

Staff Report 35

APPLICANT:

Humboldt Redwood Company, LLC, a Delaware limited liability company

PROPOSED ACTION:

Issuance of a General Lease – Right-of-Way Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Eel River, adjacent to Assessor's Parcel Numbers 211-141-003 and 211-132-007, near Dyerville, Humboldt County.

AUTHORIZED USE:

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

TERM:

4 years, 10 months, and 11 days, beginning July 28, 2021.

CONSIDERATION:

\$528 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.
- Surety bond or other security in the amount of \$5,000.
- Annual reporting of location of the seasonal bridge, and of harvesting plans upon request.
- Posting low-bridge warning signs when the bridge is in place.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On March 29, 2012, the Commission authorized a General Lease - Right-of-Way Use to Humboldt Redwood Company, LLC, a Delaware limited liability company for the annual placement, use, and removal of a seasonal bridge crossing over the Eel River constructed from a railroad flat car ([Item C05, March 29, 2012](#)). On June 28, 2016, the Commission authorized a revision of rent to revise the annual rent from \$100 to \$450 per year ([Item C15, June 28, 2016](#)). The lease expired on July 27, 2021.

The Applicant is now applying for a General Lease – Right-of-Way Use for the continued activities. The Applicant owns and maintains the facilities and paid \$450 in rent through July 27, 2022, past the expiration of the prior lease. Staff recommends the payment be applied towards the first year's rent of the proposed lease. Staff also recommends the proposed lease begin on July 28, 2021 (the day after the prior lease expired) and end on June 7, 2026 to align with the expiration of the Timber Harvesting Plan (THP) approved by the California Department of Forestry and Fire Protection (Cal Fire). The THP is a California Environmental Quality Act (CEQA) equivalent document, which included evaluation of the impacts associated with this seasonal bridge crossing. Cal Fire granted Permit Number 1-21-00012-HUM to the Applicant on June 8, 2021.

The Applicant owns the upland parcels where they grow and harvest saw timber. The seasonal bridge will be used to transport timber harvest across the Eel River to a company-owned sawmill in Scotia to be manufactured into forest products and sold to customers. Some of the timber may be sold to non-company-owned sawmills. The THP contains measures that address potential significant impacts to the environment including but not limited to wildlife, habitat, and fisheries from the commercial timber harvest operations.

The seasonal bridge, constructed of two 8.5-foot wide by 89-foot long railroad flat cars, will be placed annually no earlier than May 1 and removed annually no later than October 15. It is installed with a minimum 3-foot clearance above the surface of the water, and low-bridge warning signs will be posted when the

bridge is in place. Passage for canoes, kayaks, and other water-related activities on 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.

The lease is limited to a 4 year, 10 month, and 11 day 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; requires the lessee to maintain a performance bond in the amount of \$5,000; 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:

The project area is not tidally influenced and, therefore, would not be subject to sea level rise. However, 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. In rivers, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris. Conversely, prolonged droughts could dramatically reduce river flow and water levels, leading to loss of public access and navigability. Climate change will further influence riverine areas by changing erosion and sedimentation rates, and flooding and storm flow, as well as runoff, will likely increase scour, decreasing bank stability at a faster rate.

The temporary seasonal bridge crossing shall be placed no earlier than May 1 of each year and would be removed no later than October 15. Any crossings removed after October 15 but before November 15 must meet several THP conditions, including sizing to accommodate the estimated 100-year river flow. While the lease premises and surrounding land may be vulnerable to climate change impacts, these projected effects are not expected to affect the proposed use of the lease premises during the lease term.

CONCLUSION:

For all the reasons above, staff believes the issuance of this 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 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 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 the “Leading Climate Activism” and “Meeting Evolving Public Trust Needs” Strategic Focus Area of the Commission’s 2021-2025 Strategic Plan.
3. Cal Fire prepared an environmental document pursuant to its certified regulatory program (Cal. Code Regs., tit. 14, § 15251, subd. (a)) and granted Permit No. 1-21-00012-HUM for this project on June 8, 2021.

