

# Staff Report 28

## **LESSEE/ASSIGNOR:**

---

David R. Peck, Trustee of the David R. Peck Trust

## **APPLICANT/ASSIGNEE:**

---

Ruth A. Rodgers and Michael B. MacQuarrie

## **SECURED-PARTY LENDER:**

---

Quontic Bank

## **PROPOSED ACTION:**

---

Assignment and Amendment of a General Lease – Recreational and Residential Use; and Authorization of an Agreement and Consent to Encumbrance of Lease

## **AREA, LAND TYPE, AND LOCATION:**

Sovereign land in Corte Madera Creek, adjacent to 30 Lucky Drive, near Greenbrae, Marin County.

## **AUTHORIZED USE:**

Continued use and maintenance of a portion of an existing residence with walkway, dock, ramp, boat lift, and float.

## **TERM:**

20 years, beginning August 23, 2018.

## **CONSIDERATION:**

\$4,467 per year, with an annual Consumer Price Index adjustment.

**PROPOSED AMENDMENT:**

The amendment is conditioned upon the Commission's approval of the Agreement and Consent to Encumbrance of Lease, effective the later of February 23, 2021, or the close of escrow, but no later than April 30, 2021 after which the proposed authorization will be void.

The following lease section is proposed to be amended:

- Section 1, Basic Provisions: Extend the term of the lease to August 22, 2056.
- Delete Exhibit A, Land Description, and Exhibit B, Site and Location Map.
- Include the attached Exhibit A, Land Description, and Exhibit B, Site and Location Map.
- Lessee agrees and acknowledges that the risks associated with geophysical phenomena such as waves, storm waves, tsunamis, earthquakes, erosion, flooding, and sea-level rise, are anticipated to increase in severity over the term of the lease due to the localized effects of climate change.
- All other terms and conditions of the lease shall remain in effect without amendment.

**STAFF ANALYSIS AND RECOMMENDATION:**

---

**AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, 6503.5, and 6505.5; California Code of Regulations, title 2, sections 2000 and 2003.

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

On August 23, 2018, the Commission authorized a 20-year General Lease – Residential and Recreational Use to David R. Peck, Trustee of the David R. Peck Trust ([Item C64, August 23, 2018](#)). That lease will expire on August 22, 2038.

Interest in the upland parcel will be deeded to Ruth A. Rodgers and Michael B. MacQuarrie no later than April 30, 2021. The Applicant is now requesting an assignment and amendment of the lease, and approval of the Agreement and Consent to Encumbrance of Lease (Agreement). The Applicant agrees to perform and be bound by the terms, conditions, covenants, and agreements contained within the lease.

Staff recommends assigning the lease to reflect the change in ownership of the upland parcel from the Assignor to the Assignee; amending the lease to extend the term of the lease to August 22, 2056; and approving the Agreement. The assignment and amendment will be effective the close of escrow, but no later than

April 30, 2021, and will be conditioned upon the Commission's approval of the Agreement.

The Applicant is in the process of obtaining mortgage financing in favor of Quontic Bank, the Secured-Party Lender, with a loan amount not to exceed \$1,000,000. The financing will be used as a mortgage obligation. Under the terms of the loan, the Secured-Party Lender is requiring the Applicant to pledge their interest in Lease 9472.1 as additional security which will require a lease term of 35 years beyond the start date of the new loan.

The Agreement will allow the Secured-Party Lender to step into the role of Lessee for the lease premises under certain circumstances and offers the State additional protections such as:

- No subsequent encumbrance of the lease shall be allowed without prior written consent of the Commission.
- Any transfer of the lease to a third party shall be subject to prior written approval and consent of the Commission.
- If the Secured Party-Lender forecloses on the lease, it shall be bound by all terms and conditions of the lease.
- The duration of the Agreement is limited to the term of the lease.

In approving the Agreement, the Commission, through a delegation to the Executive Officer, retains the right to approve any transfer of the lease from the lending institution to a prospective lessee, should any foreclosure of the loan occur. The proposed Agreement provides that the Commission's Executive Officer make certain approvals as provided in the Agreement, including the approval of purchasers during a foreclosure sale.

