

Staff Report 47

LESSEE:

Tesoro Refining & Marketing Company LLC

PROPOSED ACTION:

Amendment of General Lease – Industrial Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Carquinez Strait and Pacheco Creek, near Martinez, Contra Costa County (as shown in Figure 1).

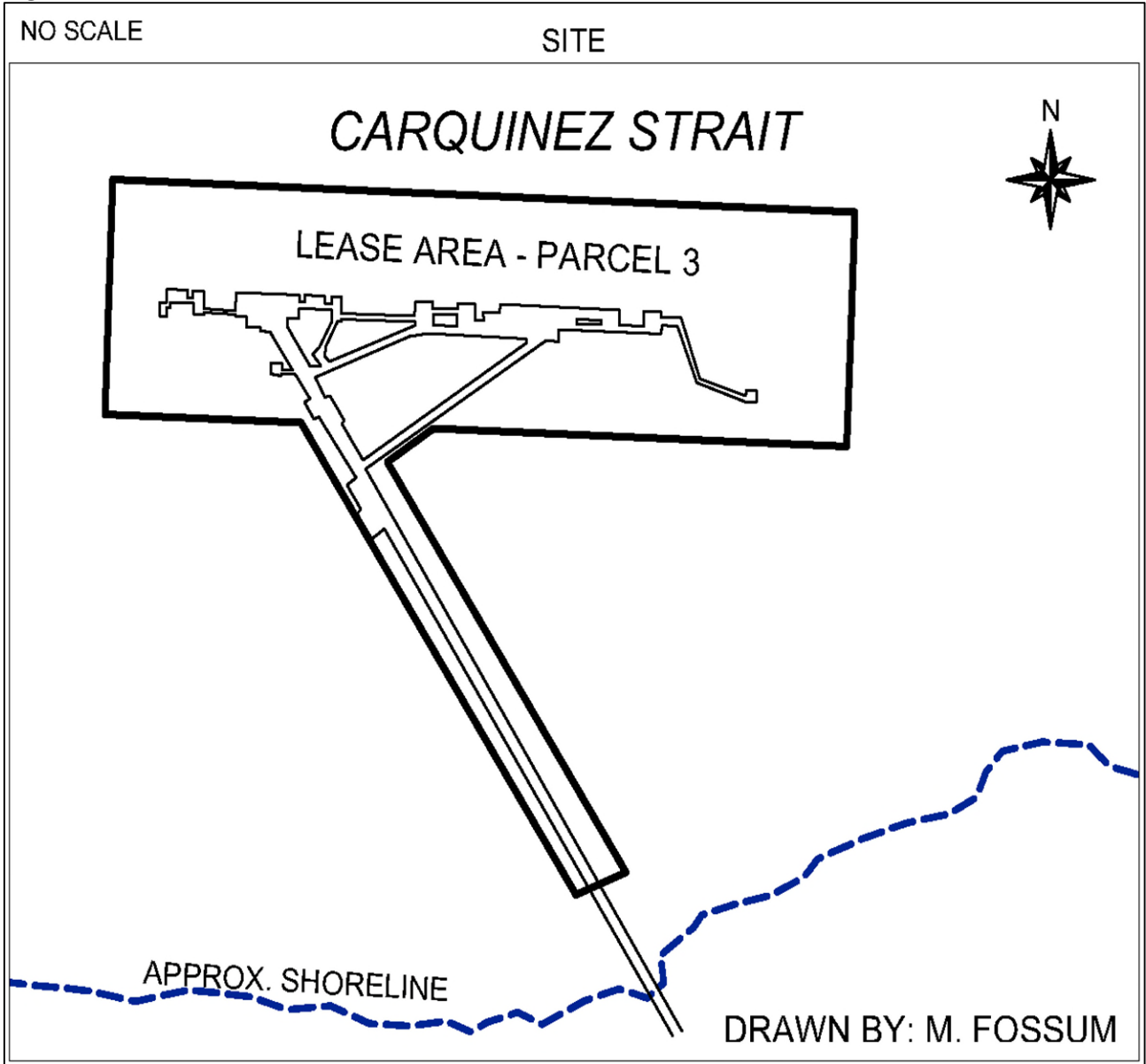
Figure 1. Location



AUTHORIZED USE:

The continued operation and maintenance of an existing marine terminal wharf (the Amorco Terminal) in the Carquinez Strait; and two crossings at Pacheco Creek for various pipelines and a telephone cable (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:

30 years, beginning January 1, 2014.

