

CALENDAR ITEM

C29

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04/05/16

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PRC 8370.1

G. Asimakopoulos

**ACCEPTANCE OF A QUITCLAIM DEED AND ISSUANCE
OF A GENERAL LEASE – RIGHT-OF-WAY-USE**

LESSEE:

King and Lyons, a Partnership

APPLICANT:

Crossings At 880 Industrial LLC, a Delaware Limited Liability Company

PROPOSED LEASE:

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 the city of 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:

Statutory Authority:

Public Resources Code sections 6005, 6216, and 6301, California Code of Regulations, Title 2, section 2000, subdivision (b).

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Public Trust and State's Best Interests Analysis:

The four flap/slide-gate culverts have existed at this location for approximately 20 years. The purpose of the culverts is to facilitate wetland preservation as part of a mitigation program and continued use of the culverts is necessary to maintain the wetland area. Habitat protection has been recognized by the courts as a public trust consistent use.

Furthermore, the use of the culverts is water-dependent and will help improve existing environmental habitat as they facilitate the reintroduction of tidal flows to restore the project area to natural salt marsh conditions. Additionally, the use does not significantly alter the land and the lease does not alienate the State's fee simple interest or permanently impair public rights. Upon termination of the lease, the Lessee may be required to remove all improvements and restore the lease premises to their original condition.

For all the reasons above, Commission staff believes the issuance of this lease is consistent with the common law public trust doctrine and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Applicant owns the upland parcel adjoining the lease premises.
2. In April 1982, the State Lands Commission entered into a Compromise Title Settlement and Exchange Agreement with Fremont International Partners (FIP) (SLL 85). As part of the settlement, among other things, FIP granted to the State the existing beds of Coyote Creek and Scott Creek (also known as Penitencia Creek). In 1983, King and Lyons, a Partnership, succeeded to the interests of FIP.
3. On January 30, 2002, the Commission authorized a General Lease – Right of Way Use to King and Lyons, a Partnership, for the placement of four flap/slide gate culverts within two separate parcels as shown on the attached Exhibit B. Each parcel contains two of the 36-inch diameter flap/slide-gate culverts. That lease will expire on January 30, 2032. On August 6, 2015, the upland parcel was deeded to Crossings At 880 Industrial LLC, a Delaware Limited Liability Company. The Applicant is now applying for a General Lease – Right of Way Use.
4. In 1995, the Lessee began planning the development of a project known as Bayside Business Park II, Phase I, which consisted of a business park development and associated wetland preservation and mitigation program, on a 148-acre site in the city of Fremont. As part of the

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mitigation program, Lessee was required to preserve the western 84 acres of the site and restore the wetlands before development could occur on the eastern portion of the site. To complete this requirement, Lessee installed the four culverts in the levee between Coyote Creek and a pond that was created on the southeastern corner of the salt marsh, to facilitate the reintroduction of tidal flows to the site to restore the project area to natural salt marsh conditions. By 2005, the marsh met its performance standards and work began on the upland development in 2006. Once the performance standards were met, maintenance of the marsh and its infrastructure has continued.

5. The Lessee executed a quitclaim deed releasing its interest in the Lease to the State. Staff recommends acceptance of the quitclaim deed and issuance of a new lease.
6. This recommended 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.
7. Acceptance of the quitclaim deed 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).

8. The 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.

9. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

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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 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, is consistent with the common law public trust doctrine, and is in the best interests of the State.

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

1. Authorize acceptance of a quitclaim deed, effective August 5, 2015, of Lease No. PRC 83701.1, a General Lease – Right of Way Use, issued to King and Lyons, a Partnership.
2. Authorize issuance of a General Lease – Right of Way Use to Crossings At 880 Industrial, LLC, a Delaware Limited Liability Company, beginning August 6, 2015, for a term of 20 years, for the continued use and maintenance of four existing 36-inch diameter flap/slide gate culverts as described in Exhibit A and as shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; annual rent in the amount of \$5,919, with an annual Consumer Price Index adjustment, and the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease; liability insurance in an amount no less than \$1,000,000 per occurrence; and surety in the amount of \$10,000.

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° 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° 40' 40" West, 5.89 feet to the POINT OF BEGINNING; thence continuing along said line South 03° 40' 40" West, 23.53 feet; thence leaving said general northeasterly line North 54° 32' 56" West, 123.85 feet; thence North 35° 27' 04" West, 20.00 feet; thence South 54° 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° 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° 33' 21" East, 1.56 feet to the POINT OF BEGINNING; thence continuing along said line North 59° 33' 21" East, 26.05 feet; thence leaving said general northeasterly line South 09° 24' 25" West, 36.84 feet; thence North 80° 35' 35" West, 20.00 feet; thence North 09° 24' 25" East, 20.15 feet to the POINT OF BEGINNING.

