

**STAFF REPORT
C34**

A 25
S 10

12/03/18
PRC 8370.1
G. Asimakopoulos

ASSIGNMENT OF LEASE

LESSEE/ASSIGNOR:

Crossings At 880 Industrial LLC, a Delaware Limited Liability Company

APPLICANT/ASSIGNEE:

The Crossings @ 880 Owners Association, a California Nonprofit Mutual Benefit Corporation

AREA, LAND TYPE, AND LOCATION:

0.07 acre, more or less, of sovereign land located in Coyote Creek, adjacent to Assessor's Parcel Number 519-0820-002-16, near Fremont, Alameda County.

AUTHORIZED USE:

Continued use and maintenance of four existing 36-inch-diameter flap/slide-gate culverts.

LEASE TERM:

20 years, beginning August 6, 2015.

CONSIDERATION:

\$5,919 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

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

Surety: Surety bond or other security in the amount of \$10,000.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

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

STAFF REPORT NO. C34 (CONT'D)

Public Trust and State's Best Interests Analysis:

On April 5, 2016, the Commission authorized a General Lease - Right-of-Way Use to Crossings At 880 Industrial LLC, a Delaware Limited Liability Company, for a term of 20 years ([Item C29, April 5, 2016](#)). That lease will expire on August 5, 2035.

In July of this year, Lessee notified staff that an internal error had been made when the original lease application was submitted in August 2015. As a result, the lease was authorized to the wrong entity. The correct Lessee should have been the Applicant, The Crossings @ 880 Owners Association, a California Nonprofit Mutual Benefit Corporation, an entity affiliated with the Lessee. The Applicant is now applying for an assignment of the lease.

The Assignee agrees to perform and be bound by the terms, conditions, covenants, and agreements contained within the lease. Staff recommends an assignment of the lease from the Assignor to the Assignee to reflect the correct ownership of the upland property. The assignment will be effective December 3, 2018.

The lease assignment will not result in a change in the use of, or impacts to, Public Trust resources. Staff believes approval of this assignment is consistent with the common law Public Trust Doctrine 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 subject facilities are located on Coyote Creek, in a tidally influenced site consisting of low-elevation floodplains. This area is vulnerable to flooding at current sea levels and will be at higher risk of flood exposure given projected scenarios of sea-level rise.

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.

STAFF REPORT NO. **C34** (CONT'D)

Table 1. Projected Sea-Level Rise for San Francisco¹

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: ¹ Projections are with respect to a 1991 to 2009 baseline.

As stated in *Safeguarding California Plan: 2018 Update* (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, fire, drought, extreme heat, and storms (especially when coupled with sea-level rise). In rivers and tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm created debris. Climate change and sea-level rise will further influence coastal and riverine areas by changing erosion and sedimentation rates. Near-coastal riverine areas will be exposed to increased wave force and run up, potentially resulting in greater bank erosion than previously experienced. Finally, in rivers and tidally influenced waterways, flooding and storm flow will likely increase scour, decreasing bank stability and structure.

This increase in sea level combined with more frequent and stronger storm events will likely expose the lease area structures to higher flood risks, comprised of greater total water levels for longer periods of time. Rising sea levels can lead to more frequent flood inundation in low-lying areas and larger tidal events, and all components of these facilities are fixed and could be susceptible to damage. The lease is a 20-year General Lease – Right-of-Way Use, that began on August 6, 2015, and may be subject to the climate change effects of the projected sea-level rise scenario provided above. Regular maintenance and implementing best management practices, as required by the terms of the lease, will help reduce the likelihood of severe structural degradation and dislodgement. Further climate change impact analyses on the leased facilities will be assessed when the lease expires in 2035, if an application is submitted for a new lease, and would be based on projected sea-level rise scenarios at that time.

STAFF REPORT NO. **C34** (CONT'D)

Conclusion:

Approval of this lease assignment 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 is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. 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.
2. Assignment of the lease 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, section 15378, subdivision (b)(5).

