

Staff Report 05

APPLICANT:

Financial Portfolios Limited, an Irish Corporation

PROPOSED ACTION:

Consider waiver of Penalty and Interest and Issuance of a General Lease –
Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Petaluma River, adjacent to 5636 Lakeville Highway, near
Petaluma, Sonoma County.

AUTHORIZED USE:

Continued use and maintenance of an existing floating boat dock, pier, ramp, and
two pilings.

TERM:

10 years, beginning April 27, 2020.

CONSIDERATION:

\$140 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.
- Lessee agrees and acknowledges hazards associated with sea-level rise may require additional maintenance or protection strategies regarding the improvements on the Lease Premises.

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 section 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On August 14, 2012, the Commission authorized a General Lease – Recreational Use for an existing floating boat dock, pier, ramp, and two pilings to Financial Portfolios, Ltd. with a lease term beginning April 27, 2010 ([Item C13, August 14, 2012](#)). On February 7, 2017, the Commission authorized a revision of rent to revise the annual rent from \$101 to \$125 per year ([Item C24, February 7, 2017](#)). The lease expired on April 26, 2020.

The Applicant is now applying for a General Lease – Recreational Use for the continued use and maintenance of the existing facilities. Although the Applicant submitted its application for a new lease prior to the expiration of the prior lease, processing of the application was delayed due to the onset of the Covid-19 pandemic and other complications. Meanwhile, on February 13, 2020, staff mistakenly sent out an invoice for annual rent using the prior rental amount. This invoice is outstanding. Staff recommends the Commission approve a new lease beginning April 27, 2020; void the outstanding February 13, 2020 invoice; and waive any penalties and interest, pursuant to the Commission's authority as set forth in California Code of Regulations, title 2, section 1911, subdivision (c).

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained, used for the docking and mooring of boats, and facilitate recreational boating. Recreational boating is a water-dependent use that is generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private recreational boating facilities as an authorized use of Public Trust land (Pub. Resources Code, § 6503.5).

The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 10-year term, does not grant the lessee exclusive rights to the lease premises, and reserves an easement to the public for Public Trust-consistent uses. 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.

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 facilities are located on the Petaluma River, in a tidally influenced site that is vulnerable to shallow coastal flooding at current sea levels, and will be at 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 Francisco

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: 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 rivers and 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 riverine areas will be exposed to increased wave force and run-up, potentially resulting in greater bank erosion than previously experienced. Finally, in rivers and tidally influenced waterways, flooding and storm flow will likely increase scour, decreasing bank stability and structure.

The combination of these projected conditions could increase the likelihood of damage to structures within the lease premises during the term of the lease. The fixed facilities such as the pier and pilings will likely need reinforcement or replacement in the future to withstand higher levels of flood exposure and storm activity. The floating boat dock and ramp will be 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 or replacement to ensure continued function during and after storm seasons or to avoid dislodgement. The adjacent upland may also experience periodic or continuous inundation with rising water levels and more frequent flooding, and although the salt marsh habitat currently provides some bank protection, it is at risk of accelerated deterioration from higher and stronger currents and floods.

Regular maintenance, as required by the lease, will reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland 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 the proposed lease will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; 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 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, as the prior lessee, may be required to remove the floating boat dock, pier, ramp, and two pilings 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 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.

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 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; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Waive penalty and interest due for the period of April 27, 2020, through April 26, 2021, and void annual rent invoice #49492 issued on February 13, 2020, to Financial Portfolios Ltd.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning April 27, 2020, for a term of 10 years, for the continued use and maintenance of an existing floating boat dock, pier, ramp, and two pilings, 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 \$140, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 3696

LAND DESCRIPTION

A parcel of tide and submerged land situate on the left bank of the Petaluma River, lying adjacent to Rancho Petaluma, approved November 19, 1874, County of Sonoma, State of California, and more particularly described as follows:

All those lands underlying an existing pier, ramp and floating boat dock lying adjacent to Parcel Two as described in that Grant Deed (Individual) recorded April 27, 2000 in Document Number 2000040803, of Official Records of said County.

TOGETHER WITH any applicable impact area(s).

EXCEPTING THEREFROM any portion lying landward of the Ordinary High Water Mark of the left bank of the Petaluma River.

Accompanying plat is hereby made a part of this description.

END OF DESCRIPTION

Prepared November 10, 2020 by the California State Lands Commission Boundary Unit.