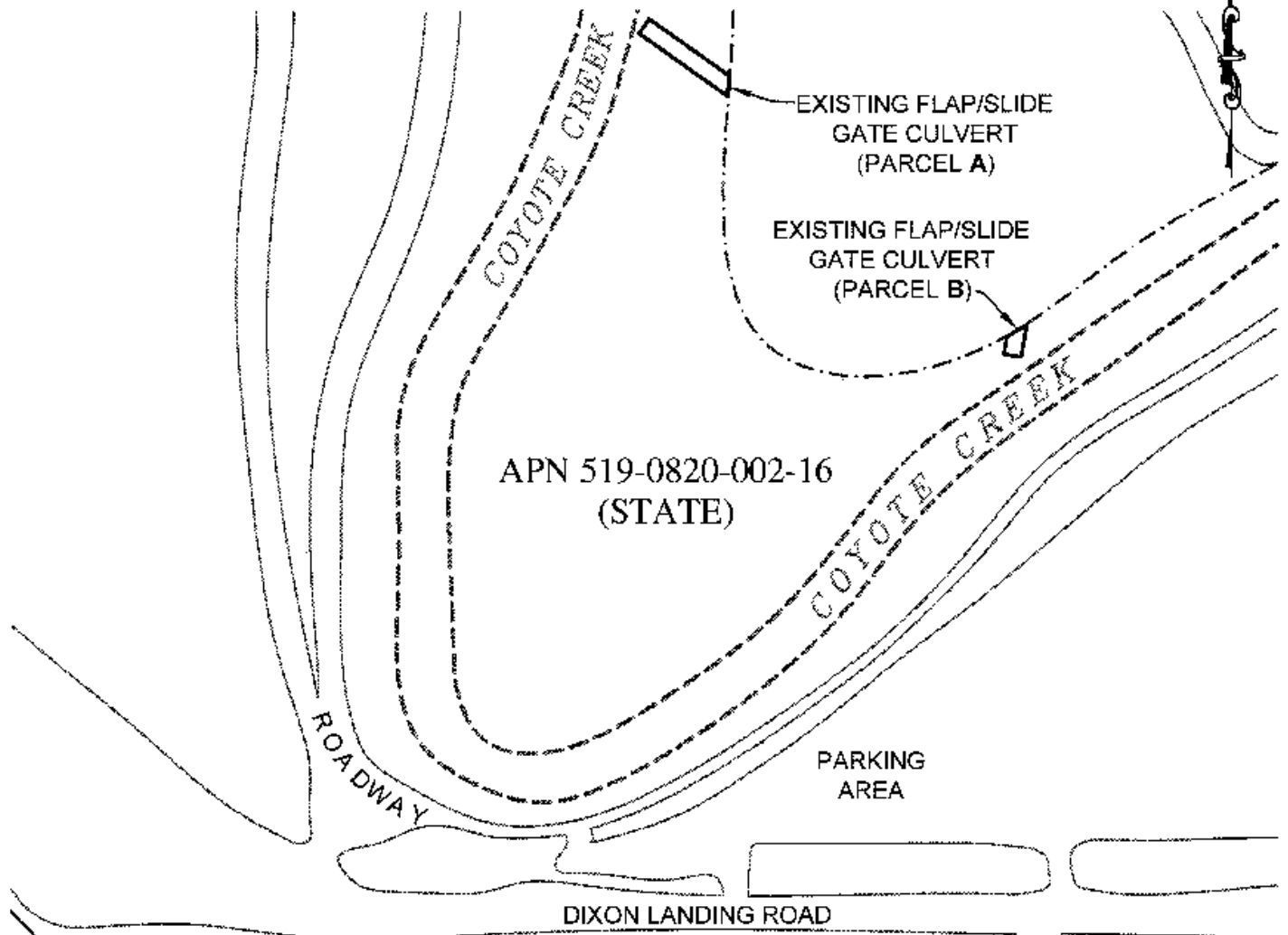
END OF DESCRIPTION

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



NO SCALE

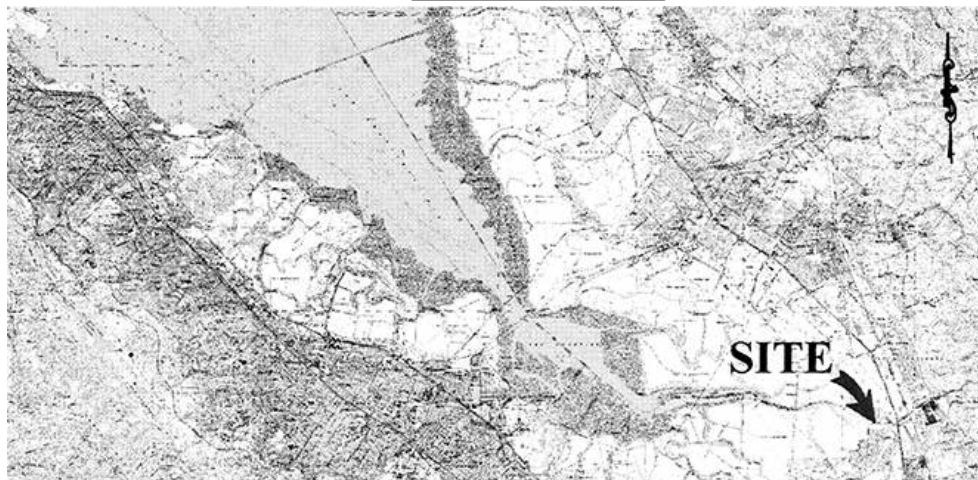
SITE



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

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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

PRC 8370.1
CROSSINGS AT 880
INDUSTRIAL, LLC
APN 519-0820-002-16
GENERAL LEASE -
RIGHT-OF-WAY USE
ALAMEDA COUNTY



RGB 09/24/15