

Staff Report 17

General Lease - Recreational Use

APPLICANT:

27 Geissberger LLC, a California Limited Liability Company

PROPOSED ACTION:

AREA, LAND TYPE, AND LOCATION

Sovereign land in Corte Madera Creek, adjacent to 1341 South Eliseo Drive, near Greenbrae, Marin County.

AUTHORIZED USE:

Use and maintenance of an existing boat dock, access ramp, and two pilings.

TERM:

10 years, beginning June 1, 2020

CONSIDERATION:

\$434 per year, with an annual Consumer Price Index adjustment.

SPECIFIC 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, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On October 27, 2011, the Commission authorized a 10-year General Lease - Recreational Use to Louis J. Geissberger, Trustee of the Geissberger Family Trust of 1989 dated June 5, 1989 ([Item C17, October 27, 2011](#)). That lease expired on May 31, 2020. On September 26, 2019, interest in the upland parcel was deeded to the Applicant. The Applicant is now applying for a General Lease – Recreational Use for the use and maintenance of an existing boat dock, access ramp, and two pilings.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained, have existed at this location for many years, and are used to 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 land (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 10-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 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, in a tidally influenced site consisting of low elevation reclaimed floodplains. This area is vulnerable to flooding at current sea levels and 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 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 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.

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 run-up, 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 Baylands¹, 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. This is true particularly for the structures affixing the ramp to the upland parcel, as the top of the ramp and adjacent parking lot may experience increased inundation with rising water levels and more frequent winter storm flooding, creating a public safety hazard. Finally, the scant vegetation that currently provides minimal bank protection will not withstand higher and stronger currents and floods and could leave the bank vulnerable to increased erosion.

Regular maintenance, as required by the lease, will reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant

¹ 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>

acknowledges that the lease premises 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 the issuance of 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; 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. If the Commission denies the application, the Applicant, as prior lessee may be required to remove the existing boat dock, access ramp, and two pilings, and restore the premises to their original condition. 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.
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 and Strategy 1.3 to promote, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
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.

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 issuance of the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Recreational Use to the Applicant beginning June 1, 2020, for a term of 10 years, for the use and maintenance of an existing boat dock, access ramp, and two pilings; 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 \$434, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 4495

LAND DESCRIPTION

A strip of submerged land of varying widths in the bed of Corte Madera Canal, County of Marin, State of California. The initial portion of said strip is 4 feet in width, the centerline of which is more particularly described as follows:

COMMENCING at the most northerly angle point in the northwesterly line of Lot 121 of "Bon Air Subdivision No. 6", as recorded in Book 12 of Maps, Page 60 in the Office of the County Recorder of said County; thence South 50° 15' 40" East 45.00 feet along the boundary line of said Lot 121 to the TRUE POINT OF BEGINNING; thence South 50° 15' 40" East 158.60 feet to the southwesterly line of said lot 121, at which point the succeeding width becomes 3 feet; thence continuing South 39° 44' 20" West 26.00 feet, at which point the succeeding width becomes 52.00 feet; thence continuing South 39° 44' 20" West 17.00 feet to the end of the herein described centerline.

EXCEPTING THEREFROM any portion lying landward of Corte Madera Canal Line as set forth in the Marin County Superior Court Case No. 14851.

