

STAFF REPORT

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02/28/20
PRC 4080.1
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J. Holt

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ASSIGNMENT OF LEASE

LESSEE/ASSIGNOR:

John C. McGuinness and Kathleen A. McGuinness, as Co-Trustees of the John C. McGuinness and Kathleen A. McGuinness Revocable Living Trust Dated October 20, 2008

APPLICANT/ASSIGNEE:

Turner Cut Resort and Marina Inc., a California corporation

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Whiskey Slough, adjacent to 12864 Neugebauer Road, near Stockton, San Joaquin County.

AUTHORIZED USE:

Continued operation, use, and maintenance of an existing commercial marina, known as Turner Cut Resort, consisting of three covered docks with approximately 130 berths of various lengths with electrical and water hookups; two uncovered docks; two floating boathouses; five walkways; guest dock with finger; accommodation dock; gas dock with two marine fuel dispensers and hose reels; launch ramp; two nightly rental cabins; swim area; and three restrooms with showers, and two transient occupancy use rental cabins.

LEASE TERM:

20 years, beginning October 19, 2012.

CONSIDERATION:

\$9,201 per year, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$2,000,000 per occurrence.
- Surety bond or other security in an amount no less than \$25,000 and as specified in Section 3, Paragraph 9 et seq.

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- The lease contains provisions requiring implementation of the Commission's "Best Management Practices for Marina Owners/Operators" and encouraging implementation of the Commission's "Best Management Practices for Berth Holders/Guest Dock Users/Boaters," including additional Best Management Practices (BMPs) the Commission subsequently deems appropriate for either of the above categories.

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 the State's Best Interests Analysis:

On October 19, 2012, the Commission authorized a 20-year General Lease – Commercial Use to John C. McGuinness and Kathleen A. McGuinness, as Co-Trustees of the John C. McGuinness and Kathleen A. McGuinness Revocable Living Trust Dated October 20, 2008 ([Item C54, October 19, 2012](#)). The authorization included an endorsement of a sublease to Turner-Cut Resort, Inc. The endorsement expired on July 31, 2013. The subject lease will expire on October 18, 2032. In 2019, Mrs. Kathleen A. McGuinness passed away, leaving Mr. John C. McGuinness as the sole surviving trustee of the trust that owns the upland parcel.

During the time period of 2016 through 2018, the Lessee/Assignor removed four floating homes from the lease premises as required by the lease. This measure increased consistency pursuant to the Public Trust Doctrine. Staff performed a visual inspection of the lease premises and noted compliance with lease requirements.

The Lessee/Assignor plans to transfer the upland to Turner Cut Resort and Marina Inc., a California corporation. In turn, the Lessee is applying for an assignment of the lease to the new owner. The Assignee is registered with the Secretary of State's Office, under California Corporate Number C4319146. The members of the corporation are Daniel Dumas (President) and Annabelle Constantin (Secretary and Chief Financial Officer). The Assignee has more than 20 years of experience in property management and business operations. The Assignee has not delegated oversight of the marina to another business entity, nor plans to enter into an operating agreement.

The Assignee agrees to perform and be bound by the terms, conditions, covenants, and agreements contained in the lease. Staff recommends an assignment of the lease to reflect the change in upland ownership from

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the Assignor to the Assignee. The assignment will be effective as of the date of the close of escrow, but no later than June 30, 2020.

The proposed assignment of the lease will not result in a change in the use of, or impacts to, Public Trust resources. Recreational boating is generally consistent with the Public Trust Doctrine, and it encourages the use of state resources for outdoor recreation. Staff believes approval of this assignment will not substantially interfere with the common law Public Trust Doctrine.

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 facilities are located on Whiskey Slough and Turner Cut 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 San Francisco 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 San Francisco¹

Year	Projection (feet)
2030	0.8
2040	1.3
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, larger tidal events, and could increase the Whiskey Slough and Turner Cut's inundation levels within the lease area over the remaining term of the lease. 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

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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 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 and affect access 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 and potentially leading to increased wear-and-tear on the pilings. Lowered water levels could also reduce navigability of the channel, thereby increasing hazards related to the lease area structures.

Most facilities within the lease area are floating or adaptable to variable water levels, allowing them to rise and fall with storms and droughts, and increasing their resiliency to some climate change impacts, but may require more frequent maintenance to ensure continued functionality, during and after storm seasons and to avoid dislodgement of dock facilities. The fixed features, such as pilings and bank protection (not within the lease area) may need reinforcement to withstand higher levels of flood exposure.

The vegetated bank (not under lease) provides additional stability and reduces the amount of erosion and scour pressure experienced during future events because of the vegetation's underground root system; but remains at risk of accelerated deterioration from currents and floods.

