

**CALENDAR ITEM
C61**

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09/20/13

PRC 2148.1

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D. Simpkin

GENERAL LEASE – COMMERCIAL USE

APPLICANT:

KMC, Inc.
167 Trinidad Drive
Tiburon, CA 94920

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in San Francisco Bay, near Tiburon, Marin County.

AUTHORIZED USE:

Continued use and maintenance of an existing public park, a north and south breakwater, three navigational pilings, and maintenance dredging.

LEASE TERM:

10 years, beginning April 7, 2013.

CONSIDERATION:

Annual rent in the amount of \$3,477, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance in an amount of no less than \$1,000,000 per occurrence.

Surety Bond:

\$20,000.

OTHER PERTINENT INFORMATION:

1. Applicant owns the upland adjoining the lease premises.
2. On March 8, 1994, the Commission authorized the issuance of Lease No. PRC 2148.1, a General Lease – Commercial Use, 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.

CALENDAR ITEM NO. **C61** (CONT'D)

3. On January 26, 2012, the Commission authorized an amendment to the lease to authorize three previously unauthorized navigational pilings. The lease expired on April 6, 2013. The Applicant is now requesting the issuance of a new General Lease – Commercial Use.
4. The lease premises involves only a small portion of the actual berthing area of the marina; instead, the lease premises occupies filled sovereign lands used as a public park, two breakwaters at the mouth of the marina, and the submerged land associated with the entrance to the marina and the three navigational pilings.
5. Upon reviewing the lease application and prior lease, Commission staff became aware that the Commission had been charging annual rent for the public park, which was required by the San Francisco Bay Conservation and Development Commission (BCDC) as part of the permit for the construction of the marina and north breakwater. The existing public park is fully accessible to the public at no cost with free parking, restrooms, benches and trash cans. The park provides scenic views of San Francisco Bay and the city of San Francisco. Commission staff has witnessed members of the public enjoying the park on several occasions, including people walking dogs and fishing. As such, staff believes this area provides substantial public benefit and it is therefore staff's recommendation that this area not be subject to annual rent. As the park also occupies the north breakwater, a public benefit is partially derived and a discount is appropriate. The remainder of the lease premises solely benefits the Lessee and is not subject to a discount in rent.
6. In addition to the proposed new rent, Commission staff is also recommending a monthly payment plan to cover the Lessee's back rent. The Lessee currently owes approximately \$13,473.16 in back rent.

The proposed payment plan would allow the Lessee to repay the past due back rent and the pro-rata portion of the proposed new annual rent of \$3,477 on a monthly basis. At the end of 28 months on April 7, 2016, the repayment plan will end and the Lessee will be responsible for making annual rent payments of \$3,477. Failure to make a full, prompt monthly payment by the seventh of each month as specified on invoices provided by Commission staff will result in all outstanding balances becoming due and payable immediately, with subsequent accrual of any penalties and

CALENDAR ITEM NO. **C61** (CONT'D)

interest to the full extent of California Code of Regulations, Title 2, Article 1, section 1911, subdivision (b). Should the Lessee fail to promptly pay the outstanding balance upon being so notified by staff, the Lessee's surety bond may be applied to the remaining balance due.

7. The staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (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.

8. 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.

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. **C61** (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 issuance of a new General Lease – Commercial Use to KMC, Inc., beginning April 7, 2013, for a term of 10 years, for the continued use and maintenance of an existing public park, a north and south breakwater, three concrete navigational pilings, and maintenance dredging located on State sovereign land, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; annual rent in the amount of \$3,477, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the Lease; liability insurance with coverage of no less than \$1,000,000 per occurrence; and surety bond in the amount of \$20,000.

Authorize a monthly payment plan through April 6, 2016. The amount to be paid each month, starting 12/7/2013, is \$760. The monthly payment plan includes back rent and the pro-rata share of the annual rent, including a monthly management fee. All existing penalty and interest shall be waived. Annual rental payments of \$3,477 will be due each April 7 beginning April 7, 2016, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

