

**STAFF REPORT
17**

A 10

08/23/19
PRC 9254.1
A2071
D. Tutov

S 2

ASSIGNMENT OF LEASE

LESSEE/ASSIGNOR:

Jack M. Bertman, MD, Trustee of the Jack M. Bertman, MD Inc., Profit Sharing Plan and Trust

APPLICANT/ASSIGNEE:

Janet Mae Black

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Corte Madera Creek, adjacent to 35 Greenbrae Boardwalk, near Larkspur, Marin County.

AUTHORIZED USE:

Continued use and maintenance of an existing deck, boat dock, and appurtenant facilities.

LEASE TERM:

20 years, beginning December 18, 2015.

CONSIDERATION:

\$287 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

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

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

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

Public Trust and the State's Best Interests Analysis:

On December 18, 2015, the Commission authorized a General Lease – Recreational Use to Jack M. Bertman, MD, Trustee of the Jack M. Bertman, MD Inc., Profit Sharing Plan and Trust ([Item C54, December 18, 2015](#)). That lease will expire on December 17, 2035.

STAFF REPORT NO. 17 (CONT'D)

On April 16, 2019, interest in the upland parcel was deeded to Janet Mae Black. The Lessee and Applicant are now requesting an assignment of the lease, and the Applicant agrees to perform and be bound by the terms, conditions, covenants, and agreements contained in the lease. Staff recommends an assignment of the lease to reflect the change in ownership of the upland parcel from the Assignor to the Assignee. The assignment will be effective as of the date of transfer, April 16, 2019. The lease assignment will not result in a change in the use of, or impacts to, Public Trust resources.

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 the Corte Madera Creek, in a tidally influenced site vulnerable to flooding at current sea levels and at a 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.

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.

This effect could increase the Corte Madera Creek’s inundation levels within the lease area. 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 natural disasters related to flooding, fire, drought, extreme heat, and storms (especially when coupled with sea-level rise). In rivers, creeks, and tidally influenced waterways, more frequent and powerful storms can result in

STAFF REPORT NO. 17 (CONT'D)

increased flooding conditions and damage from storm-created debris as well as decreased bank stability and structure. Conversely, climate-change induced droughts could decrease creek levels and flow for extended periods of time. Climate change and sea-level rise will further influence riverine areas by changing erosion and sedimentation rates. Flooding and storm flow, as well as runoff, will likely increase scour and decrease bank stability at a faster rate.

The combination of these projected conditions could increase the likelihood of damage and affect access to structures within the lease premises during the term of the lease. For example, the potential for more frequent and stronger storm events may expose the lease area structures to higher flood risks and cause facilities to be damaged or dislodged, presenting hazards to public safety as well as dangers for navigation within the channel. Conversely, prolonged drought conditions could lower water levels, exposing previously submerged structures to the elements and potentially leading to increased wear-and-tear on the pilings and dock. Lowered water levels could also reduce navigability of the channel, thereby increasing hazards and impacting the function and utility of the lease area structures.

The lease area may be subject to the climate change effects of the projected sea-level rise scenario provided above. Regular maintenance and implementation of 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 area will be assessed at the time the lease expires if an application is submitted for a new lease and would be based on projected sea-level rise scenarios at that time.

Conclusion:

For all the reasons above, Commission staff believes that the issuance of this lease will not substantially interfere with the Public Trust needs at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application for assignment 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 Applicant may be required to remove the existing deck, boat dock, and appurtenant facilities and restore the premises to their original condition. Upon expiration or

STAFF REPORT NO. 17 (CONT'D)

prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.

2. This activity 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. 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:

1. Find that the existing and, for a limited period, continuing use and maintenance of the boat dock and appurtenant facilities will not substantially interfere with Public Trust needs and values at this location and are consistent with the common law Public Trust Doctrine; and
2. Find that the existing and, for a limited period, continuing use and maintenance of the deck is not generally consistent with the Public Trust Doctrine, but the current use does not substantially interfere with the trust; and
3. Find that assigning the existing lease is in the best interests of the State.

AUTHORIZATION:

Authorize the assignment of Lease No. PRC 9254.1, a General Lease – Recreational 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 Jack M. Bertman, MD, Trustee of the Jack M. Bertman, MD Inc., Profit Sharing Plan and Trust to Janet Mae Black, effective April 16, 2019.