The lease is a 20-year General Lease – Commercial Use that began on October 19, 2012, and 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 severe structural degradation and dislodgement. Further climate change impact analyses on the lease

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facilities will be assessed at the time the lease expires in 2032 and would be based on projected sea-level rise scenarios at that time.

Conclusion:

Approval of this assignment of lease will not result in a change in the use of, or impacts to, Public Trust resources at this location, at this time, and for the foreseeable term of the lease. For these reasons, staff recommends finding that approval of this assignment is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application for assignment of lease 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 lessee may be required to remove the existing three covered docks with approximately 130 berths of various lengths with electrical and water hookups; two uncovered docks; two floating boathouses; five walkways; guest dock with finger; accommodation dock; gas dock with two marine fuel dispensers and hose reels; launch ramp; two nightly rental cabins; swim area; and three restrooms with showers, and two transient occupancy use rental cabins, 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 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.
3. Assignment of the lease is not a project as defined by the California Environmental Quality Act because it is an administrative action 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

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RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed assignment of the 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:

Authorize the assignment of Lease PRC 4080.1, a General Lease – Commercial Use, of sovereign land as described in Exhibit A, Land Description, and shown on Exhibit B, Site and Location Map (for reference purposes only), attached and by this reference made a part hereof, from John C. McGuinness and Kathleen A. McGuinness, as Co-Trustees of the John C. McGuinness and Kathleen A. McGuinness Revocable Living Trust Dated October 20, 2008, to Turner Cut Resort and Marina Inc., a California corporation, effective at the close of escrow, but no later than June 30, 2020.

EXHIBIT A

PRC 4080.1

LAND DESCRIPTION

A parcel of tide and submerged land in the beds of Whiskey Slough and Turner Cut (AKA Branch Slough), situate adjacent to that land as described as Parcel 1, Parcel 2, and Parcel 3 in that certain Grant Deed recorded in Book 3163, Page 456, San Joaquin County Official Records, located in San Joaquin County, State of California, and being more particularly described as follows:

BEGINNING at a point having CCS83, Zone 3 coordinates: Northing (y) = 2181293.20 feet and Easting (x) = 6280954.46 feet which bears North 00°42'43" East 2125.43 feet from NGS monument PID AE9887 point having CCS83, Zone 3 coordinates: Northing (y) = 2179167.93 feet and Easting (x) = 6280928.05 feet;

thence from said point of beginning the following thirteen (13) courses:

- (1) North 21°23'32" West 226.32 feet,
- (2) North 42°01'07" East 311.99 feet,
- (3) North 57°26'54" East 878.27 feet,
- (4) South 23°52'04" East 203.11 feet,
- (5) South 69°54'18" West 215.60 feet,
- (6) South 51°54'55" West 272.07 feet,
- (7) South 63°45'59" West 245.03 feet,
- (8) South 25°56'25" West 93.70 feet,
- (9) South 05°24'42" East 75.75 feet,
- (10) South 18°37'33" East 196.59 feet,
- (11) South 02°44'26" East 116.31 feet,
- (12) North 88°03'50" West 203.27 feet, and
- (13) North 62°04'49" West 162.63 feet to the point of beginning.

EXCEPTING THEREFROM any portion lying landward of the Ordinary High Water Marks of the Whiskey Slough.

ALSO EXCEPTING THEREFROM any portion lying landward of the Low Water Marks of Turner Cut (AKA Branch Slough).