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 nominated by California Department of Fish and Wildlife pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon participation from the agency nominating such lands through the THP review and permitting process, it is staff’s opinion that the project, as proposed, is consistent with its use classification.

APPROVALS OBTAINED:

California Department of Forestry and Fire Protection

U.S. Army Corps of Engineers
California Department of Fish and Wildlife
North Coast Regional Water Quality Control Board
National Marine Fisheries Service

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that Cal Fire Permit No. 1-21-00012-HUM (the environmental document), prepared for this project and adopted on June 8, 2021, by Cal Fire pursuant to its certified regulatory program (Cal. Code Regs., tit. 14, § 15251, subd. (a)), is a substitute document as provided by the California Code of Regulations, title 14, section 15252, subdivision (a), and that the Commission has reviewed and considered the information therein.

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:

1. Authorize the annual rent paid after the expiration of Lease Number PRC 2760 to be applied to the first year of the annual rent due under the proposed lease.
2. Authorize issuance of a General Lease – Right-of-Way Use to the Applicant beginning July 28, 2021, for a term of 4 years, 10 months, and 11 days, 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 \$528, with an annual Consumer Price Index adjustment; liability insurance in an amount no less than \$3,000,000 per occurrence; and surety bond or other security in the amount of \$5,000.

EXHIBIT A

LEASE 2760

LAND DESCRIPTION

A strip of submerged land 250 feet in length and 75 feet in width lying in the bed of the Eel River situate adjacent to Section 26, Township 1 South, Range 2 East, HBM., as shown on U.S. Government Township Plat approved January 9, 1885, County of Humboldt, State of California, the location of said strip is to be adjacent to the following described lands:

Government Lot 3 and Lot 6 of the North $\frac{1}{2}$, of the Southeast $\frac{1}{4}$, of said Section 26.

EXCEPTING THEREFROM any portion of said strip lying landward of the ordinary low water mark of the right and left bank of the Eel River.

