

**STAFF REPORT
C38**

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12/03/18
PRC 8031.1
V. Caldwell

GENERAL LEASE – RESIDENTIAL AND RECREATIONAL USE

APPLICANT:

Lee Henry Greenberg, Trustee of the Lee Henry Greenberg Revocable Trust

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Corte Madera Creek, adjacent to 14 Lucky Drive, near Greenbrae, Marin County.

AUTHORIZED USE:

Use and maintenance of an existing residence, decks, walkway, docks, and appurtenant facilities.

LEASE TERM:

20 years, beginning August 23, 2018.

CONSIDERATION:

\$11,263 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.
- Lessee agrees and acknowledges hazards associated with sea-level rise may require additional maintenance or protection strategies regarding the improvements on the lease premises.

BACKGROUND:

Lucky Drive is located along Corte Madera Creek, on the west side of Highway 101, in Marin County. All of the properties on Lucky Drive and adjacent to Corte Madera Creek are improved residential parcels. This area was developed over many years starting with arks (floating homes) landing on the shore and taking up residence, as was commonplace in Larkspur in the early 1900s. Over the years, the arks have transitioned from houses on barges to houses on foundations. Facilities such as decks, docks, and other appurtenant facilities have also been added, and now nine of the properties have improvements

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extending beyond the Ordinary High-Water Mark (OHWM) onto State-owned sovereign land.

The boundary between State and private ownership along tidal waterways is generally the OHWM pursuant to California Civil Code section 830. The OHWM is the legal boundary between tidelands and uplands, as measured by the mean high tide line. In general, when a tidal waterway is unaffected by fill or artificial accretion, the location of the OHWM is the mean high tide line, which is the intersection of the mean high water with the shore. As a result, the boundary may move over time as water levels change. In some situations, the boundary between State and private ownership may be fixed by a court decision or agreement. This is the case for the westerly portion of Corte Madera Creek along Lucky Drive, which is subject to Sovereign Land Location 24, a land exchange agreement between Schultz Construction Company and the State of California. The boundary between upland and State-owned sovereign lands in the remainder of Corte Madera Creek is not fixed by an agreement or court decision and is thus considered to be ambulatory.

To determine the relationship between existing improvements and the current mean high tide line, staff conducted a land survey and aerial photography survey in December 2016. This aerial survey was performed to create planimetric mapping of the present improvements and to map the mean high tide line. The 2016 surveyed mean high tide line represents the most accurate data known to exist in the area at this time.

In 2017, the Commission had one current lease and had expired lease agreements with four others of the nine property owners on Lucky Drive with improvements extending onto State-owned sovereign lands, leaving many of the property owners with unauthorized facilities on State lands. To remedy the situation, staff conducted public outreach to educate the Lucky Drive and Boardwalk One community on the Commission's jurisdiction, leasing practices, and lease application process. On October 9, 2017, staff held a public meeting in Corte Madera for the affected property owners and other interested parties. Since that time, through the development of a frequently asked questions document, meetings, and many telephone conversations and email communications, staff worked with property owners to reach an agreement on lease terms and conditions acceptable to the involved parties.

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.

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Public Trust and State's Best Interests Analysis:

On June 19, 1998, the Commission authorized a Recreational Pier Lease for a dock and ramp to Lee Greenberg ([Item C62, June 19, 1998](#)). That lease expired on April 30, 2008. On May 2, 2018, the upland property was transferred to Lee Henry Greenberg, Trustee of the Lee Henry Greenberg Revocable Trust. In the early 2000s, the residence, decks, docks, walkway, and appurtenant facilities were constructed with San Francisco Bay Conservation and Development Commission authorization, but without Commission authorization. The Applicant is now applying for a General Lease – Residential and Recreational Use for the use and maintenance of the facilities.

The public's right to use California's waterways for navigation, fishing, and waterborne commerce is protected by the common law Public Trust Doctrine. Historically, the Public Trust Doctrine ensures the right of the public to use its waterways to engage in commerce, navigation, and fisheries. More recently, the Public Trust Doctrine was broadened by court decisions to include various forms of water-dependent recreation and preservation of lands in their natural state in order to protect scenic and wildlife habitat values. The Public Trust, as a common law doctrine, is not static, but is continuously evolving to protect the public's needs and values inherent in the use of California's waterways.

The docks and ramp are privately owned and maintained for the docking and mooring of boats. Recreational boating is water-dependent and generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private recreational boating facilities as an authorized use of Public Trust lands (Pub. Resources Code, § 6503.5).

