

Staff Report 30

LESSEE:

Barbara Roberts Jones, Trustee of the Barbara Roberts Jones Trust dated January 26, 2006

APPLICANT:

Julie Maccarin

PROPOSED ACTION:

Waiver of Rent, Penalty, and Interest; Termination and Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION

Sovereign land in Corte Madera Creek, adjacent to 52 Greenbrae Boardwalk, Greenbrae, Marin County.

AUTHORIZED USE:

Continued use and maintenance of an existing boat dock, two pilings, walkway, and ramp.

TERM:

15 years, beginning June 29, 2020.

CONSIDERATION:

\$144 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.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 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 December 18, 2015, the Commission authorized a 20-year General Lease - Recreational Use to Barbara Roberts Jones, Trustee of the Barbara Roberts Jones Trust dated January 26, 2006 ([Item C39, December 18, 2015](#)). That lease will expire on December 17, 2035. Sometime in 2018, Barbara Roberts Jones died. On July 15, 2019, the upland was transferred to Evan Menken and Jeannette Godbey. Commission staff mailed notices to the address on file and solicited a new lease application. On June 29, 2020, the upland was transferred to Julie Maccarin. The Applicant is now applying for a General Lease – Recreational Use, for the use and maintenance of an existing boat dock, two pilings, walkway, and ramp in Corte Madera Creek.

Staff recommends termination of the existing lease because the Lessee's estate sold the upland and the accompanying improvements located on state land without notifying staff, seeking an assignment, or executing a lease quitclaim deed. Accounting records show the annual rent was paid through December 17, 2017. The following invoices have outstanding balances: invoice number 43450, 46069, and 48751 for the period of December 18, 2017, through December 17, 2020 totaling \$877.38. Because costs incurred in collection efforts would likely exceed the amount of rent due, staff believes it is not in the State's best interests to pursue the unpaid rent, penalty, and interest from the Lessee's estate or the prior owner. The Applicant assumed ownership of the upland parcel on June 29, 2020. Staff recommends the effective date of the proposed lease be June 29, 2020.

The Applicant owns the upland adjoining the lease premises and the improvements on state land. The existing dock and appurtenant facilities will be used for the docking and mooring of boats and will facilitate recreational boating. Recreational boating is a water-dependent use that is 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).

The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 15-year term, does not grant the lessee exclusive rights to the lease premises, and reserves an easement to the public for

Public Trust-consistent uses. Upon termination of the lease, the lessee may be required to remove all improvements from State land.

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 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, in a tidally influenced site consisting of low-elevation reclaimed floodplains and adjacent to the natural and partially restored tidal marshes of the Corte Madera Baylands. The Greenbrae Boardwalk community is vulnerable to flooding at current sea levels, will be at higher risk of flood exposure given projected scenarios of sea-level rise, and may require implementing adaptation strategies to minimize the risks from a 100-year flood event with approximately 4.6 feet of sea-level rise¹.

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 lease area 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.

¹ See the 'Sea Level Rise and Shoreline' section of the [Town of Corte Madera Climate Action Plan](#) story map for more information about vulnerability and the potential adaptation strategies being considered. Updates on specific adaptation projects may also be found at <https://cortemaderaadapts.org/>.

Rising sea levels can lead to more frequent flood inundation in low-lying areas and larger tidal events. 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 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 runup, 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.

The combination of these projected conditions could increase the likelihood of damage to structures within the lease premises from rising seas and flooding events during the term of the lease. While some of the current and future vulnerabilities may be partially reduced by the presence of the Corte Madera Baylands,² the fixed structures on the lease premises are at low elevation and will likely need reinforcement or replacement in the future to withstand higher levels of flood exposure. In particular, the walkway may experience periodic or continuous inundation with rising water levels and more frequent winter storm and tidal flooding, creating a public safety hazard. Finally, the Corte Madera Baylands are at risk of accelerated deterioration from sea-level rise and reduced upstream sedimentation³ and would leave the lease area increasingly vulnerable to wave action and flooding.

Regular maintenance and implementation of best management practices, as required by the lease, will help reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises are located in an area that will likely be subject to effects of climate change, including sea-level rise.

CONCLUSION:

For all the reasons above, staff believes the issuance of this lease will not substantially interfere with Public Trust needs and values at this location, at this time,

² These wetlands at the mouth of Corte Madera Creek help to reduce wave height and energy from the San Francisco Bay. See The San Francisco Bay Conservation and Development Commission and ESA PWA, 2013, Corte Madera Baylands: Conceptual Sea Level Rise Adaptation Strategy. <http://www.sfestuary.org/wp-content/uploads/2015/07/Corte-Madera-Final-Report-May-2013.pdf>. Accessed 8/19/2020.

³ *Id.*

and for the foreseeable term of the proposed lease; is consistent with the Public Trust Doctrine; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the 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. Upon expiration or prior termination of the lease, the lessee 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. Termination of the lease is not a project as defined by the California Environmental Quality Act (CEQA) 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).

4. Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of 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 issuance 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 termination of a lease; waiver of rent, penalty, and interest; and issuance of the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the proposed lease; is consistent with common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Waive annual rent, penalty, and interest due for the period of December 18, 2017, through December 17, 2020, and void annual rent invoice numbers 43450, 46069, and 48751, issued to Barbara Roberts Jones, Trustee of the Barbara Roberts Jones Trust dated January 26, 2006.
2. Authorize termination, effective June 28, 2020, of Lease No. PRC 9284, a General Lease – Recreational Use, issued to Barbara Roberts Jones, Trustee of the Barbara Roberts Jones Trust dated January 26, 2006.
3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning June 29, 2020, for a term of 15 years, for the continued use and maintenance of the existing boat dock, two pilings, walkway, and ramp, 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 \$144 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

LEASE 9284

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 June 29, 2020 in Document No. 2020-0027254, Official Records of said county; thence along the southeasterly boundary of said parcel, North 17° 10' 00" East 87.00 feet; thence North 25° 10' 00" East 148.64 feet; thence North 47° 32' 00" West 6.30 feet; thence North 27° 15' 00" East 70.40 feet to the POINT OF BEGINNING; thence along said southeasterly boundary and northeasterly prolongation thereof, North 27° 15' 00" East 63.18 feet; thence leaving said boundary prolongation the following four (4) courses:

- 1) South 69° 00' 57" East 8.02 feet
- 2) North 22° 47' 05" East 39.59 feet,
- 3) North 67° 40' 33" West 29.25 feet,
- 4) South 21° 00' 33" West 39.06 feet to a point on the northeasterly prolongation of the northwesterly boundary of said Parcel One;

thence along said prolongation and northwesterly boundary, South 27° 15' 00" West 63.93 feet; thence leaving said northwesterly boundary, South 67° 43' 19" East 20.08 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.

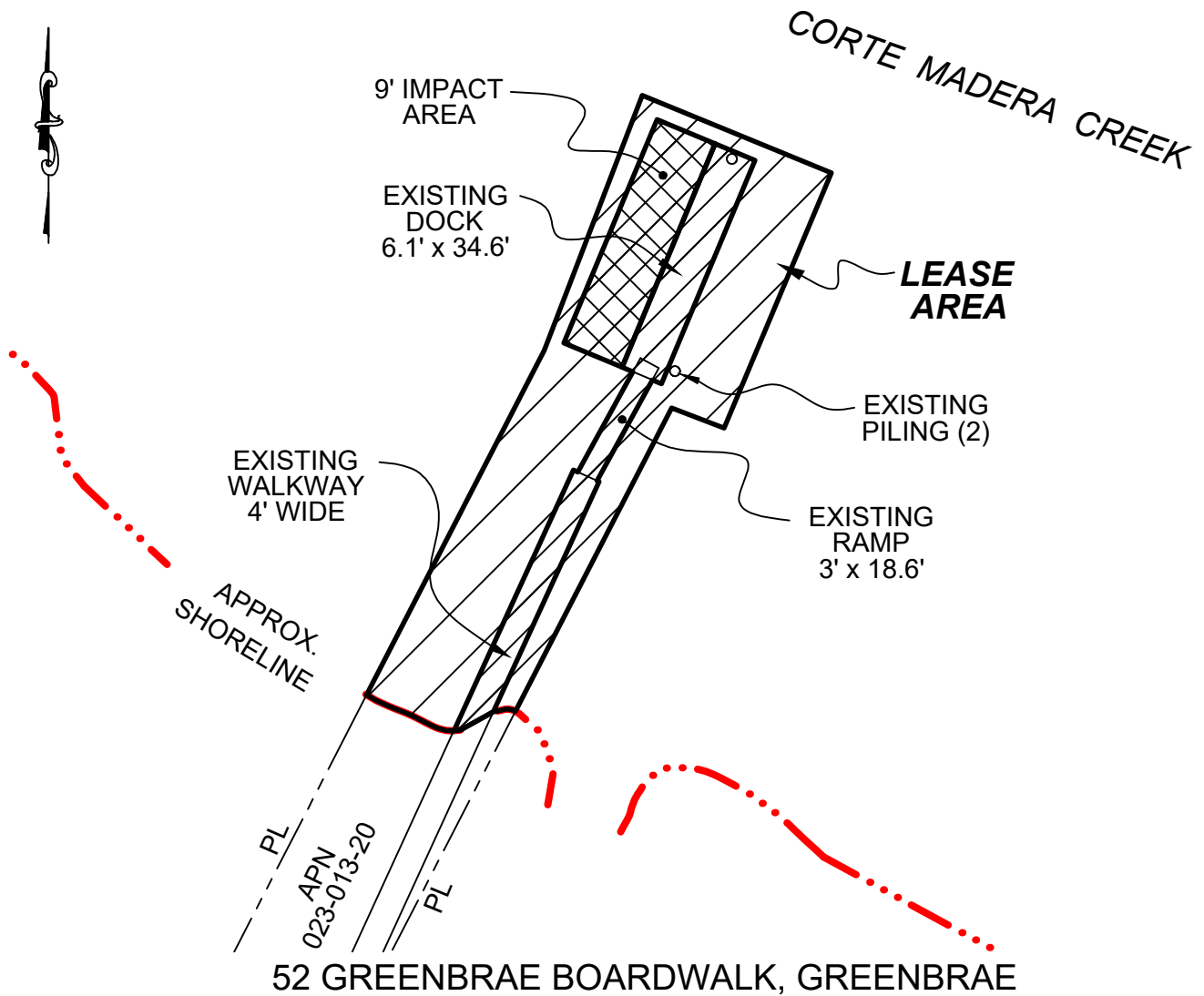
END OF DESCRIPTION

Prepared 09/16/2020 by the California State Lands Commission Boundary Unit.



NO SCALE

SITE



NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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.

Exhibit B

LEASE 9284
MACCARIN
APN 023-013-20
GENERAL LEASE -
RECREATIONAL USE
MARIN COUNTY



TS 09/16/2020