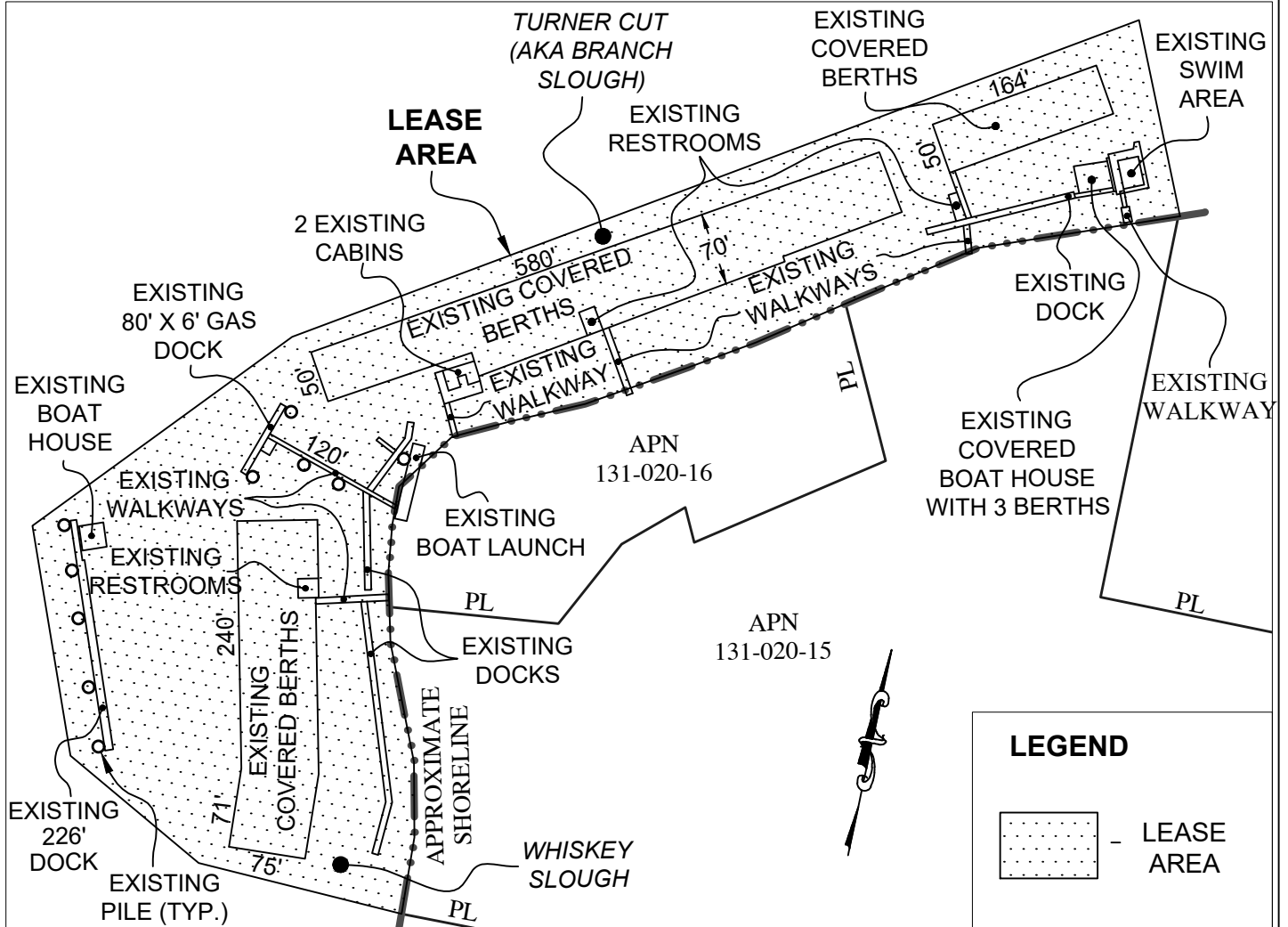
END OF DESCRIPTION

Prepared 08/14/2012 by the California State Lands Commission Boundary Unit.



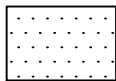
NO SCALE

SITE



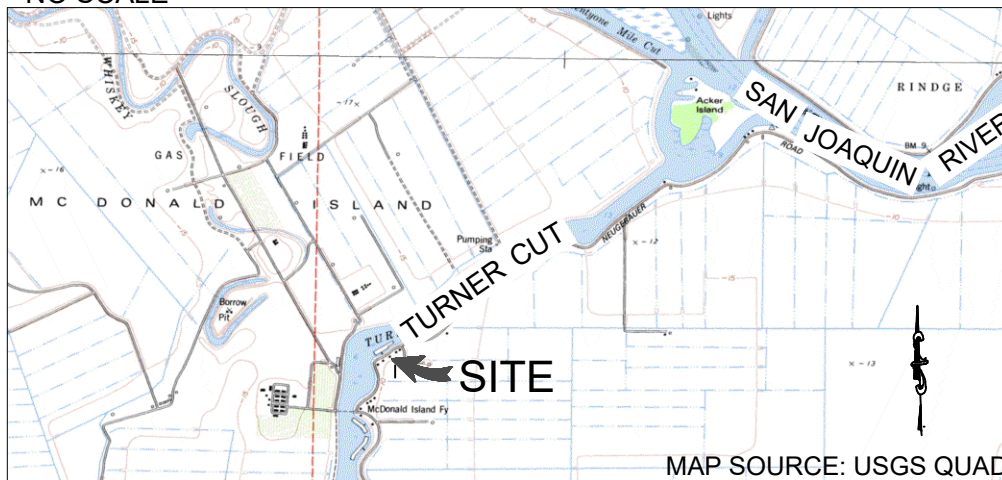
12860 & 12864 NEUGEBAUER ROAD, STOCKTON

LEGEND

 - LEASE AREA

NO SCALE

LOCATION



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 4080.1
TURNER CUT RESORT AND MARINA INC.
APNs 131-020-15 & 131-020-16
GENERAL LEASE - COMMERCIAL USE
SAN JOAQUIN COUNTY



JWP 1/27/2020