

STAFF REPORT

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06/23/20
Lease 7760.1

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J. Toy

GENERAL LEASE – RIGHT-OF-WAY USE

APPLICANT:

Mercer-Fraser Company

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Eel River, adjacent to Assessor's Parcel Number 200-341-005, near Fortuna, Humboldt County.

AUTHORIZED USE:

Continued annual placement, use, and removal of a seasonal bridge crossing. The exact location of the bridge may vary from year to year within the lease premises due to conditions in the Eel River.

LEASE TERM:

5 years, beginning January 1, 2020.

CONSIDERATION:

\$510 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$3,000,000 per occurrence.
- Annual reporting of extraction plans upon request and location of the seasonal bridge.
- Posting low-bridge warning signs when the bridge is in place.

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.

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Public Trust and State's Best Interests Analysis:

On August 19, 2015, the Commission authorized a General Lease – Right-of-Way Use to the Mercer-Fraser Company for the annual placement, use, and removal of a seasonal bridge ([Item C36, August 19, 2015](#)). The lease expired on December 31, 2019.

The Applicant is now applying for a General Lease – Right-of-Way Use for the continued activities. Staff recommends the lease begin on January 1, 2020, the day after the previous lease expired. The California Coastal Commission (CCC) Coastal Development Permit No. 1-15-0277 and amendment (1-15-0277-A1) is being used to comply with the requirements of the California Environmental Quality Act (CEQA). Therefore, staff also recommends aligning the expiration date of the proposed lease with the expiration date of the CCC permit, which expires on December 31, 2024. The permit includes the Applicant's adjacent lease premises, also for a seasonal bridge crossing, previously covered under Lease 7797.1. The Applicant submitted an application for a new lease for that crossing, which is also scheduled for consideration at the June 23, 2020 meeting.

The CCC authorized extraction of up to 270,000 cubic yards of gravel per year from two sites on the Sandy Prairie landform, between River Miles 10 and 12 of the lower Eel River. The installation of the crossing is based on annual pre-extraction survey conditions and applicable agency requirements. The annual pre-extraction site visits include the U.S. Army Corps of Engineers, California Department of Fish and Wildlife, Regional Water Quality Control Board, and the County of Humboldt Extraction Review Team who evaluate the proposed crossing location in addition to haul roads and extraction areas.

The railroad flat-car bridge is typically constructed 6 feet above the water surface (with a 3-foot minimum clearance) and with the use of K-rails, concrete abutment blocks, and wash rock backfill. It will be placed no earlier than June 30 and removed no later than October 15 each year. Low-bridge warning signs will be posted when the bridge is in place. Passage for canoes, kayaks, and other water related activities in the Eel River will, therefore, remain available throughout the year. While the bridge does not facilitate water-dependent activities, it does not interfere with Public Trust needs and values at this location, at this time, and for the foreseeable term of the proposed lease. The bridge does not significantly alter the land, and the lease does not alienate the State's sovereign interest, or permanently impact public rights.

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The lease is limited to a 5-year term and does not grant the lessee exclusive rights to the lease premises. The lease includes provisions requiring the lessee to obtain necessary permits; requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved; and 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.

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 facility is located in the Eel River and may be a tidally influenced site vulnerable to flooding at current sea levels and at higher risk of flood exposure given projected scenarios of sea-level rise. The lease premises will be used for a seasonal bridge.

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," "low risk aversion" scenario to apply a conservative approach based on both current emission trajectories and the lease location and structure. The North Spit tide gauge was used for the projected sea-level rise scenario for the region as listed in Table 1.

Table 1. Projected Sea-Level Rise for North Spit¹

Year	Projection (feet)
2030	0.7
2040	1.1
2050	1.5
2100	3.1

Source: Table 4, 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 and could increase the Eel River's inundation levels within the lease area over the 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 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

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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.

Although the temporary seasonal bridge would be placed after June 30 of each year and must be removed before October 15 to avoid the winter storm season, there is still the possibility that 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 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. Regular maintenance as required by the terms of the lease will help reduce the likelihood of severe structural degradation and dislodgement.

Conclusion:

For all the reasons above, staff believes the issuance of this lease will not substantially interfere with Public Trust needs and values 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 cease placement of the bridge and leave the premises in 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 protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.