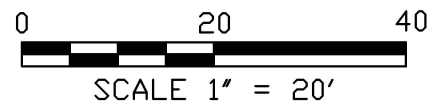
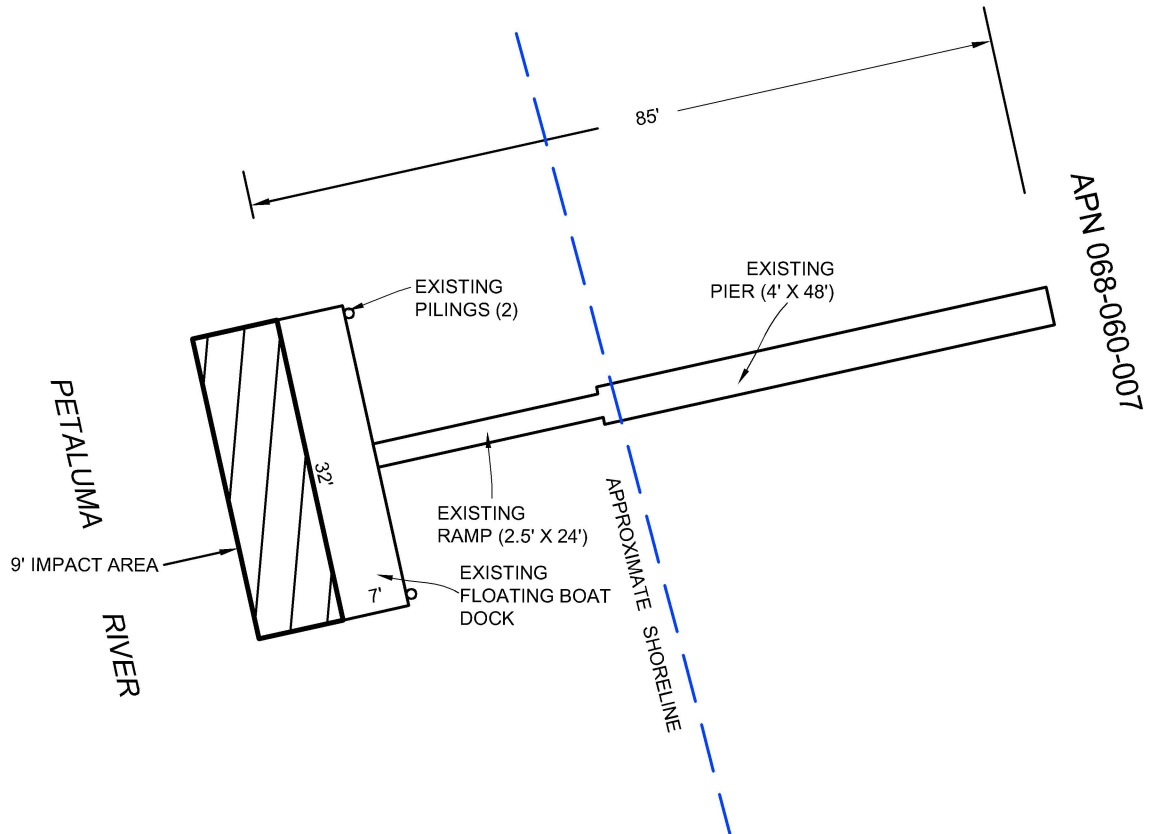


