

Staff Report 18

General Lease – Protective Structure Use

APPLICANT:

805 South Eliseo Homeowners Association, a California Nonprofit Mutual Benefit Corporation

PROPOSED ACTION:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Corte Madera Creek, adjacent to 805 South Eliseo Drive, near Greenbrae, Marin County.

AUTHORIZED USE:

Use and maintenance of existing bank protection consisting of a geo-web erosion control system and wooden retaining wall (Phase I); and, if necessary, the construction, use, and maintenance of additional bank protection involving the installation of approximately 1,000 square feet of rock and the planting of native vegetation (Phase II).

TERM:

10 years, beginning August 11, 2019.

CONSIDERATION:

The public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests.

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

PUBLIC TRUST AND STATE'S BEST INTERESTS:

The Applicant is a homeowner's association consisting of five condominium units, located adjacent to Corte Madera Creek, at 805 South Eliseo Drive, near Greenbrae, in Marin County. In response to rising creek conditions, in November 2005 and January 2006, the Applicant installed an approximate 653-square-foot geo-web erosion control system and a 2-foot-high, 12-foot-long wooden retaining wall (Phase I). This Phase I work was constructed without any permits or approvals. The City of Larkspur subsequently approved a building permit for Phase I.

On August 11, 2009, the Commission authorized issuance of a General Lease – Protective Structure Use to 805 South Eliseo Homeowners Association, for retention of the previously installed bank protection (Phase I); and, if necessary, the construction of additional bank protection involving the installation of approximately 1,000 square feet of rock and the planting of native vegetation (Phase II) ([Item C33, August 11, 2009](#)). That lease expired on August 10, 2019. Phase II of the project has not yet been started. The Applicant is now applying for a General Lease – Protective Structure Use, for the use and maintenance of existing bank protection consisting of a geo-web erosion control system and wooden retaining wall (Phase I); and, if necessary, the construction, use, and maintenance of additional bank protection involving the installation of approximately 1,000 square feet of rock and the planting of native vegetation (Phase II). These additional measures will serve as a living shoreline system that will stabilize the problematic areas, while creating a self-sustaining tidal marsh habitat buffer to enhance the longevity of shoreline stabilization measures.

The bank protection has existed at this location for many years. It has helped to improve the integrity of Corte Madera Creek, which has also helped protect the Public Trust resources of Corte Madera Creek for recreational and navigational use by the public at no cost to the public. The proposed lease does not alienate the State's fee simple interest, nor permanently impair public rights. The proposed 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 and restore the lease premises to their original condition. The proposed lease requires the lessee to keep and maintain the protective structure in good order and repair, 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 stabilization and restoration project is located on Corte Madera Creek, in a tidally influenced site vulnerable to flooding at current sea levels that will be at a 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 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 10, State of California Sea-Level Rise Guidance: 2018 Update

Note: ¹ Projections are with respect to a baseline of the year 2000.

These impacts 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 potential for more frequent and stronger storm events may expose the lease area structures to higher flood risks. However, if necessary, the Applicant would construct a living shoreline system that will stabilize the problematic areas, while creating a self-sustaining tidal marsh habitat buffer to enhance the longevity of shoreline stabilization measures.

Regular maintenance and implementing best management practices, as required by the terms of the lease, will help reduce the likelihood of further shoreline degradation. Pursuant to the proposed lease, the Applicant 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; 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 may be required to remove the existing bank protection and restore the lease premises to their original condition. 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. **Existing Bank Protection:** 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).
4. **Proposed Additional Bank Protection:** 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 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

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:

Existing Bank Protection: 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).

Proposed Additional Bank Protection: 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 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

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 at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Protective Structure Use to the Applicant beginning August 11, 2019, for a term of 10 years, for the use and maintenance of existing Phase I bank protection consisting of a geo-web erosion control system and wooden retaining wall, and, if necessary, construction of Phase II bank protection involving the installation of approximately 1,000 square feet of small rock and the planting of native vegetation; as described in Exhibit A and as shown on Exhibit B (for

reference purposes only), attached and by this reference made a part hereof; consideration being the public use and benefit, with the State reserving the right at any time to set a monetary rent, as specified in the lease, if the Commission finds such action to be in the State's best interests; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 8838

LAND DESCRIPTION

A parcel of sovereign land in the bed of the Corte Madera Creek, County of Marin, State of California, lying adjacent to Lot 1 of "Resubdivision of Lot 314, Bon Air Sub. No. Eight" filed in Book 15 of Maps, at Page 38, Official Records of said County, and being more particularly described as follows:

All those lands underlying an existing geoweb, timber retaining wall and fill and proposed rock rip-rap with wetland planting (fill).

EXCEPTING THEREFROM any portion lying landward of the Corte Madera Canal as shown on that certain map dated 1870 and titled "Map No. 2 of Salt Marsh and Tide Lands situate in the County of Marin, State of California", on file at the Sacramento Office of the California State Lands Commission.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 03/18/2020 by the California State Lands Commission Boundary Unit.



