

# Staff Report 30

## LESSEE/ASSIGNOR:

---

Tiki Lagun Partners, LLC

## APPLICANT/ASSIGNEE:

---

Tiki Lagoon Resort and Marina, Inc., a California corporation

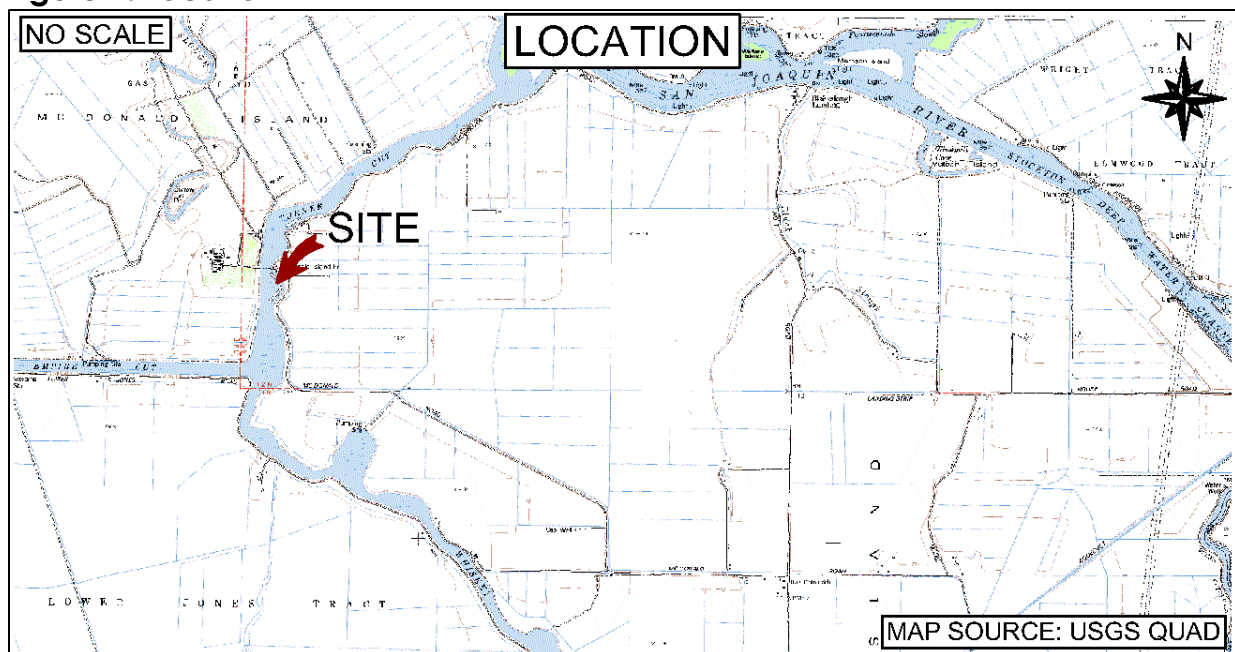
## PROPOSED ACTION:

Assignment of Lease, Continuation of Rent, and Revision of Surety Bond for a General Lease – Commercial Use.

## AREA, LAND TYPE, AND LOCATION:

Sovereign land in Whiskey Slough, adjacent to 12988 West McDonald Road, near Stockton, San Joaquin County (as shown on Figure 1).

