

# Staff Report 46

**LESSEE/ASSIGNOR:**

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The Abalone Farm, Inc., a California corporation

**APPLICANT/ASSIGNEE:**

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Harmony Coast Aquaculture Institute, a California non-profit public benefit corporation

**PROPOSED ACTION:**

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

**AREA, LAND TYPE, AND LOCATION:**

Sovereign land in the Pacific Ocean, adjacent to Assessor's Parcel Number 046-151-009, Cayucos, San Luis Obispo County (as shown in Figure 1).

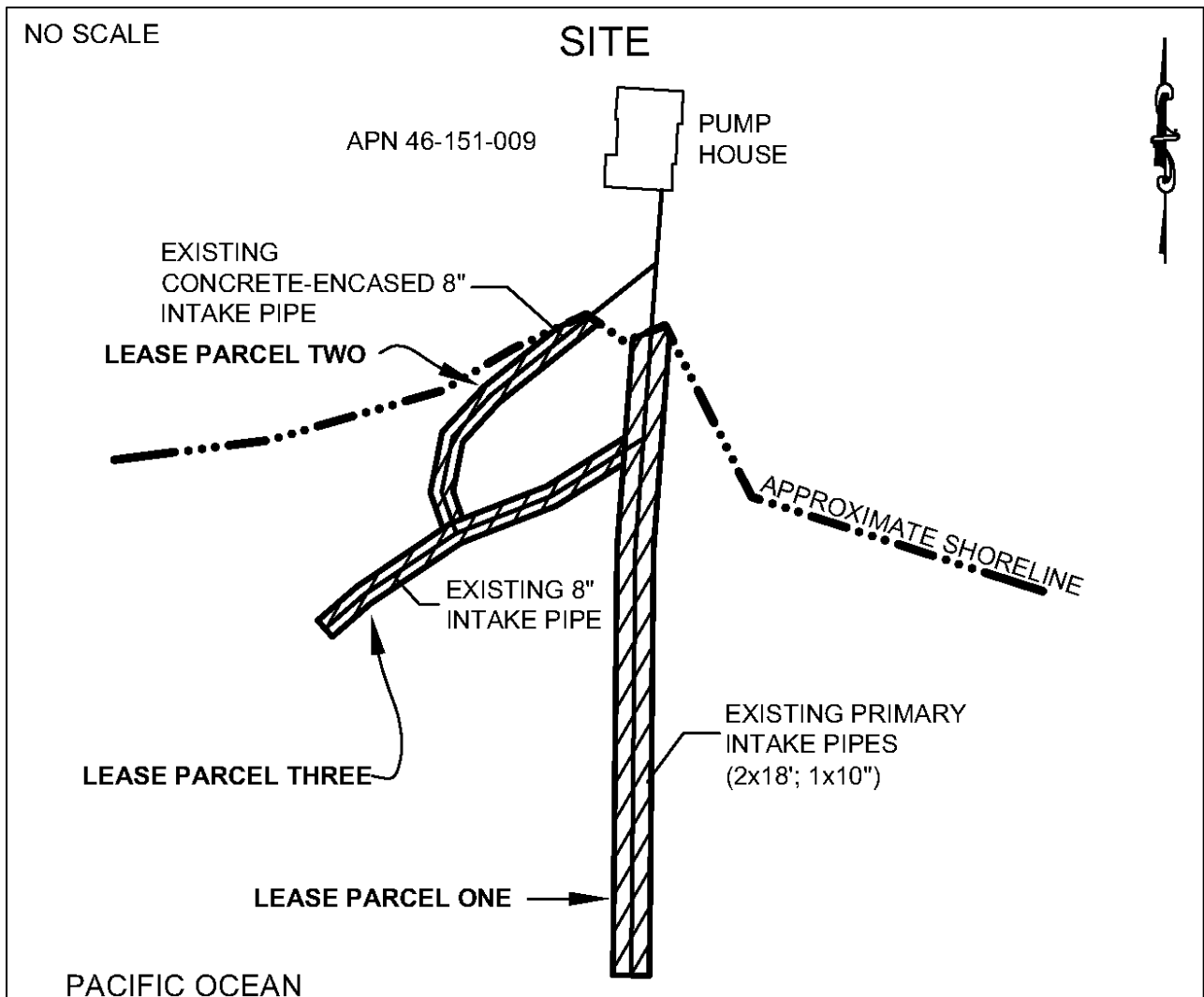
**Figure 1. Location**



**AUTHORIZED USE:**

Use and maintenance of an abandoned 8-inch-diameter PVC ocean saltwater intake pipeline, two existing 18-inch-diameter PVC intake pipelines, one existing 10-inch-diameter PVC intake pipeline, and one existing 8-inch-diameter PVC intake pipeline; all encased in concrete (as shown in Figure 2).

**Figure 2. Site Map**



NOTE: This depiction of the lease premises is based on unverified information provided by the applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

**TERM:**

20 years, beginning October 1, 2019.