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease assignment 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; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

Authorize the assignment of Lease No. PRC 8370.1, a General Lease – Right-of-Way Use, of sovereign land as described in Exhibit A, Land Description, and shown on Exhibit B, Site and Location Map (for reference purposes only), attached and by this reference made a part hereof, from Crossings At 880 Industrial LLC, a Delaware Limited Liability Company, to The Crossings @ 880 Owners Association, a California Nonprofit Mutual Benefit Corporation; effective December 3, 2018.

EXHIBIT A

PRC 8370.1

LAND DESCRIPTION

Two parcels of State-owned sovereign land situated in Coyote Creek in the City of Fremont, County of Alameda, State of California, said parcels being described as follows:

PARCEL A

Being a portion of Parcel 5, as said parcel is described in the deed to the State of California, recorded in Series Number 83-225688, Alameda County Records and more particularly described as follows:

COMMENCING at the northerly terminus of the line having a bearing and distance of South $03^{\circ} 40' 40''$ West, 82.24 feet as said line is described in said deed; thence along said line and the general northeasterly line of said parcel South $03^{\circ} 40' 40''$ West, 5.89 feet to the POINT OF BEGINNING; thence continuing along said line South $03^{\circ} 40' 40''$ West, 23.53 feet; thence leaving said general northeasterly line North $54^{\circ} 32' 56''$ West, 123.85 feet; thence North $35^{\circ} 27' 04''$ West, 20.00 feet; thence South $54^{\circ} 32' 56''$ East, 111.46 feet to the POINT OF BEGINNING.

PARCEL B

Being a portion of Parcel 5, as said parcel is described in the deed to the State of California, recorded in Series Number 83-225688, Alameda County Records and more particularly described as follows:

COMMENCING at the southwesterly terminus of the line having a bearing and distance of North $59^{\circ} 33' 21''$ East, 36.05 feet as said line is described in said deed; thence along said line and the general northeasterly line of said parcel North $59^{\circ} 33' 21''$ East, 1.56 feet to the POINT OF BEGINNING; thence continuing along said line North $59^{\circ} 33' 21''$ East, 26.05 feet; thence leaving said general northeasterly line South $09^{\circ} 24' 25''$ West, 36.84 feet; thence North $80^{\circ} 35' 35''$ West, 20.00 feet; thence North $09^{\circ} 24' 25''$ East, 20.15 feet to the POINT OF BEGINNING.

