

**CALENDAR ITEM
C23**

A 6
S 3

01/26/11
WP 2148.1
D. Simpkin

AMENDMENT OF LEASE

LESSEE:

KMC, Inc.
167 Trinidad Drive
Tiburon, CA 94920

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Paradise Cay, near the city Tiburon, Marin County.

AUTHORIZED USE:

Continued use and maintenance of an existing public park, a north and south breakwater, fifteen concrete piles, portions of five boat berths and maintenance dredging.

LEASE TERM:

20 years, beginning April 7, 1993

CONSIDERATION:

Annual rent in the amount of \$6,700, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

PROPOSED AMENDMENT:

1. Amend the lease to revise Section 1, Authorized Improvements, to include the use and maintenance of three concrete navigational pilings not previously authorized by the Commission; and to remove fifteen 12-inch concrete pilings and five boat slips that were previously authorized by the Commission but not installed.
2. Amend Section 1, Consideration, to increase the annual rent from \$6,700 per year to \$6,750 per year, effective April 7, 2012.
3. Amend section 2, Special Provisions, to include the following:

CALENDAR ITEM NO. **C23** (CONT'D)

- a. Lessee agrees to pay \$200 in back rent for the concrete pilings for the period beginning April 7, 2008 to April 6, 2009, April 7, 2009 to April 6, 2010, April 7, 2010 to April 6, 2011 and April 7, 2011 to April 6, 2012.
4. Replace Section 3, Description of Lease Premises, with the attached Exhibit A.

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

OTHER PERTINENT INFORMATION:

1. Lessee owns the upland adjoining the lease premises.
2. On March 8, 1994, the Commission authorized the issuance of a General Lease – Commercial Use, PRC 2148.1, to the Pullman Building Company, for a 20-year term, effective April 7, 1993. On September 3, 1999, the Commission authorized an Assignment of Lease to KMC, Inc. The lease expires on April 6, 2013.
3. On October 19, 2010, the Lessee submitted an application to amend the existing lease for the addition of three concrete navigational pilings in San Francisco Bay located outside the current lease premises at Paradise Cay Yacht Harbor. In 2008, the Lessee installed three 12-inch by 12-inch by 50-foot concrete navigational pilings to alert incoming vessels of the shallow water outside the boundary of the yacht harbor. The piling were driven into the bed of the bay and extended approximately 10-15 feet above the water. They were authorized by the U.S. Coast Guard and installed with daytime and nighttime lighting devices. The pilings were installed without Commission authorization and the Lessee is now seeking authorization for them. Rent for navigational markers is \$50 per year.
4. During the course of processing the application, Commission staff was advised by the Lessee that the previously authorized fifteen 12-inch concrete piles around the tip of the south breakwater were never installed and the five previously authorized boat slips are not located on sovereign land. Commission staff is now recommending that these previously authorized improvements be removed from the “Authorized Improvements” section of the lease.
5. In addition to the proposed amendment, Commission staff is also recommending the Commission authorize Commission staff to collect \$200 in back rent for the four years the navigational pilings have occupied state-owned sovereign land, but have not been under lease. The

CALENDAR ITEM NO. **C23** (CONT'D)

Lessee's annual rent will be revised to include the new improvements effective April 7, 2012.

6. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15061), the staff has determined that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, Title 14, section 15300 and California Code of Regulations, Title 2, section 2905.

7. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

APPROVALS OBTAINED:

U.S. Coast Guard

FURTHER APPROVALS REQUIRED:

San Francisco Bay Conservation and Development Commission
U.S. Army Corps of Engineers

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

CALENDAR ITEM NO. **C23** (CONT'D)

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:

Authorize the amendment of Lease No. PRC 2148.1, a General Lease – Commercial Use, effective April 7, 2012, to revise the “Authorized Improvements” to include, use and maintenance of three concrete navigational pilings, and remove fifteen 12-inch concrete pilings and five boat slips that were previously authorized but not installed. Revise the “consideration” from \$6,700 per year to \$6,750 per year, effective April 7, 2012, include a special provision in Section 2 requiring back rent from, 2008-2011 for the unauthorized concrete navigational pilings and replace the Description of Lease Premises with the attached Exhibit A; all other terms and conditions of the lease will remain in effect without amendment

Authorize Commission staff to collect \$200 in back rent for the concrete navigational pilings for the period beginning April 7, 2008 to April 6, 2009, April 7, 2009 to April 6, 2010, April 7, 2010 to April 6, 2011 and April 7, 2011 to April 6, 2012.

EXHIBIT A

PRC 2148.1

LAND DESCRIPTION

A parcel of partially filled tide and submerged land situate in the bed of the San Francisco Bay, Marin County, California, more particularly described as follows:

BEGINNING at the northeast corner of Lot 120, Paradise Cove Subdivision, recorded in Volume 5, page 77 of Maps, records of said county; said corner also being on the line of nine feet of water at the lowest stage of the tide as shown on "Map No. 2 of Salt Marsh and Tidelands situate in the County of Marin, State of California, 1870" filed in Can "S", Marin County Recorder's Office; thence leaving the easterly line of said subdivision N 70°00'00" E, 156.51 feet; thence N 43°30'05" E, 109.99 feet; thence S 69°51'57" E, 39.16 feet; thence S 05°00'00" W, 56.00 feet; thence S 36°00'00" E, 417.30 feet; thence N 83°19'18" E, 526.14 feet; S 06°40'42" E, 185.42 feet; thence S 83°19'18" W, 598.22 feet; S 54°21'56" W, 45.70 feet; thence S 15°20'25" W, 64.03 to the easterly line of Lot 44 of said Paradise Cove Subdivision; thence along said easterly line of said subdivision N 36°00'00" W, 644.49 feet and N 27°15'00" W, 37.20 feet to the POINT OF BEGINNING.