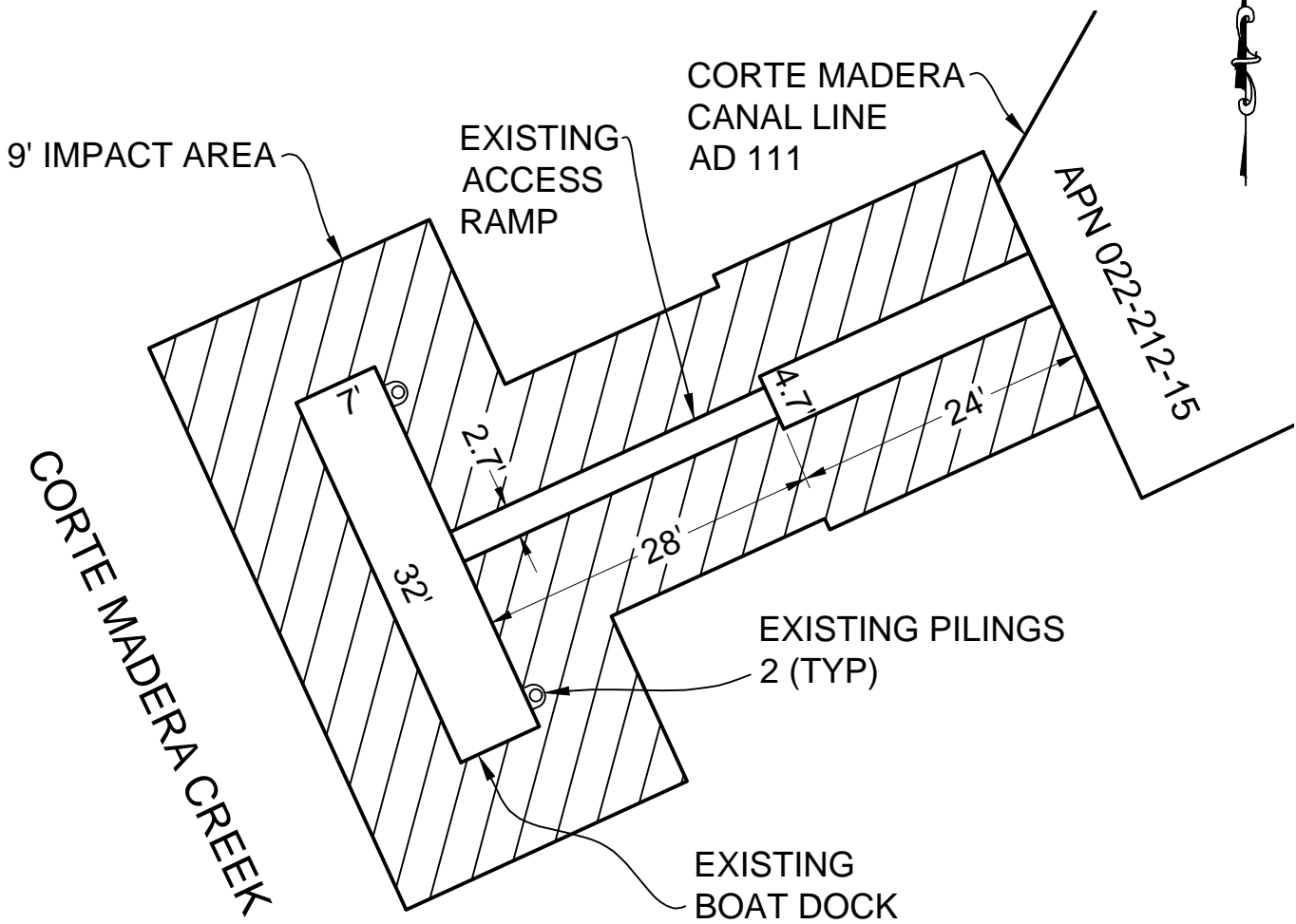
END OF DESCRIPTION

Prepared 07/08/2020 by the California State Lands Commission Boundary Unit.



NO SCALE

SITE



1341 SOUTH ELISEO DRIVE, GREENBRAE

NO SCALE

LOCATION

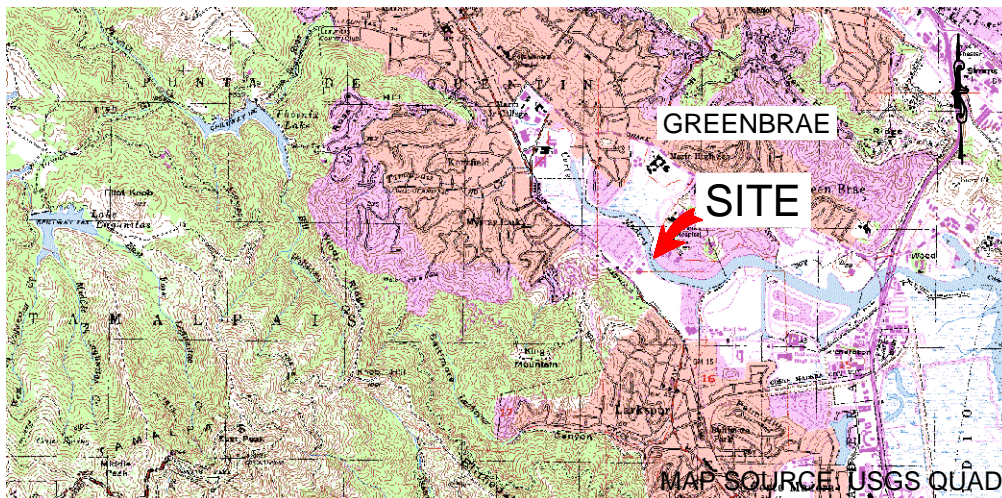


EXHIBIT B

LEASE 4495
 27 GEISSBERGER LLC
 APN 022-212-15
 GENERAL LEASE -
 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.

RGB 7/08/20