

# Staff Report 48

## LESSEE:

Tesoro Refining & Marketing Company LLC

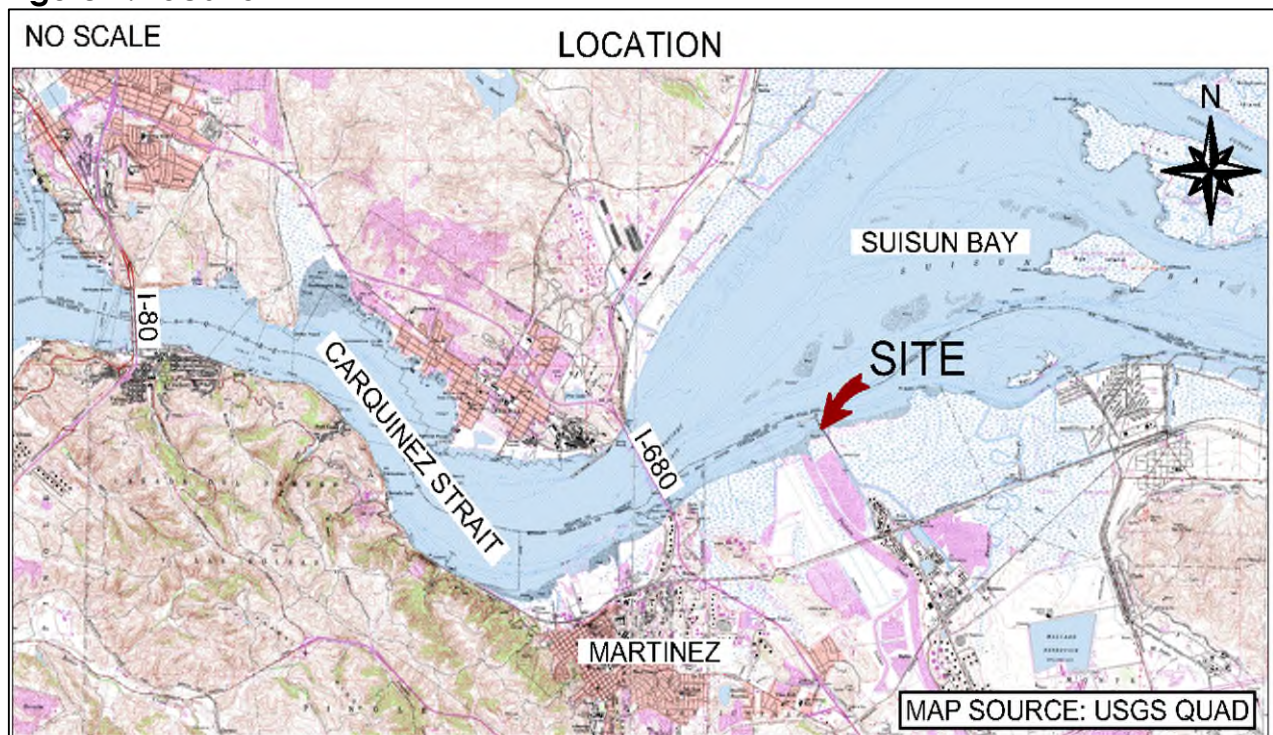
## PROPOSED ACTION:

Amendment of General Lease – Industrial Use.