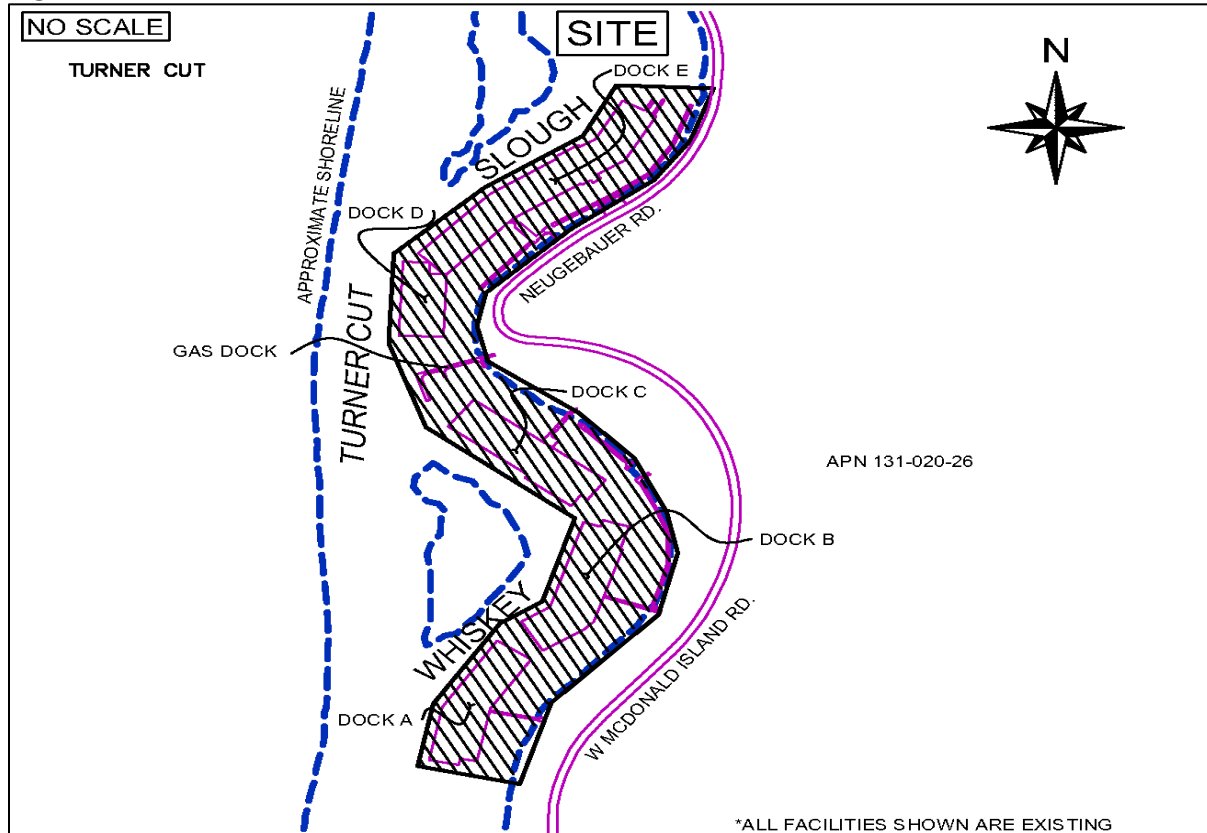
**Figure 1. Location**



**AUTHORIZED USE:**

Continued use and maintenance of a commercial marina, known as Tiki Lagoon, consisting of three concrete docks and one wooden dock with approximately 212 combined berths, restrooms, gas dock with two gas pumps, pump out facilities, and ancillary facilities (as shown on 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:**

30 years, beginning December 10, 2013.

**CONSIDERATION:**

The lease provides that Lessor may modify the rent periodically during the lease term. Pursuant to this provision, staff has conducted a review of the rent under this lease and recommends a continuation of rent in the amount of \$28,053.48 with an annual Consumer Price Index adjustment, and an increase in the surety bond from \$50,000 to \$100,000, effective December 10, 2023.

**SPECIFIC LEASE PROVISIONS:**

Liability insurance in an amount no less than \$3,000,000 per occurrence.

**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.

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

On September 20, 2013, the Commission authorized a 30-year General Lease – Commercial Use ([Item 70, September 20, 2013](#)) to Tiki Lagun Partners LLC for the operation, use, and maintenance of an existing commercial marina, known as Tiki Lagun, on 10.26 acres in Whiskey Slough, adjacent to 12988 West McDonald Road, near Stockton, San Joaquin County. The authorized improvements consist of three concrete docks and one wooden dock, with 212 combined berths, restrooms, gas dock with two pumps, pump out facilities, and ancillary facilities. Each dock includes a restroom with showers, a laundry room, and dry storage spaces. A continuation of rent was placed on the December 3, 2018 Commission agenda's Executive Officer's Report ([Executive Officer's Report, December 3, 2018](#)) with an effective date of December 10, 2018. On October 5, 2021, the upland and marina facilities were sold and transferred to Tiki Lagoon Resort and Marina, Inc., a California corporation. The Applicant is applying for an Assignment of Lease PRC 4082, a General Lease – Commercial Use. The current Lessee supports the assignment of lease to the new owner.

