

STAFF REPORT

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10/24/19

PRC 9488.1

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V. Caldwell

**AMENDMENT OF LEASE AND AN
AGREEMENT AND CONSENT TO ENCUMBRANCING OF LEASE**

LESSEE:

Andrew Majit and Ansley Majit

LESSEE/APPLICANT:

Ansley Majit

SECURED-PARTY LENDER:

PNC Bank

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Corte Madera Creek, Adjacent to 35 Boardwalk One, near Larkspur, Marin County.

AUTHORIZED USE:

Continued use and maintenance of a portion of an existing deck and dock.

LEASE TERM:

20 years, beginning August 23, 2018.

CONSIDERATION:

\$1,146 per year, with an annual Consumer Price Index adjustment.

PROPOSED AMENDMENT:

The amendment is conditioned upon the Commission's approval of the Agreement and Consent to Encumbrancing of Lease, effective the later of October 24, 2019, or the close of escrow, but no later than December 31, 2019.

The following sections of the lease are proposed to be amended:
Section 1, Basic Provisions:

- a. Remove Andrew Majit as Lessee.
- b. Extend the term of the lease to August 22, 2055

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All other terms and conditions of the lease shall remain in effect without amendment.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

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

Public Trust and State's Best Interests Analysis:

On August 23, 2018, the Commission authorized a General Lease – Recreational Use to Andrew Majit and Ansley Majit for the use and maintenance of a portion of an existing deck and dock ([Item C60, August 23, 2018](#)). That lease will expire on August 22, 2038. On May 2, 2019, the property was transferred to the Applicant, Ansley Majit.

The Applicant is applying for an amendment of lease and approval of an encumbrancing agreement. Staff recommends amending the lease to remove Andrew Majit as Lessee, extend the term of the lease, and approve the encumbrancing agreement.

The Applicant is in the process of obtaining a rate-and-term refinance in favor of PNC Bank, the Secured-Party Lender, with a loan amount not to exceed \$810,000. The purpose of the refinance is to lower the Applicant's existing interest rate. Under the terms of the loan, the Secured-Party Lender is requiring the Applicant to pledge their interest in Lease 9488.1 as additional security which will require a lease term of 35 years beyond the start date of the new loan.

The encumbrance of the lease would be implemented through the document, "Agreement and Consent to Encumbrancing of Lease," (Agreement) that includes protections for the State land associated with the lease. This encumbrance will allow the Secured-Party Lender to step into the role of Lessee for the lease premises under certain circumstances. These protections include the following requirements:

1. No subsequent encumbrancing of the lease shall be allowed without prior written consent of the Commission.
2. Any transfer of the lease to a third party shall be subject to prior written approval and consent of the Commission.
3. If the Secured Party-Lender forecloses on the lease, it shall be bound by all terms and conditions of the lease.

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4. The duration of the encumbrancing agreement is limited to the term of the lease.

In approving the Agreement, the Commission, through a delegation to the Executive Officer, retains the right to approve any transfer of the lease from the lending institution to a prospective lessee, should any foreclosure of the loan occur. The proposed Agreement provides that the Commission's Executive Officer make certain approvals as provided in the Agreement, including the approval of purchasers during a foreclosure sale.

The subject facilities do not significantly alter the land and the lease does not alienate the State's fee simple interest or permanently impair public rights. The proposed lease amendment is limited to a 37-year term, does not grant the lessee exclusive rights to the lease premises, and reserves an open water area 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. Based on the information above, staff believes that the subject facilities will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the amended lease.

The existing 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 that 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

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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 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 dock, residence and desk, dock, ramp, and pilings. 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 is a 20-year General Lease – Residential, Recreational and Protective Structure Use that began on August 23, 2018, and is proposed

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to be extended to August 22, 2055, 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. Pursuant to the 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 approving the amendment and encumbering agreement will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the amended lease; 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. If the Commission denies the application, the Applicant's existing lease would not be amended and the Agreement would not be approved. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease, including but not limited to extending the lease term.
2. This proposed 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. 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.