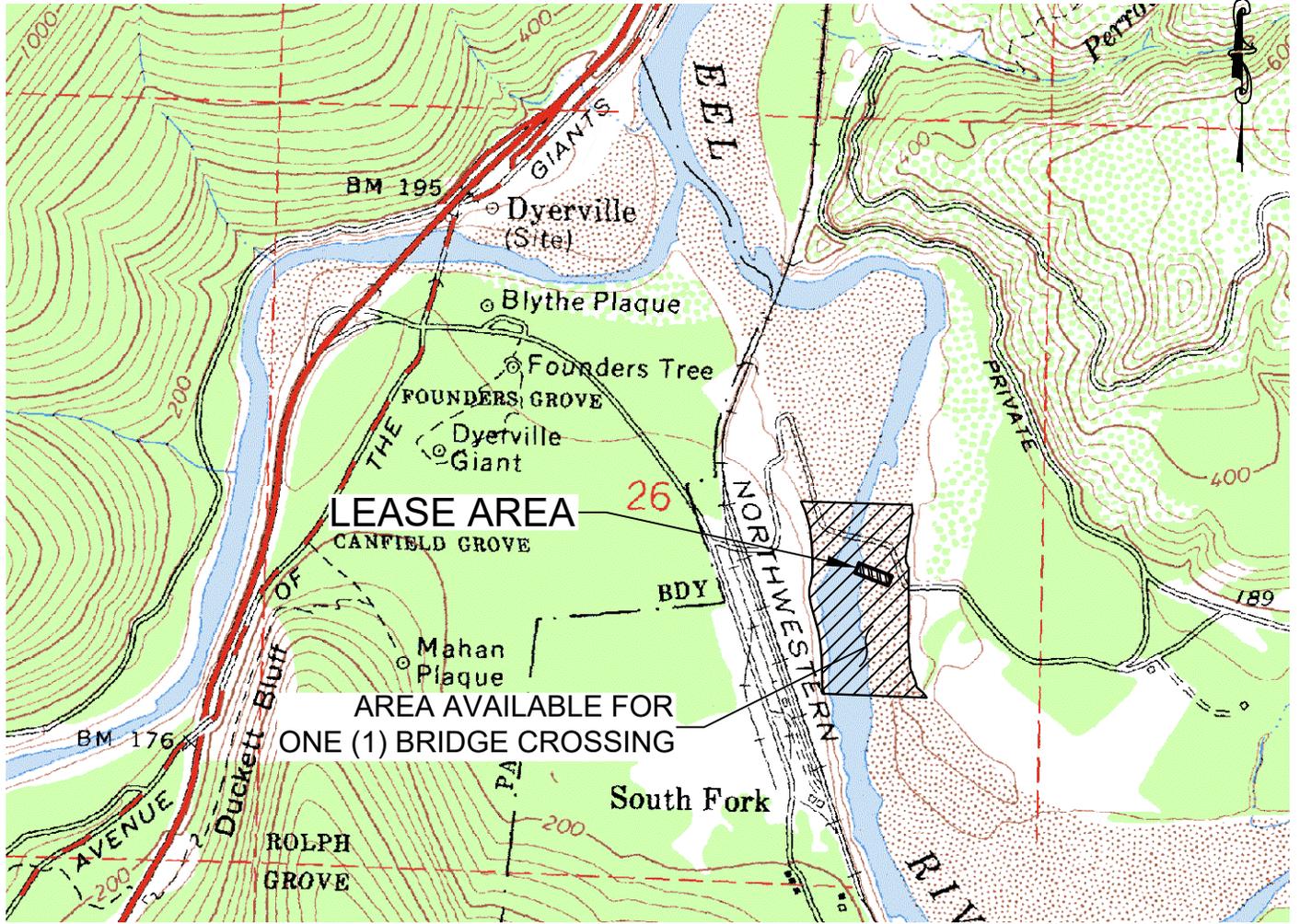
END OF DESCRIPTION

Prepared May 17, 2021 by the California State Lands Commission Boundary Unit.



NO SCALE

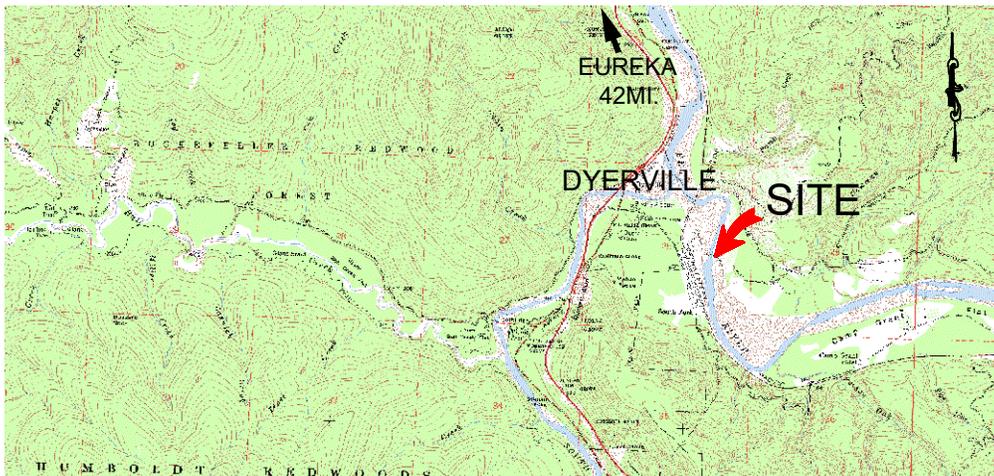
SITE



N1/2, SE1/4, SEC 26, T1S, R2E, HBM.
 SEASONAL BRIDGE CROSSING NEAR DYERVILLE

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 2760
 HUMBOLDT REDWOOD CO.
 LLC.
 APN 211-132-007, 211-141-003
 GENERAL LEASE -
 RIGHT-OF-WAY USE
 HUMBOLDT COUNTY



JAK 05/17/2021