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

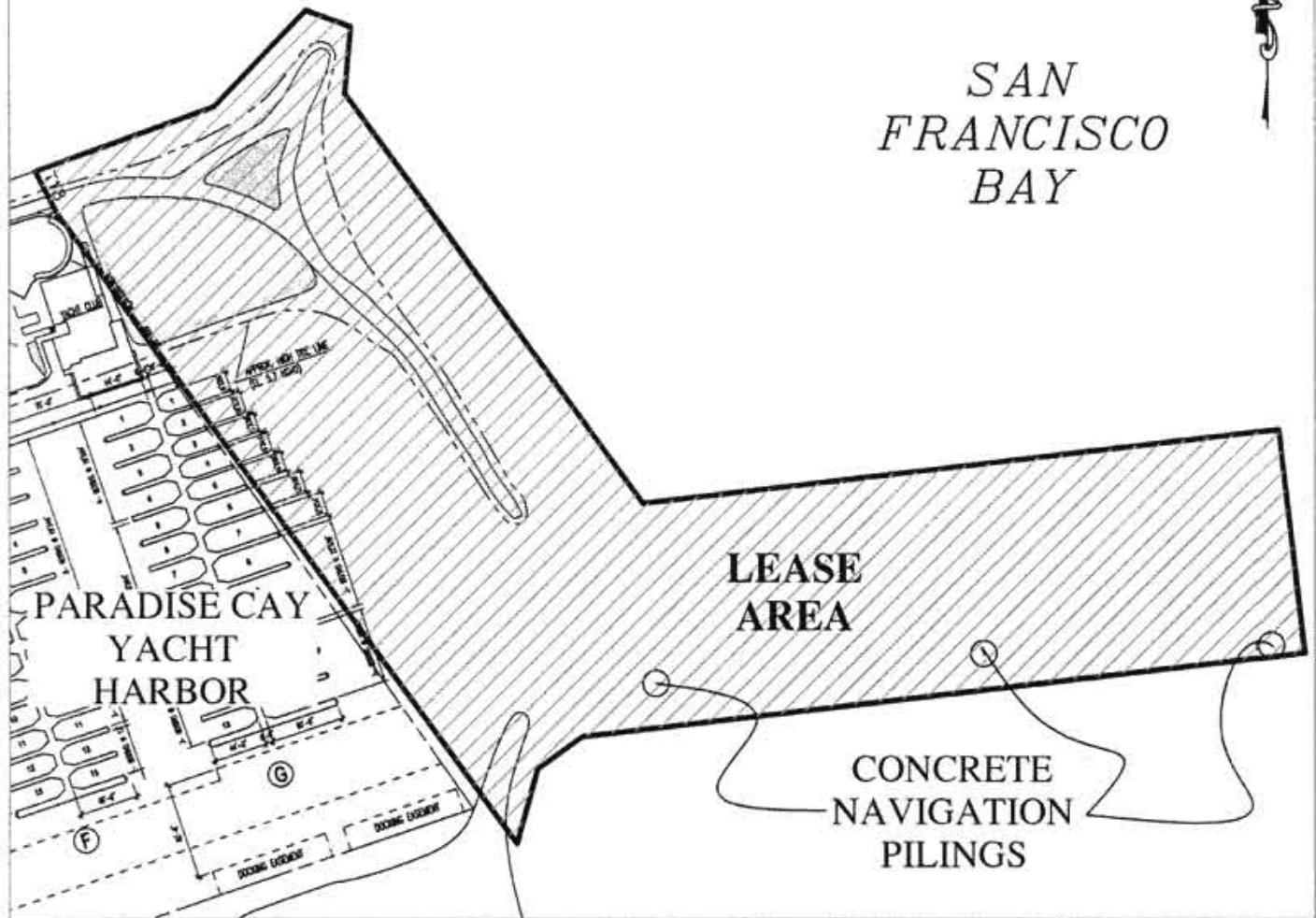
PREPARED BY 1/10/12 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



NO SCALE

SITE

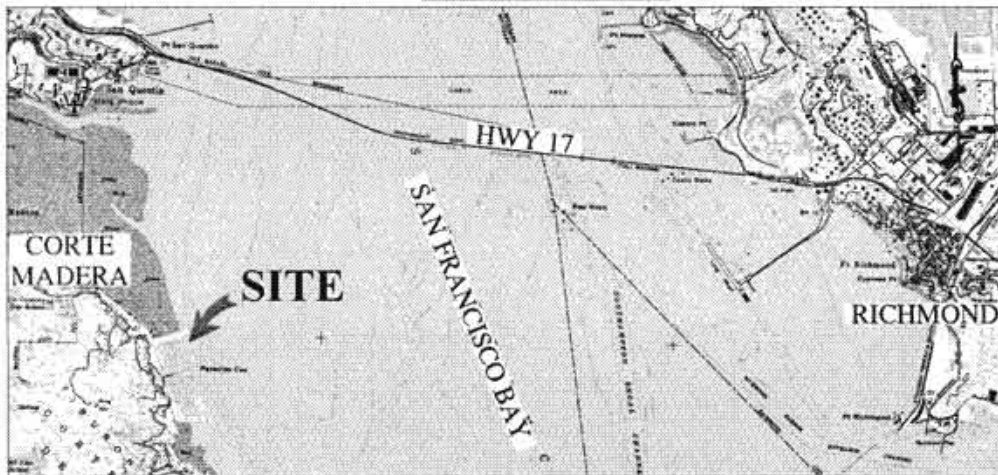
SAN
FRANCISCO
BAY



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



MJF 01/10/12

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.