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3. The CCC prepared an environmental document pursuant to its certified regulatory program (Cal. Code Regs., tit. 14, § 15251, subd. (c)), and granted Permit No. 1-15-0277 and amendment (1-15-0277-A1) for this seasonal bridge installation and removal project (Project) on ~~December 19, 2019~~ September 9, 2016.

Staff has reviewed the document and determined that the conditions, as specified in the California Code of Regulations, title 14, section 15253, subdivision (b), have been met for the Commission to use this document for its compliance with CEQA.

4. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon staff's consultation with the persons nominating such lands and through the CEQA review process, it is staff's opinion that the Project, as proposed, is consistent with its use classification.

APPROVALS OBTAINED:

California Coastal Commission
North Coast Regional Water Quality Control Board
County of Humboldt Extraction Review Team (CHERT)
U.S. Army Corps of Engineers
National Marine Fisheries Service

APPROVALS REQUIRED:

California Department of Fish and Wildlife

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the CCC Permit No. 1-15-0277 and amendment (1-15-0277-A1) (the environmental document), prepared for this Project and adopted on ~~December 19, 2019~~ September 9, 2016, by the CCC pursuant to its certified regulatory program (Cal. Code Regs., tit. 14, § 15251, subd. (c)), is a substitute document as provided by California Code of Regulations, title 14, section 15252, subdivision (a), and that the Commission has reviewed and considered the information therein.

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Find that the conditions described in the California Code of Regulations, title 14, section 15253, subdivision (b), have been met for the Commission, acting as a responsible agency, to use the environmental document to comply with the requirements of CEQA. (Cal. Code Regs., tit. 14, § 15096.)

Determine that the Project, as approved, will not have a significant effect on the environment.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that 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.

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

Authorize issuance of a General Lease – Right-of-Way Use to the Applicant beginning January 1, 2020, for a term of 5 years, for the continued annual placement, use, and removal of a seasonal bridge crossing, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; annual rent in the amount of \$510, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$3,000,000 per occurrence.

EXHIBIT A

LEASE 7760.1

LAND DESCRIPTION

A 40 foot wide by 230 foot long, more or less, strip of submerged lands lying in the bed of the Eel River situate adjacent to Section 34, Township 3 North, Range 1 West, Humboldt Base and Meridian, as shown on U.S. Governmental Plat approved January 19, 1856, County of Humboldt, State of California, the location of said strip to be within the following described lands:

Said strip lying with the exterior boundaries of that parcel of land described in that Corporation Grant Deed recorded February 23, 1971 in Volume 1077 of Official Records of said county, Page 356, TOGETHER WITH that parcel of land described in that Individual Grant Deed recorded February 25, 1981 in Volume 1636 of Official Records of said county, Page 616.