## AREA, LAND TYPE, AND LOCATION:

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

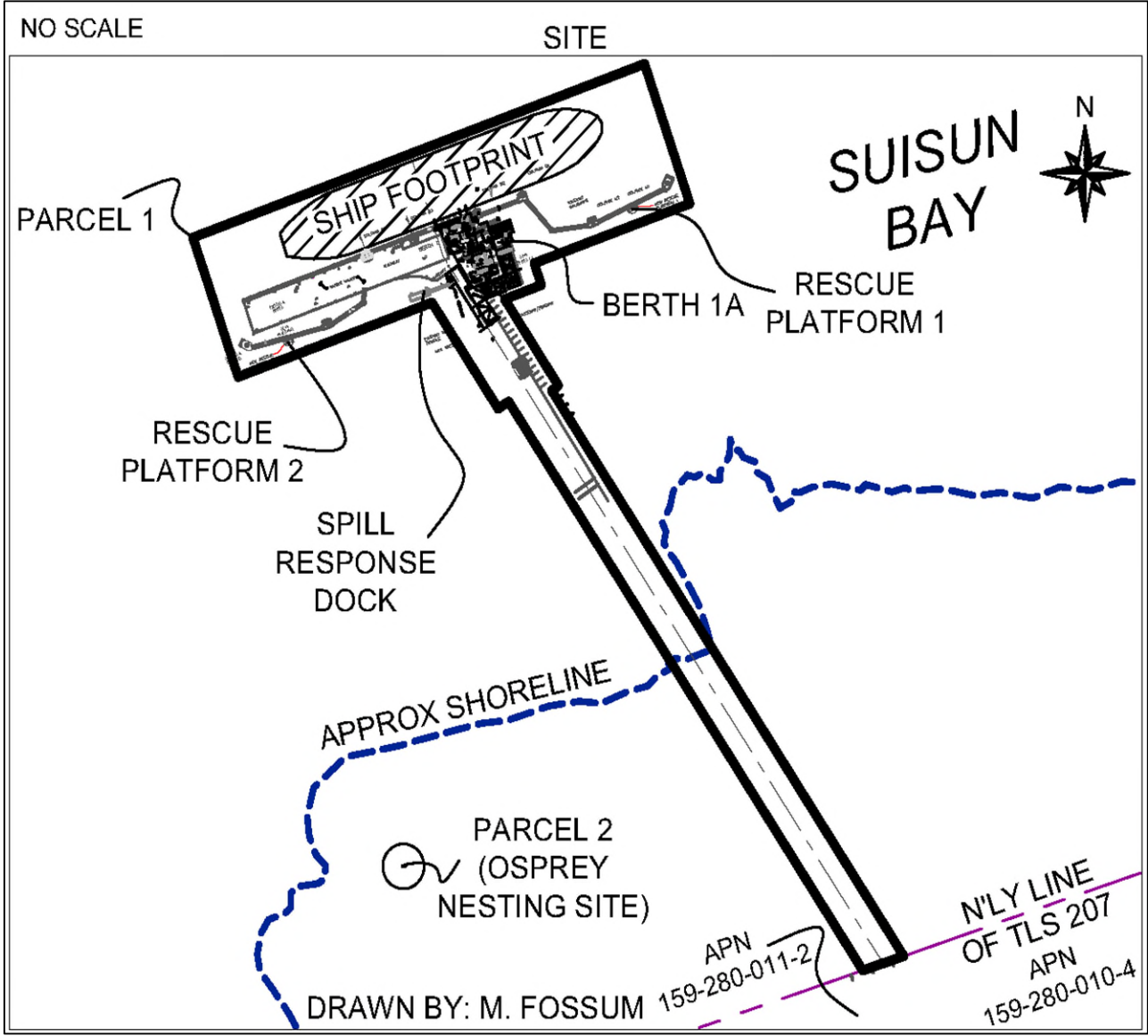
**Figure 1. Location**



**AUTHORIZED USE:**

The continued operation and maintenance of an existing marine terminal wharf (the Avon terminal) in the Carquinez Strait and periodic maintenance dredging; and for Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS) compliance-related renovations (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, 2015.

**CONSIDERATION:**

**Parcel #1 (marine oil terminal):** Initial Base Rent of \$302,263; with an annual Consumer Price Index (CPI) adjustment, provided that the Adjusted Annual Rent will never be lower than the Base Rent then in effect; and the State reserving the right to fix a different Base Rent on the 10<sup>th</sup> and 20<sup>th</sup> anniversaries of the lease term, as provided in the lease.

**Parcel #2 (osprey nesting site):** The public benefit, with the State reserving the right at any time to set a monetary rent should the Commission find such action to be in the State's best interests.

**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:**

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**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 March 20, 2015, 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 Avon Terminal in the Carquinez Strait, east of the Benicia Bridge. The lease also authorizes periodic maintenance dredging and Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS) compliance-related renovations ([Item 2, March 20, 2015](#)). On October 25, 2022, the Commission authorized acceptance of a partial lease quitclaim deed, and amendment of the lease to expand the authorized uses of the leased lands to include transfer of renewable fuels and their constituent components; to install electrical heat tracing and insulation for a pipeline and reconfigure pipes and

hoses for renewable feedstocks and renewable fuels, include a Mitigation Monitoring Program, and to increase the performance deposit to \$2,600,000 at future scheduled CPI adjustments ([Item 40, October 25, 2022](#)). That lease will expire on December 31, 2044.

In 2024, the Lessee conducted third-party decommissioning cost estimates which revealed that existing guarantees are insufficient to cover the costs to decommission the Avon 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 to better protect the State's interests.

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 modified guaranty provides reasonable and secure level of protection and can serve as a future model on similar facilities on sovereign lands. 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:**

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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:**

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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 3454, 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.