Based on the 2016 survey work at this location, staff has concluded that the existing residence, decks, walkway, and appurtenant facilities encroaching below the mean low tide line onto State-owned sovereign land. These improvements are not associated with traditional Public Trust uses. The Commission has issued leases on a limited basis for portions of existing residential structures that encroach onto sovereign lands where such encroachments do not significantly interfere with the Public Trust needs and values.

The subject facilities have existed for many years at this location, and the lease does not alienate the State's fee simple interest or permanently impair public rights. The proposed lease includes certain provisions protecting the public use of the proposed lease area, including a limited

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lease term of 20 years and a non-exclusive use provision. Upon termination of the lease, the lessee may be required to remove any improvements and restore the lease premises to their original condition.

The proposed 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.

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 Corte Madera Creek, 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 lease premises consist of a fixed residence, fixed decks, fixed walkway, fixed pilings, floating docks, and floating ramps.

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

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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 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, residence, and decks. 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 floating dock and adjustable ramp are adaptable to variable water levels, allowing them to rise and fall with storms and droughts and increasing their resiliency to some climate change impacts, but may require more frequent maintenance to avoid dislodgement and ensure continued function during and after storm seasons and to avoid dislodgement. The fixed features like the pilings, residence, decks, walkway, and appurtenant facilities may need reinforcement and possibly replacement to withstand higher levels of flood exposure and more frequent storm events. For example, the pilings appear to be at a sufficient height to withstand projected changes in water levels, but additional fortification may be needed, because damage to these pilings could lead to a public safety hazard. The bank is also vegetated, which provides additional stability and will reduce the amount of erosion and scour pressure experienced during future events because of the vegetation's underground root system; but remains at risk of accelerated deterioration from currents and floods. Regular maintenance, as required by the lease, will reduce the likelihood of severe structural degradation or dislodgement.

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Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland (not within the lease area) are located in an area that may be subject to effects of climate change, including sea-level rise.

Conclusion:

For all the reasons above, staff believes issuing this lease will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; 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. 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.

EXHIBITS:

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

PUBLIC TRUST AND STATE'S BEST INTERESTS:

1. Find that the existing and, for a limited period, continuing use and maintenance of the docks and ramp will not substantially interfere

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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 a residence, decks, and appurtenant facilities are not generally consistent with the Public Trust Doctrine, but the current use does not substantially interfere with the trust; and,
3. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Residential and Recreational Use to Lee Henry Greenberg, Trustee of the Lee Henry Greenberg Revocable Trust beginning August 23, 2018, for a term of 20 years, for an existing residence, decks, walkway, docks, and appurtenant facilities, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration: \$11,263 per year, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 8031.1

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 southwest corner of Parcel Two described in that certain Grant Deed recorded as Document No. 91-29579, Official Records of said county; thence along the southwesterly boundary of said parcel, North 41° 52' 00" West 95.00 feet to the POINT OF BEGINNING; thence continuing along the southwesterly boundary and northwesterly prolongation thereof, North 41° 52' 00" West 135.00 feet; thence leaving said boundary prolongation North 47° 00' 00" East 79.47 feet to a point on the northwesterly prolongation of the northeasterly boundary of Parcel One of said deed; thence southeasterly along said prolongation and northeasterly boundary, South 41° 52' 00" East 135.00 feet; thence leaving said northeasterly boundary, South 47° 00' 00" West 79.47 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 07/05/2018 by the California State Lands Commission Boundary Unit.