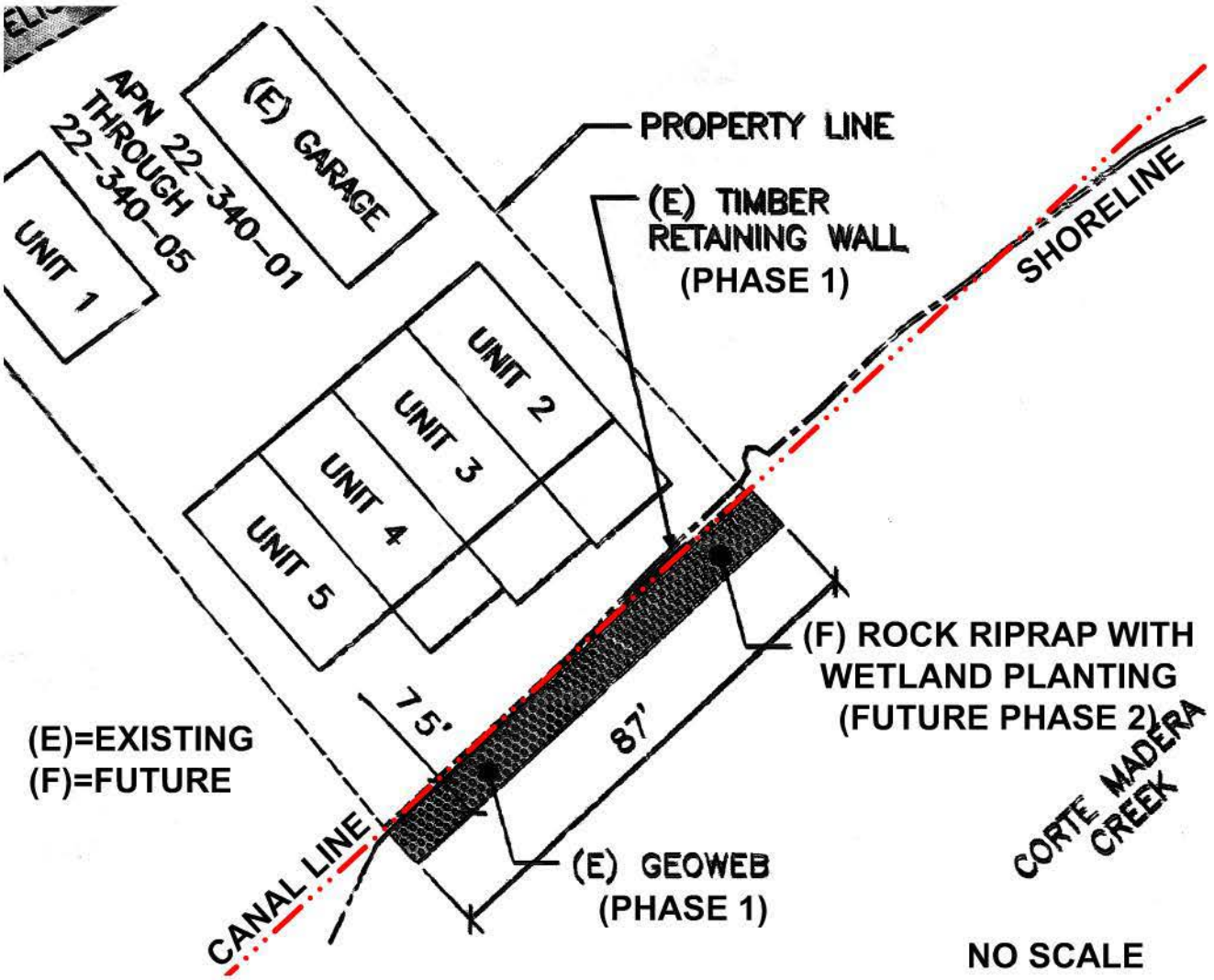
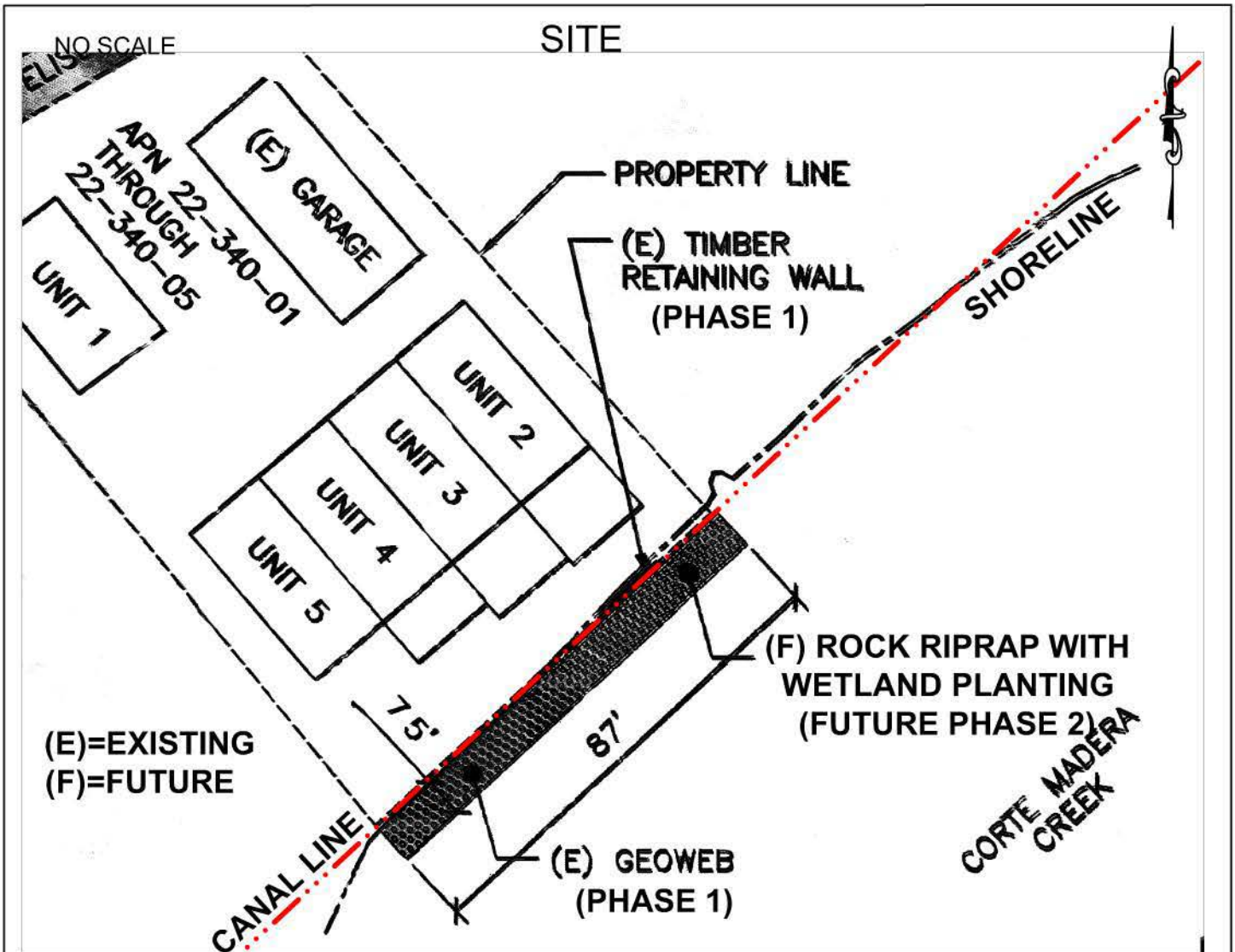