**CONSIDERATION:**

\$556 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.
- Surety bond or other security in the amount of \$250,000.
- Applicant shall conduct external inspections of the Improvements at least once every 5 years.
- Upon expiration or sooner termination of Lessee's upland ground lease, lessee shall have 2 years to submit a plan for the Commission's review and approval to restore the lease premises and shall complete such restoration no later than one year following Lessor's approval of the plan.

**STAFF ANALYSIS AND RECOMMENDATION:**

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**AUTHORITY:**

Public Resources Code sections 6005, 6106, 6216, 6301, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

On October 24, 2019, the Commission authorized a General Lease – Right-of -Way Use to the Lessee for the use and maintenance of an abandoned 8-inch-diameter PVC ocean saltwater intake pipeline, two existing 18-inch-diameter PVC intake pipelines, one existing 10-inch-diameter PVC intake pipeline, and one existing 8-inch-diameter PVC intake pipeline; all encased in concrete ([Item 57, October 24, 2019](#)). The lease will expire on September 30, 2039.

In June 2022, the Lessee contacted staff to advise of the proposed sale of their commercial land-based marine aquaculture facility that cultivates red abalone for commercial sale, and the intent to assign the existing lease to the potential buyers. The Applicant subsequently applied for an assignment of the lease for the use and maintenance of the lease facilities.

The Applicant holds a 30-year ground lease with the upland property owner to operate the upland facility. Commission Lease 7326 requires that the Applicant maintain the right to utilize the upland throughout the lease term. The effective date of the assignment will be October 1, 2022, to coincide with the effective date of the upland ground lease.

The shoreline at this location is comprised of steep rock bluffs. The intake pipelines are privately owned and maintained. The ocean saltwater intake pipelines do not interfere with public access or impair the public rights to navigation and fishing at this location and at this time.

Approval of this lease assignment will facilitate orderly and continuous management of the lease facilities and 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 remaining term of the lease. For these reasons, staff recommends finding that approval of this assignment is in the best interests of the State.

**CLIMATE CHANGE:**

Climate change impacts, including sea level rise, more frequent and intense storm events, increased flooding, and erosion affect both open coastal areas and inland waterways in California. The intake pipelines are located at the base of a coastal bluff adjoining a tidally influenced beach along the Pacific Ocean and is subject to wave run-up and impact during high tide periods.

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. Projected sea level rise scenarios for the lease area are listed in Table 1.

**Table 1. Projected Sea Level Rise for Port San Luis**

Year	Projection (feet)
2030	0.7
2040	1.2
2050	1.8
2100	6.7

Source: Table 13, [State of California Sea-Level Rise Guidance: 2018 Update](#)

Note: Projections are with respect to a 1991 to 2009 baseline.

In addition, as stated in the [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 as well as decreased bank stability and structure. These projected conditions could increase the likelihood of damage to the pipelines within the lease premises during the term of

the lease. The pipelines are located in an intertidal and subtidal zone, and currently experience tidal and wave action on a daily basis, as well as storm surge during the winter months. The pipelines are mostly underwater, and are completely submerged at high tide, partially exposed at most low tides, and completely exposed at extreme low tides. A modest rise in sea level would allow for better pumping conditions and therefore less stress overall on the pipelines. However, increased storm frequency and intensity could cause potential damage to the concrete cap, which is easily repairable.

The lease is a 20-year General Lease – Right-of-Way Use that began on October 1, 2019, and may be subject to the sea level rise scenarios described above. Regular maintenance, as referenced in the lease, may help reduce the likelihood of severe structural degradation or dislodgement. Further climate change impact analyses on the leased facilities will be assessed at the time the lease is up for renewal in 2039 and would be based on projected sea level rise scenarios at that time.

**CONCLUSION:**

Assignment of this lease will not result in a change in the use of or impacts to Public Trust resources and is in the best interests of the State.

**OTHER PERTINENT INFORMATION:**

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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 a trustee of the State’s Public Trust lands as authorized by law.
2. The Applicant/Assignee meets the legal qualifications to hold the lease and staff has not discovered any information that would provide a basis for withholding the assignment. Upon expiration or prior termination of the lease, neither the assignor nor the assignee has any right to a new lease or to renewal of any previous lease.
3. This action is consistent with the “Meeting Evolving Public Trust Needs” Strategic Focus Area of the Commission’s 2021-2025 Strategic Plan.
4. 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).

**RECOMMENDED ACTION:**

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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 Public Trust needs and values at this location, at this time, and for the remaining term of the lease; and is in the best interests of the State.

**AUTHORIZATION:**

Authorize the assignment of Lease 7326, a General Lease – Right-of -Way Use from The Abalone Farm Inc., a California corporation, to Harmony Coast Aquaculture Institute, a California nonprofit public benefit corporation, effective October 1, 2022.