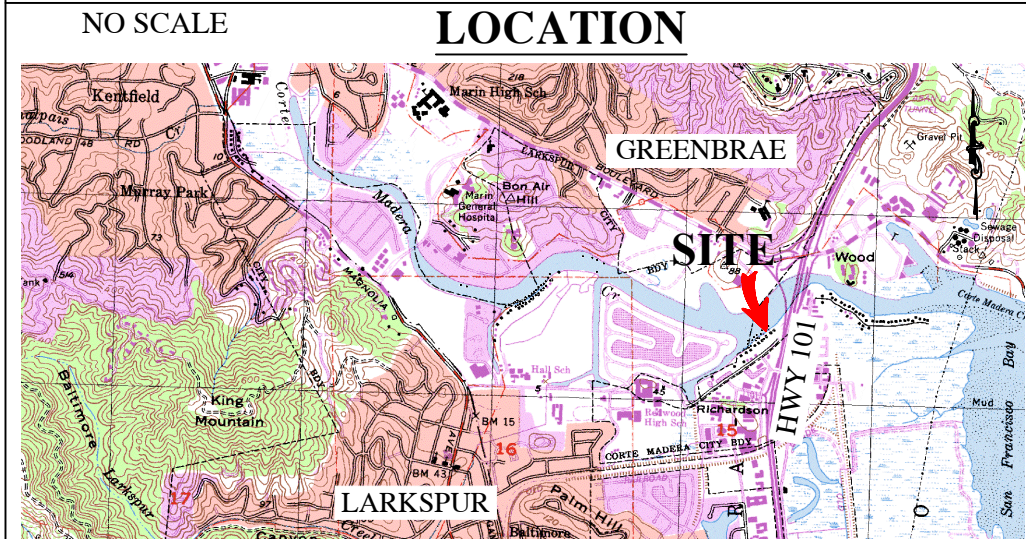
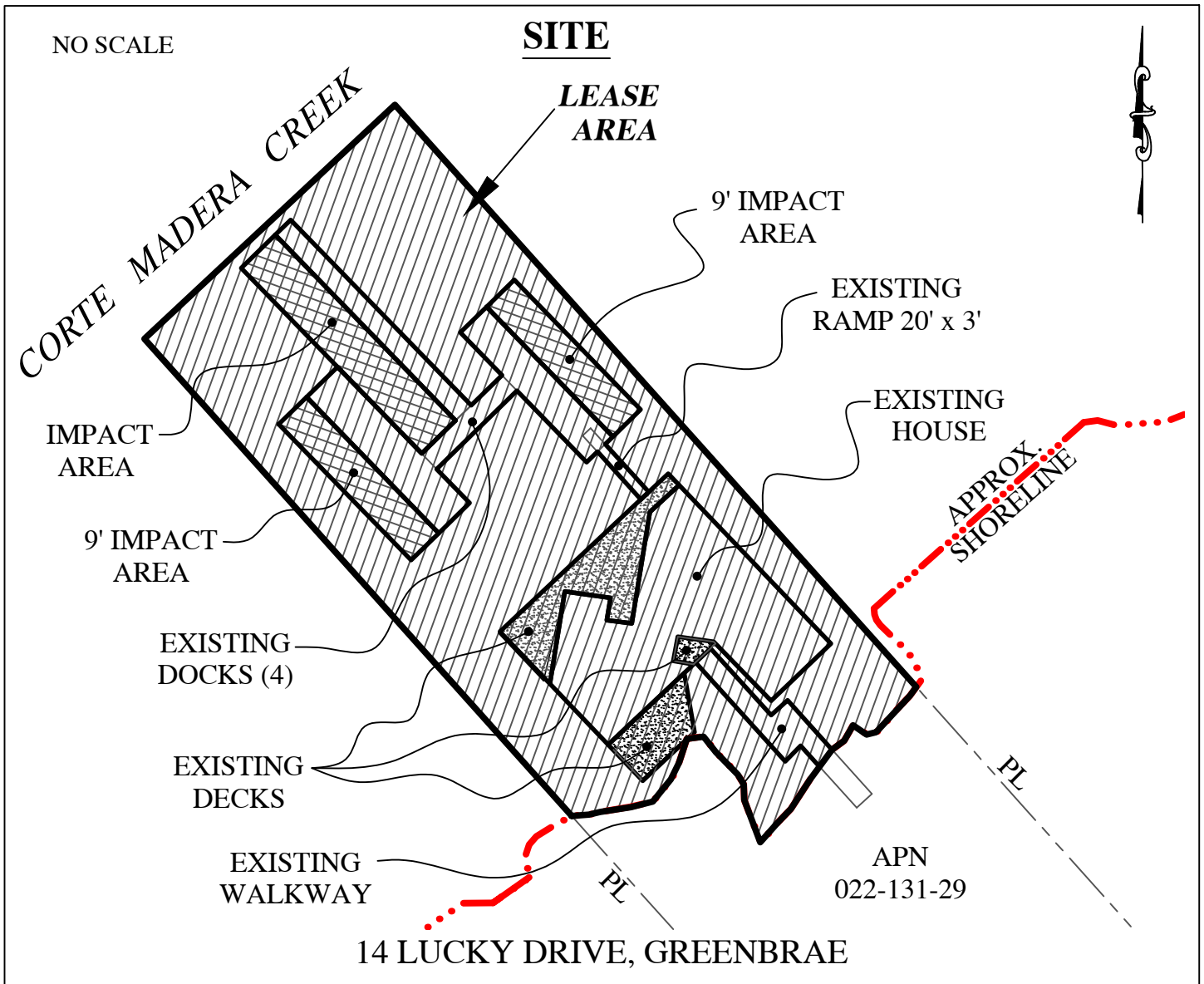


Exhibit B
 PRC 8031.1
 GREENBERG TRUST
 APN 022-131-29
 GENERAL LEASE -
 RESIDENTIAL &
 RECREATIONAL USE
 MARIN COUNTY



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.