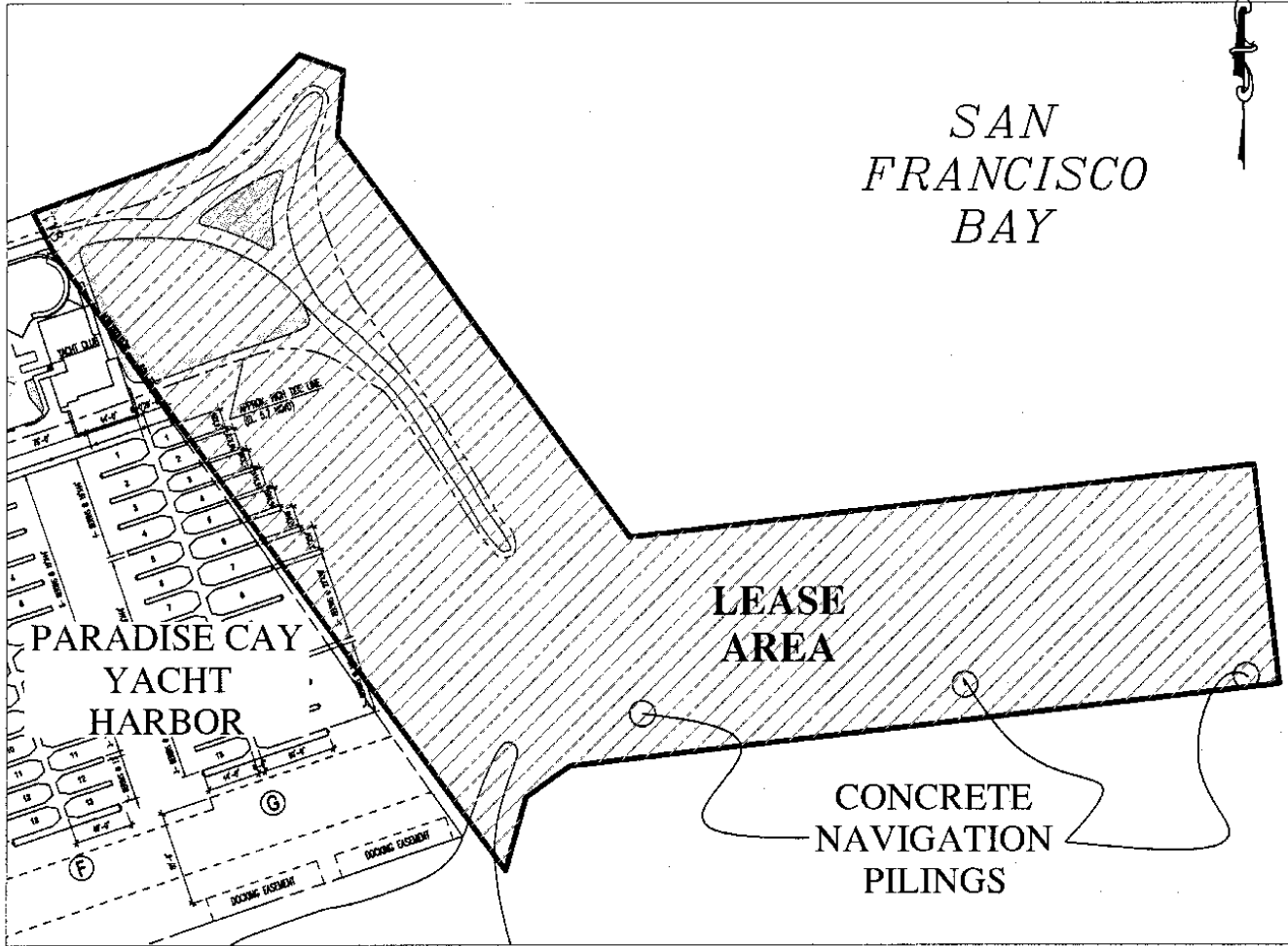
END OF DESCRIPTION

PREPARED BY 1/10/12 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



NO SCALE

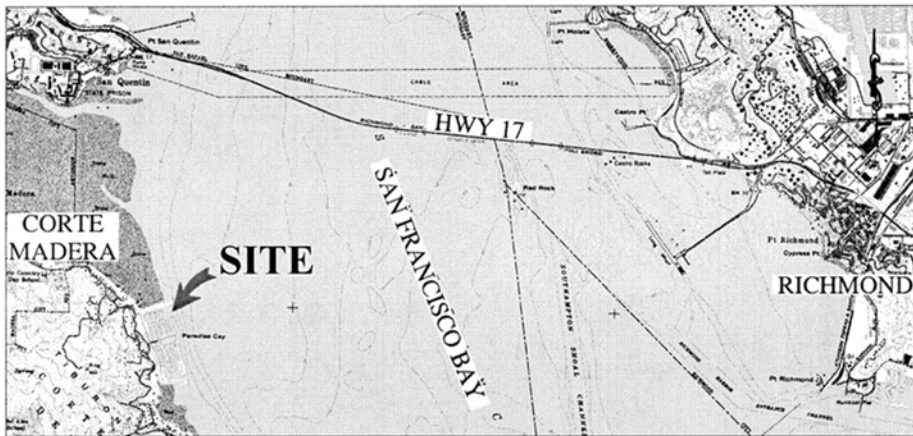
SITE



Paradise Cay Yacht Harbor

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 2148.1
 K.M.C., INC.
 GENERAL LEASE -
 COMMERCIAL USE
 MARIN COUNTY



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.