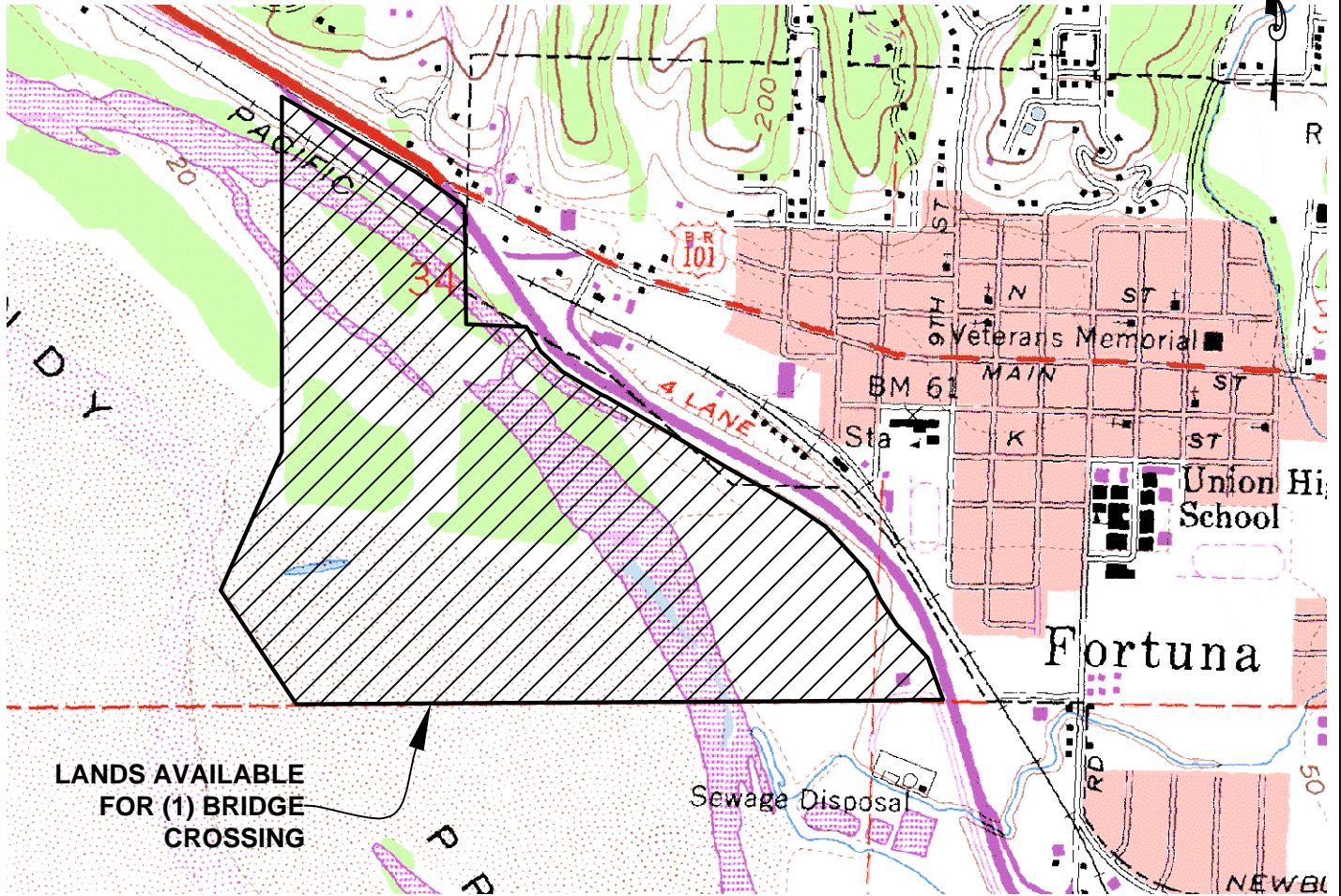
END OF DESCRIPTION

Prepared by the California State Lands Commission Boundary Unit May 19, 2020.



NO SCALE

SITE



INSTALLATION & REMOVAL OF A SEASONAL BRIDGE ON THE EEL RIVER, NEAR FORTUNA

NO SCALE

LOCATION

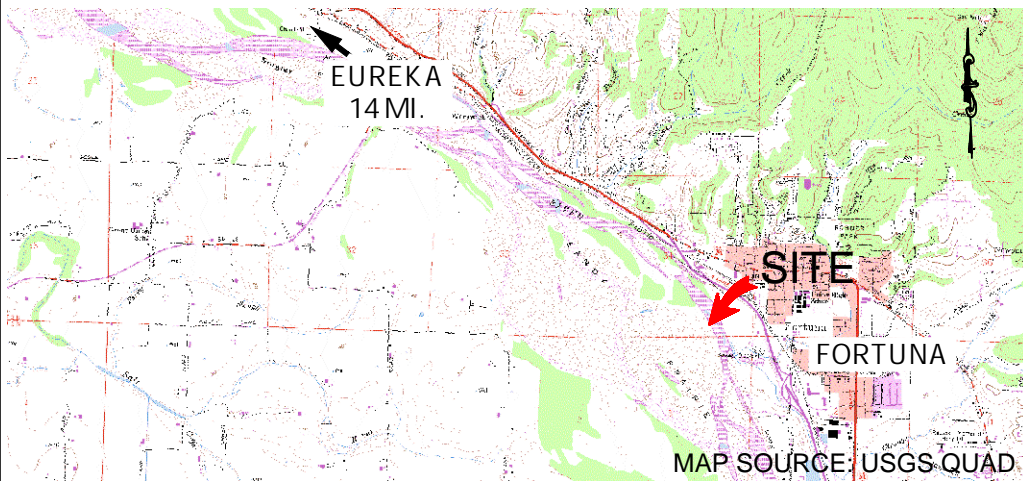


EXHIBIT B

LEASE 7760.1
 MERCER-FRASER CO.
 APN 200-341-005
 GENERAL LEASE -
 RIGHT-OF-WAY USE
 HUMBOLDT 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.