EXHIBIT A

PRC 9254.1

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 southeast corner of Parcel One as described in that certain Grant Deed recorded as Document No. 2019-0015016, Official Records of said county; thence along the southeasterly boundary of said parcel, North 39° 13' 00" East 138.30 feet to the POINT OF BEGINNING; thence along said southeasterly boundary and northeasterly prolongation thereof, North 39° 13' 00" East 53.31 feet; thence leaving said boundary prolongation the following three (3) courses:

- 1) South 50° 45' 01" East 11.33 feet,
- 2) North 45° 37' 44" East 33.87 feet,
- 3) North 49° 06' 28" West 51.13 feet to northeasterly prolongation of the northwesterly boundary of said parcel;

thence along said prolongation and northwesterly boundary, South 39° 13' 00" West 88.60 feet; thence leaving said northwesterly boundary, South 51° 01' 20" East 36.00 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.

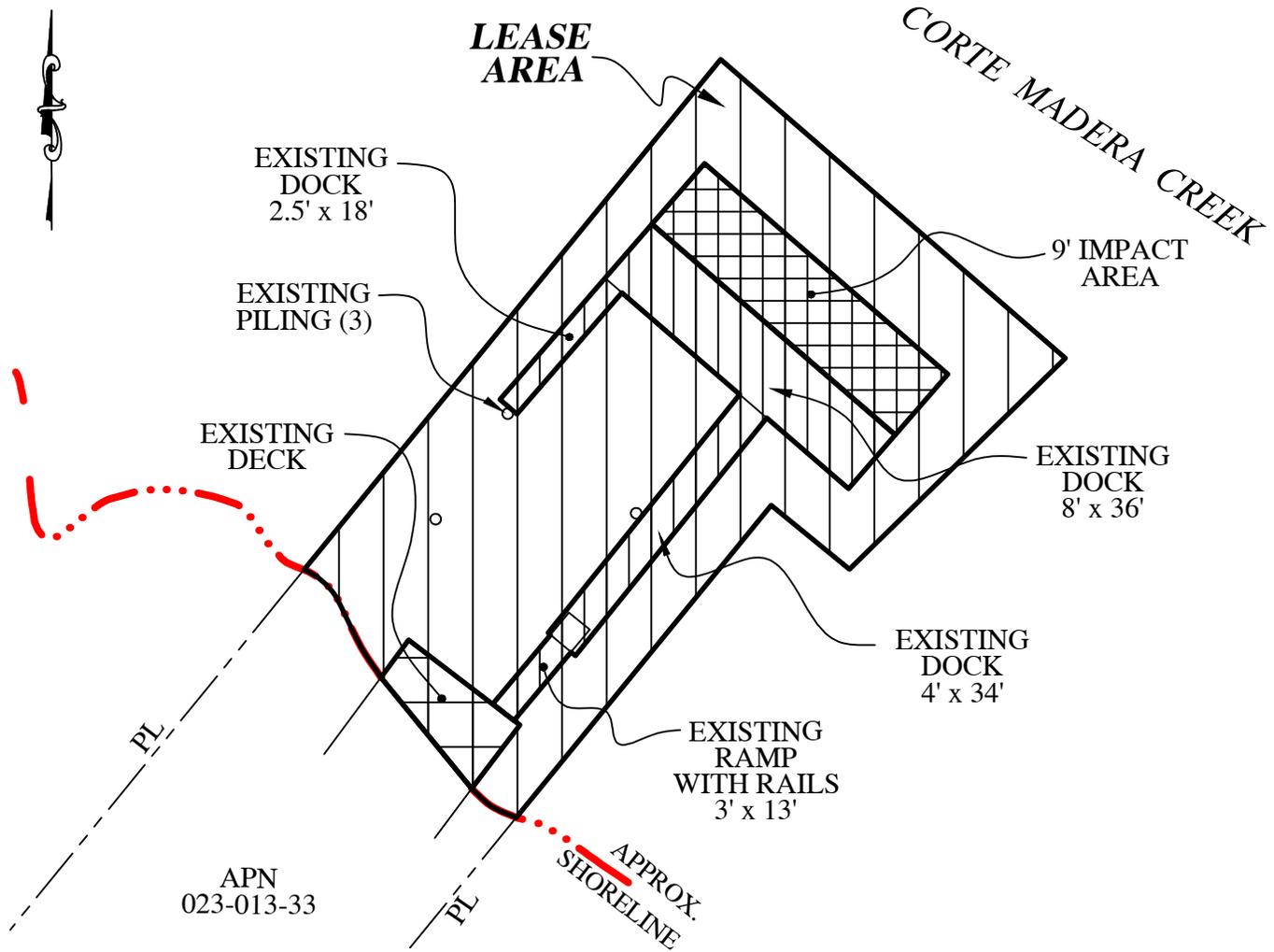
END OF DESCRIPTION

Prepared 06/04/2019 by the California State Lands Commission Boundary Unit.



NO SCALE

SITE



35 GREENBRAE BOARDWALK, GREENBRAE

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 9254.1
 BLACK
 APN 023-013-33
 GENERAL LEASE -
 RECREATIONAL USE
 MARIN COUNTY



SITE

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 06/04/19