The existing lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred as a result of the lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved.

The proposed assignment and amendment of the lease will not result in a change in the use of, or impacts to, Public Trust resources. Staff believes approval of the assignment, amendment, and the Agreement will not substantially interfere with Public Trust needs and values and is 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 lease area is located on the Corte Madera

Creek, in a tidally influenced site vulnerable to flooding at current sea levels that will be at high risk of flood exposure based on the projected scenarios of sea-level rise in this area.

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**

Year	Projection (feet)
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.

Sea-level rise will raise the total water levels of Corte Madera Creek and likely cause frequent inundation of the lease area if no measures are taken to control the flooding and elevate the shoreline. 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 storms and rain events, causing more flooding in low-lying areas. In rivers, creeks, and tidally influenced waterways, higher water levels from sea-level rise and flooding may cause damage such as bank erosion to the lease area. Storm debris and water-borne contaminants may constitute additional hazards to the lease area and structures. Higher rates of erosion and sedimentation from flooding, storm flow, and runoff will likely increase scour and further decrease bank stability.

As the total water levels of Corte Madera Creek increase with sea-level rise, the lease area and the existing residence with walkway, dock, ramp, boat lift, and float will be at higher risk to damage, degradation, and loss from the combined impacts of sea-level rise, storms, and rain events. The lessee is responsible for protecting the lands, resources, and values of the Public Trust within the lease area and should be aware that these changes are very likely to occur and impact not only the current footprint of the lease area, but the adjacent upland area as well over the course of the lease.

The existing lease is a 20-year General Lease – Residential and Recreational Use that began on August 23, 2018, is proposed to be extended to August 22, 2056, and will be subject to the climate change effects of the projected sea-level rise scenario provided above. Regular maintenance as required by the terms of the lease will help reduce the likelihood of severe structural degradation and dislodgement.

**CONCLUSION:**

Approval of this lease assignment, amendment, and Agreement 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 foreseeable term of the lease. For these reasons, staff recommends finding that approval of this assignment, amendment, and Agreement is in the best interests of the State.

**OTHER PERTINENT INFORMATION:**

---

1. Approval or denial of an application 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. If the Commission denies the application the existing lease would not be assigned or amended, and the Agreement would not be approved. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
3. The lease assignment, approval of the Agreement, and consent to encumber the lease 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).

4. Staff recommends that the Commission find that amendment of the lease is exempt from the requirements of the 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 15378 and California Code of Regulations, title 2, section 2905.

## **EXHIBITS:**

---

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

## **RECOMMENDED ACTION:**

---

It is recommended that the Commission:

### **CEQA FINDING:**

Find that the amendment of the lease 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).

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

Find that the proposed lease assignment, amendment, and approval of the Agreement will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the amended lease; and is in the best interests of the State.

### **AUTHORIZATION:**

1. Authorize the assignment of Lease No. PRC 9472.1, a General Lease – Recreational and Residential Use, of sovereign land, as described in Exhibit A and as shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof, from David R. Peck, Trustee of the David R. Peck Trust, to Ruth A. Rodgers and Michael B. MacQuarrie, effective the later of February 23, 2021, or the close of escrow, but no later than April 30, 2021 after which the authorization will be void.
2. Authorize the amendment of Lease No. PRC 9472.1, a General Lease – Recreational and Residential Use, of sovereign land, as described in Exhibit A, Land Description, and as shown on Exhibit B, Site and Location Map, (for reference purposes only) attached and by this reference made a part hereof, effective the later of February 23, 2021, or the close of escrow, but no later than

April 30, 2021, after which the proposed authorization will be void, to extend the term of the lease to August 22, 2056; and to replace the existing Exhibit A, Land Description, and Exhibit B, Site and Location Map, with the attached Exhibit A, Land Description, and Exhibit B, Site and Location Map (for reference purposes only); and to include a special provision requiring Lessee's acknowledgment of increased severity of risks associated with geophysical phenomena, due to the effects of climate change; all other terms and conditions of the lease will remain in effect without amendment. The amendment of the lease shall only be executed in concert with execution of the "Agreement and Consent to Encumbrance of Lease" described below.