EXHIBIT A

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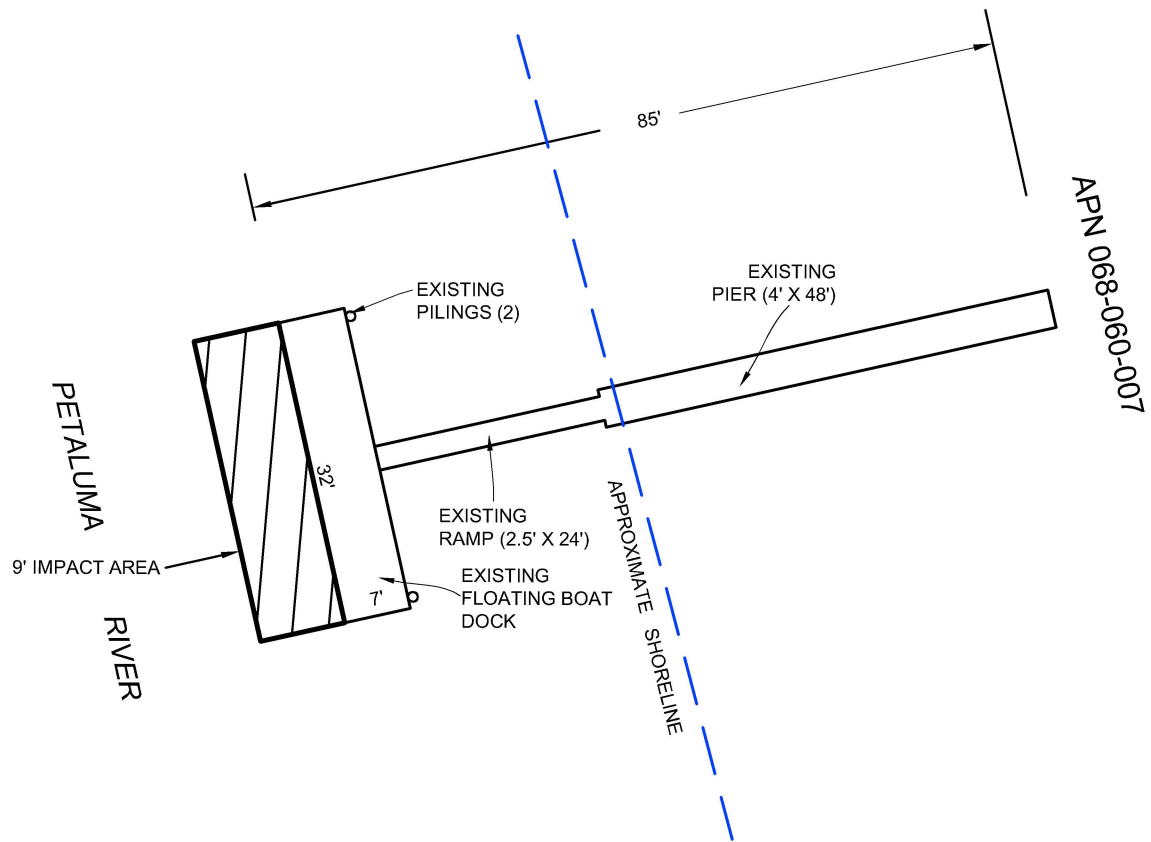
LAND DESCRIPTION PLAT
LEASE 3696, FINANCIAL PORTFOLIOS, LTD
SOLANO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

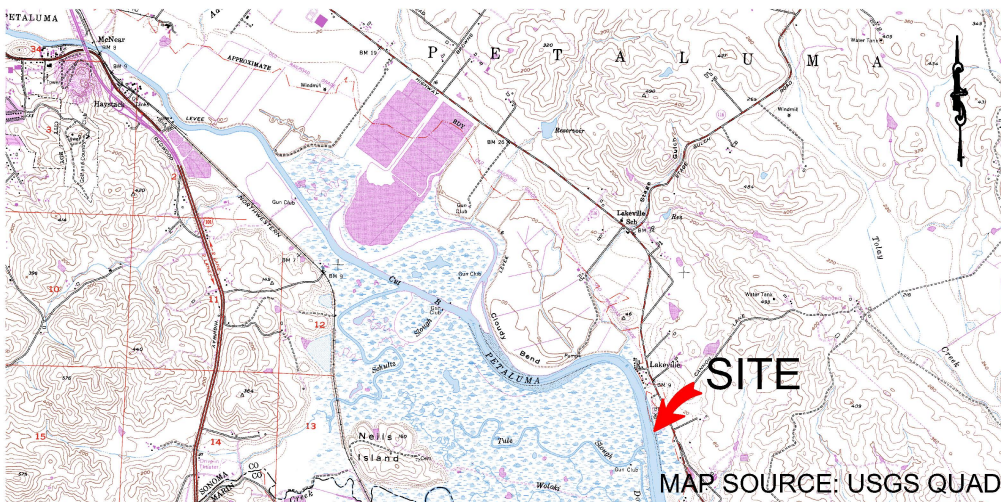
SITE



5636 LAKEVILLE HWY, PETALUMA RIVER

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

LEASE 3696
FINANCIAL PORTFOLIOS, LTD
APN 068-060-007
GENERAL LEASE -
RECREATIONAL USE
SONOMA COUNTY



MJF 11/10/2020