CONSIDERATION:

Base Rent of \$301,323 for the lease year from January 1, 2014, to December 31, 2014; with the State adjusting the Annual Rent for each year following the Base Rent year by the application of the annual percentage change of the California Consumer Price Index (CPI), provided that the adjusted Annual Rent will never be lower than the Base Rent then in effect. CPI adjustments will continue annually until each tenth anniversary of the Lease (2024 and 2034), when a new Base Rent may be established as outlined in the Lease.

PROPOSED AMENDMENT:

- Add a provision for a parent guaranty.

All other terms and conditions of the lease to remain in effect without amendment.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, 8750, and 8755; California Code of Regulations, title 2, sections 2000, 2003, 2300-2571, and title 24, part 2, Chapter 31F.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On February 21, 2014, the Commission certified a Final Environmental Impact Report and authorized issuance of a General Lease – Industrial Use for the continued operation and maintenance of the existing Amorcó Terminal in the Carquinez Strait; and two crossings at Pacheco Creek for various pipelines and a telephone cable to the Lessee ([Item 41, February 21, 2014](#)). On October 25, 2022, the Commission authorized amendment of the lease to allow for the transfer of renewable fuels and their constituents across the Lease Premises, install a fender on the marine terminal wharf, include a Mitigation Monitoring Program, and increase the performance deposit to \$2,600,000 with future CPI adjustments ([Item 41, October 25, 2022](#)). That lease will expire on December 31, 2043.

In 2024, the Lessee conducted third-party decommissioning cost estimates which revealed that existing guarantees are insufficient to cover the costs to decommission the Amorco Terminal. In the worst-case scenario where the Lessee becomes insolvent and cannot perform decommissioning obligations under the lease, the state would be left to incur any costs above current surety levels. To adequately protect the State from this potential liability, Commission staff and Lessee's parent company, Marathon Petroleum Corporation (MPC), negotiated a parent guaranty.

The negotiated guaranty is modeled after regulations governing the Department of Toxic Substances Control (DTSC) (tit. 2, C.C.R., sec. 66262.125(k)) which require annual guarantor certification to verify that it retains the capital and financial wherewithal to meet decommissioning obligations considering its overall liabilities. Besides annual certifications, MPC will update the decommissioning cost estimate every five years and adjust its certifications to match the liabilities within the cost estimates. If MPC does not meet the certification requirement, the lease requires a substitute guaranty (e.g., bonding or some equivalent) be obtained that covers the decommissioning obligation.

Implementing a parent guaranty is a sound approach and follows a proven process by DTSC (and the U.S. Environmental Protection Agency) to cover significant financial obligations related to closing hazardous waste sites. The Lessee is now applying to amend the lease to provide the parent guaranty to meet surety requirements.

The facilities have existed for many years. The proposed lease amendment contains a revised lease provision to further protect the state from financial liability, does not alienate the State's fee simple interest and does not grant the lessee exclusive rights to the lease premises. The lease requires Lessee to insure and indemnify the State for any liability incurred as a result of Lessee's activities thereon. The lease also requires the payment of annual rent.

CONCLUSION:

For all the reasons above, staff believes the issuance of this lease amendment will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the term of the lease; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the lease amendment 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. The lessee has no right to a new lease or to a renewal of any previous lease.
2. This action is consistent with the "Meeting Evolving Public Trust Needs" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
3. Amendment of the lease to provide a corporate parent guaranty 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, sections 15060, subdivision (c)(3), and 15378, subdivision (b)(5).

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease amendment will not substantially interfere with the 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.

AUTHORIZATION:

Authorize amendment of Lease No. PRC 3453, a General Lease – Industrial Use, effective August 21, 2025; to add a provision for a parent guaranty; all other terms and conditions of the lease will remain in effect without amendment.