Staff recommends an assignment of lease to reflect the change in ownership from Assignor to Assignee. The effective date of the assignment would be October 5, 2021, to coincide with the Assignee's purchase of the upland property. The Applicant is qualified to hold the lease. The lease is in good standing and staff has not discovered any information that would provide a basis for withholding the assignment. The assignment will also include an increase in the bond to better ensure lease compliance and protect the State. Further, it would bring this lease in line with other marina leases which fall under Commercial Use. Thus, staff believes that assigning the lease is in the State's best interest to ensure that a capable lessee is committed to managing the improvements and fulfilling the lease obligations. The proposed assignment does not alienate the State's fee simple interest or permanently impair public rights.

Under the terms of the current lease, the lessee holds a surety bond in the amount of \$50,000. This amount is subject to increases over the lease term and serves the purpose of being able to mitigate costs that might otherwise be shouldered by the state, including where the state must take restorative actions on the leased premises upon lease termination or abandonment of the lease premises. Accordingly, staff recommends increasing the bond from \$50,000 to \$100,000 to cover the obligations under the lease and protecting the state's liability.

The lease premises are improved and open to the public for waterborne activities. These activities are consistent with Public Trust use. Approval of this lease assignment 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 the proposed actions are in the best interests of the State.

### **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 Whiskey Slough in a tidally influenced site vulnerable to flooding at current sea levels and at higher risk of flood exposure given future projection 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 region as listed in Table 1.

**Table 1. Projected Sea Level Rise for San Francisco**

<b>Year</b>	<b>Projection (feet)</b>
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 could 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, creeks, 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, storm flow, and 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 and docks. Lowered water levels could also reduce navigability of the channel, thereby increasing hazards and impacting the function and utility of the lease area structures. It is crucial to ensure continued function of the gas station, toilets, and any electrical conduits during and after storm seasons, so they do not become public health, public safety, and navigation hazards in the channel.

The lease is a 30-year General Lease – Commercial Use that began on September 20, 2013, and may be subject to the climate change effects and projected sea level rise scenarios provided above. Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation and dislodgement. Further analysis of climate change impacts on the leased facilities will be assessed at the time the lease is up for renewal in 2043 and would be based on projected climate change and sea level rise scenarios at that time.

## **CONCLUSION:**

For all the reasons above, Commission staff believes the approval of this lease assignment, continuation of rent, and revision of bond 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; and is in the best interests of the State.

## **OTHER PERTINENT INFORMATION:**

---

1. Approval or denial of the application for assignment of lease, continuation of rent, and revision of surety bond are discretionary actions 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 authorized by law. Upon expiration or prior termination of the lease, the Lessee has no right to a new lease or to renewal of any previous lease.
2. Assignment of the lease, continuation of rent, and revision of surety bond are not projects as defined by the California Environmental Quality Act (CEQA) because they are administrative actions 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).

3. These actions are consistent with addressing the challenges and opportunities described in the Commission's 2021-25 Strategic Plan.

## **RECOMMENDED ACTION:**

---

It is recommended that the Commission:

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

Find that the proposed assignment of lease, continuation of rent, and revision of surety bond 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 remaining term of the lease; are consistent with the common law Public Trust Doctrine; and are in the best interests of the State.

### **AUTHORIZATION:**

1. Authorize assignment of Lease PRC 4082, a General Lease – Commercial Use from Tiki Lagun Partners, LLC to Tiki Lagoon Resort and Marina, Inc., a California corporation, effective October 5, 2021, to coincide with the Applicant's acquisition of the upland property.

2. Approve the continuation of rent for Lease PRC 4082 in the amount of \$28,053.48 per year with an annual Consumer Price Index adjustment, and increase the surety bond from \$50,000 to \$100,000, effective December 10, 2023, to coincide with the lease anniversary date.