3. Authorize the Executive Officer or her designee to execute the document titled "Agreement and Consent to Encumbrance of Lease," allowing Applicant's right, title, and interest in Lease PRC 9472.1 to be pledged as partial security for a loan in the principal amount not to exceed \$1,000,000 in favor of the Secured-Party Lender in substantially the same form as that on file in the Sacramento office of the Commission, effective upon signature by all parties but no later than April 30, 2021, and to execute, acknowledge, accept, and record all related documents as may be reasonably necessary to complete the transaction.
4. Authorize the Executive Officer or her designee to give approval on behalf of the Commission of prospective purchasers during a foreclosure sale and make any other approvals required of the Commission under the Agreement.

**EXHIBIT A**

**PRC 9472**

**LAND DESCRIPTION**

A parcel of tide and submerged land situate in the bed of the Corte Madera Creek, in the Unincorporated area of Greenbrae, County of Marin, State of California, and being more particularly described as follows:

COMMENCING at the southwest corner of Parcel One described in that certain Grant Deed recorded as Document No. 2013-0068580, Official Records of said county; thence along the southwesterly boundary of said parcel, North 32° 28' 00" West 180.00 feet to the POINT OF BEGINNING; thence continuing along the southwesterly boundary and northwesterly prolongation thereof, North 32° 28' 00" West 105.00 feet; thence leaving said boundary prolongation North 56° 31' 47" East 42.00 feet; thence South 37° 43' 36" East 100.00 feet; thence South 50° 40' 17" West 51.53 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portions lying landward of the Ordinary High Water Mark on the right bank of said Corte Madera Creek.

ALSO EXCEPTING THEREFROM any portions lying within Parcel 3, patented on December 19, 1958, and described within Swamp and Overflowed Lands Book 14 at Page 41, on file in State Lands Commission, Sacramento Office.