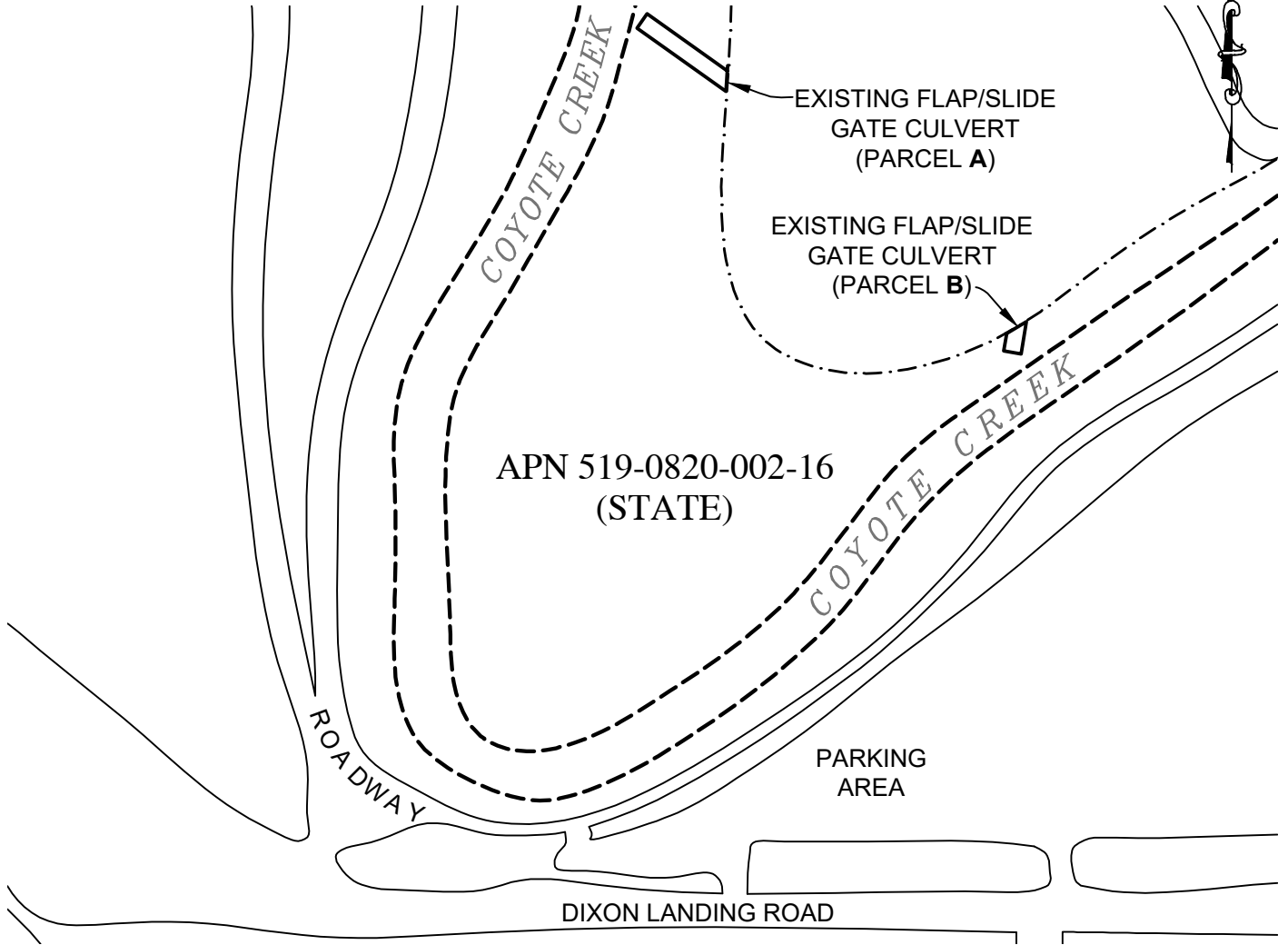
END OF DESCRIPTION

The above description prepared 09/10/2015 by the California State Lands Commission Boundary Unit.



NO SCALE

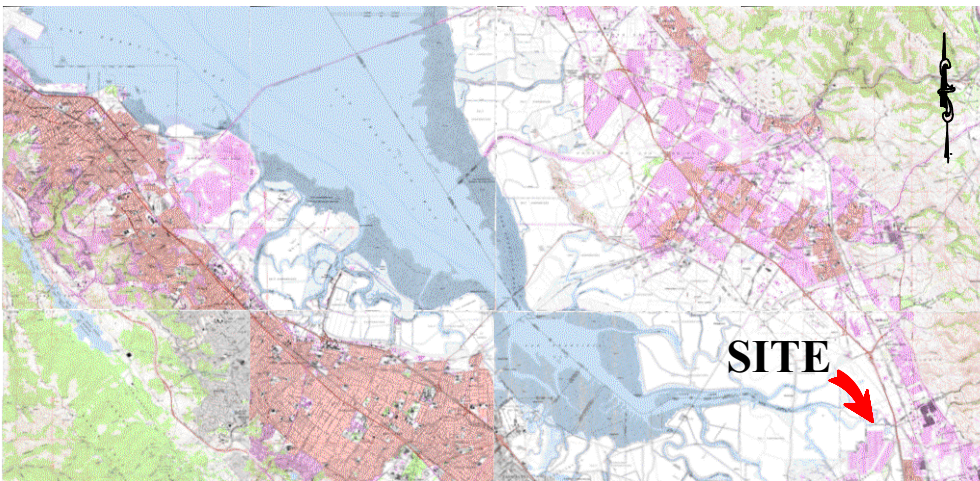
SITE



APN 519-0820-002-16, NEAR THE CITY OF FREMONT

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 8370.1
 THE CROSSINGS @ 880
 OWNERS ASSOCIATION
 APN 519-0820-002-16
 GENERAL LEASE -
 RIGHT-OF-WAY USE
 ALAMEDA 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.

RGB 10/24/18