15" W, 5.00 FEET;
10. S 58° 16' 45" W, 1029.05 FEET;
11. N 31° 43' 15" W, 324.00 FEET;
12. N 58° 16' 45" E, 2090.00 FEET;
13. S 31° 43' 15"E, 324.00 FEET;
14. S 58° 16' 45" W, 529.28 FEET;
15. S 07° 33' 31" E, 1768.46 FEET TO THE ABOVE MENTIONED BOUNDARY LINE

BETWEEN THE STATE AND SHELL OIL COMPANY; THENCE ALONG SAID BOUNDARY LINE S 54°36' 29" W, 79.16 FEET TO THE POINT OF BEGINNING.

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE BASED ENTIRELY ON RECORD DATA AS SET FORTH ON SAID MAP ENTITLED "BOUNDARY OF STATE SUBMERGED LANDS, VICINITY OF MARTINEZ", AS RECORDED UNDER NUMBER 48615 ON JUNE 14, 1962, IN VOLUME 20 OF LICENSED SURVEYOR'S MAPS, PAGE 14, OFFICIAL RECORDS OF CONTRA COSTA COUNTY AND ARE BASED UPON THE CALIFORNIA COORDINATE SYSTEM, ZONE 3. (NAD 27)

FRED FEICKERT, PLS 8428
LICENSE EXPIRES 12/31/10

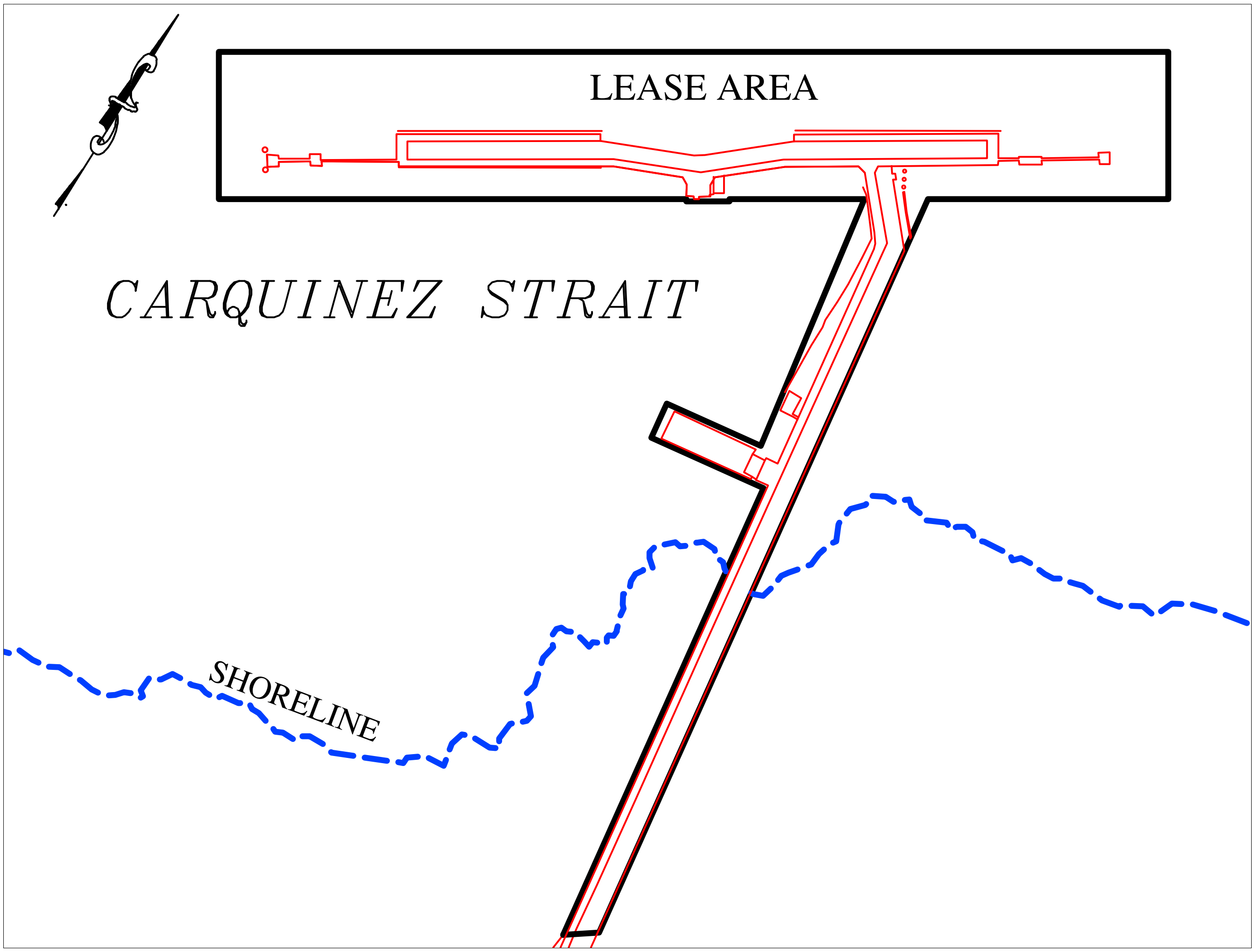
DATE: 4/2/2009

LICENSED LAND SURVEYOR
FRED FEICKERT
Exp. 12-31-2010
No. LS #8428
STATE OF CALIFORNIA

END OF DESCRIPTION

NO SCALE

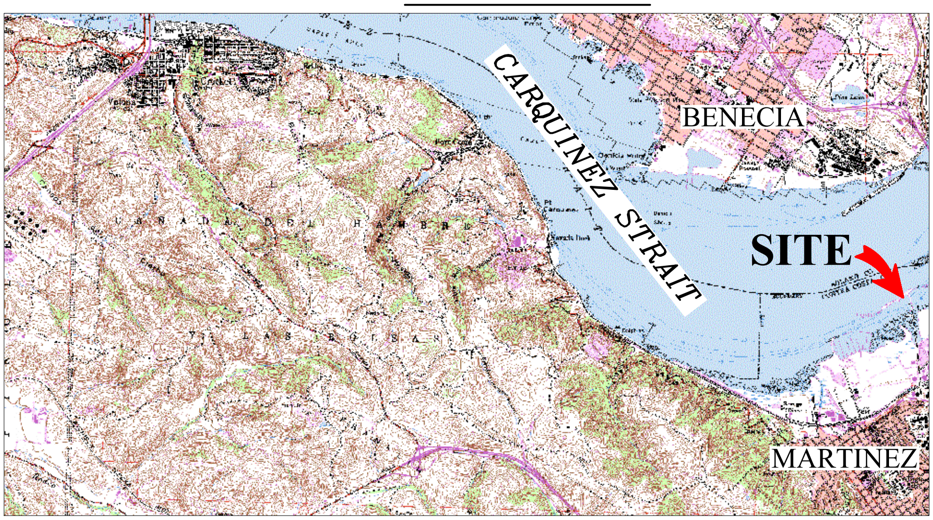
SITE



Carquinez Strait, Martinez

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

PRC 4908.1
MARTINEZ REFINING COMPANY LLC
APN 378-010-017
GENERAL LEASE - INDUSTRIAL USE
CONTRA COSTA COUNTY

MJF 12/02/19