**END OF DESCRIPTION**

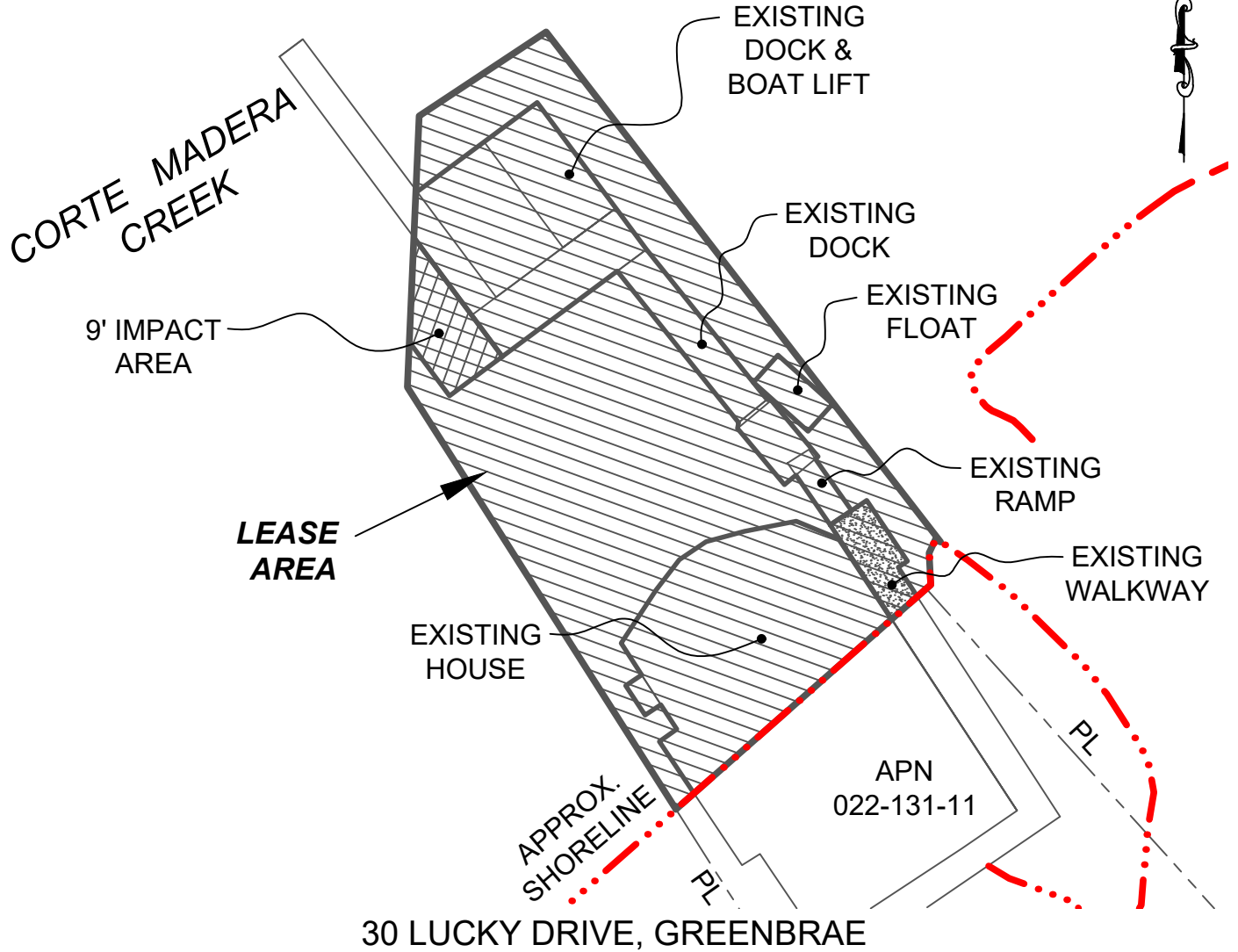
Prepared 09/10/2020 by the California State Lands Commission Boundary Unit.





NO SCALE

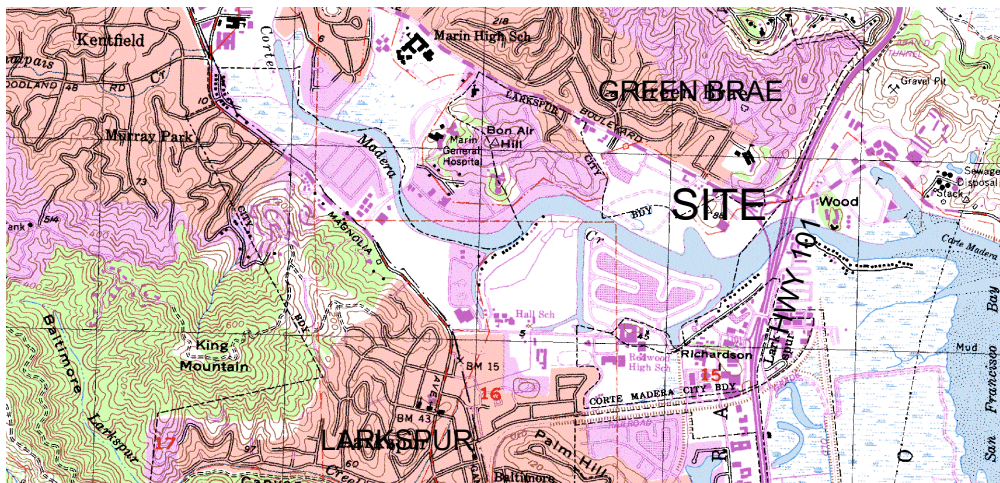
### SITE



30 LUCKY DRIVE, GREENBRAE

NO SCALE

### LOCATION



MAP SOURCE: USGS QUAD

### Exhibit B

PRC 9472  
 RODGERS & MACQUARRIE  
 APN 022-131-11  
 GENERAL LEASE -  
 RESIDENTIAL &  
 RECREATIONAL 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.

TS 09/10/2020