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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 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:

Find that the proposed lease amendment and approval of an encumbrancing agreement will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the amended lease; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize the amendment of Lease 9488.1, a General Lease – Recreational Use, of sovereign land as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof, effective the later of October 24, 2019, or the close of escrow, but no later than December 31, 2019, to remove Andrew Majit as Lessee and extend the term of the lease to August 22, 2055; all other terms and conditions of the lease will remain in effect without amendment. The amendment of the Lease shall only be executed in concert with execution of the “Agreement and Consent to Encumbrancing of Lease” described below.
2. Authorize the Executive Officer or her designee to execute the document titled “Agreement and Consent to Encumbrancing of Lease,” allowing Lessee’s right, title, and interest in Lease 9488.1 to be pledged as partial security for a loan in the principal amount not to exceed \$810,000 in favor of the Secured-Party Lender in substantially the same form as that on file in the Sacramento office of the Commission, effective upon signature by all parties, and to execute, acknowledge, accept, and record all related documents as may be reasonably necessary to complete the transaction.

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3. Authorize the Executive Officer or her designee to give approval on behalf of the Commission of prospective purchasers during a foreclosure sale and make any other approvals required of the Commission under the Agreement.

EXHIBIT A

LEASE 9488.1

LAND DESCRIPTION

A parcel of tide and submerged land situate in the bed of the Corte Madera Creek, in the City of Larkspur, County of Marin, State of California, and being more particularly described as follows:

COMMENCING at the southeast corner of Parcel One described in that certain Grant Deed recorded as Document No. 2018-0009750, Official Records of said county; thence along the northeasterly boundary of said parcel, North $51^{\circ} 35' 30''$ West 140.00 feet to the POINT OF BEGINNING; thence continuing along the northeasterly boundary and northwesterly prolongation thereof, North $51^{\circ} 35' 30''$ West 45.00 feet; thence leaving said boundary prolongation South $42^{\circ} 56' 26''$ West 60.18 feet to the northwesterly prolongation of the southwesterly line of said parcel; thence southeasterly along said prolongation and southwesterly line thereof, South $51^{\circ} 35' 30''$ East 45.00 feet; thence leaving said boundary line North $42^{\circ} 56' 26''$ East 60.18 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 09/06/2019 by the California State Lands Commission Boundary Unit.



NO SCALE

SITE

CORTE MADERA CREEK

LEASE
AREA

9' IMPACT
AREA

EXISTING
DOCK 20' x 8'

EXISTING
DECK

APPROX.
SHORELINE

PL

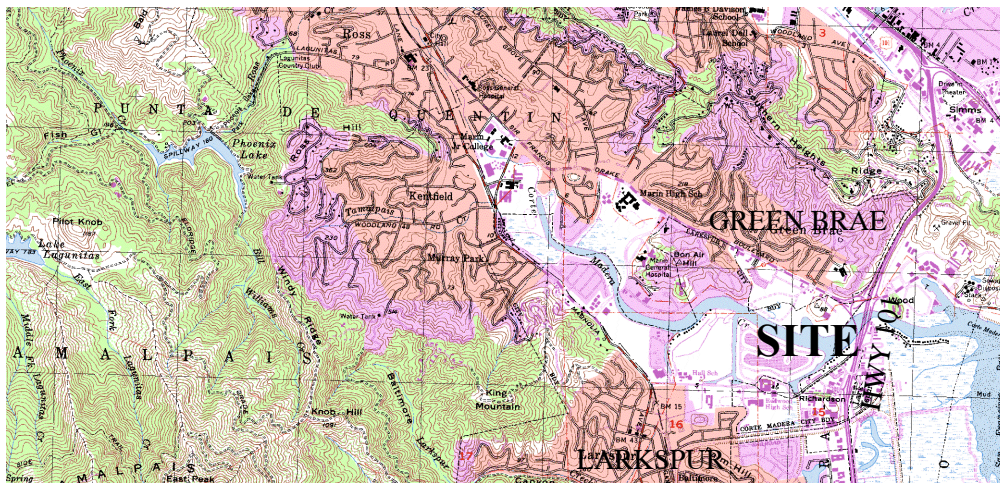
APN
022-091-15

PL

35 BOARDWALK ONE, LARKSPUR

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 9488.1

MAJIT

APN 022-091-15

GENERAL LEASE -
RECREATIONAL USE
MARIN COUNTY



TS 09/06/19