EXHIBIT A

LAND DESCRIPTION PLAT
 LEASE 8838, 805 S. ELISEO HOA
 MARIN COUNTY

CALIFORNIA STATE
 LANDS COMMISSION





805 SOUTH ELISEO DR., GREENBRAE

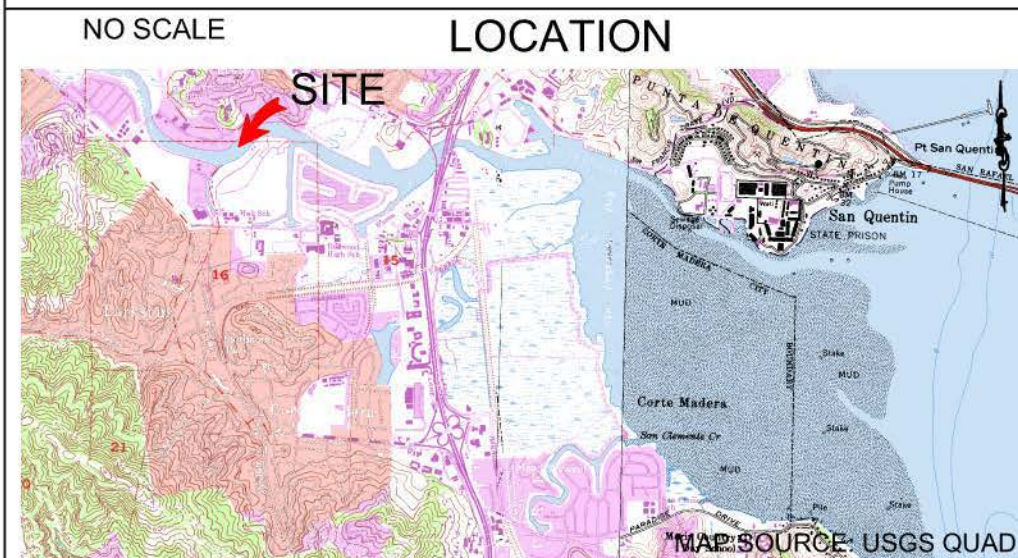


EXHIBIT B

PRC 8838
805 S. ELISEO HOA
APN 22-340-01,02,03,04,05
GENERAL LEASE -
PROTECTIVE STRUCTURE USE
MARIN COUNTY



MJF 7/15/2020

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.