

Staff Report 37

APPLICANT:

Marin County Flood Control and Water Conservation District

PROPOSED ACTION:

Issuance of a General Lease – Public Agency Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Corte Madera Creek from the Bon Air Bridge to San Pablo Bay, near Larkspur, Marin County.

AUTHORIZED USE:

Continued use and maintenance of a flood control channel.

TERM:

20 years, beginning December 17, 2020

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:

- Lessee agrees and acknowledges that the hazards associated with sea-level rise may require additional maintenance or protection strategies regarding the improvements on the lease premises.
- Lessee shall not prohibit public access and use of the lease premises for common law Public Trust purposes such as, but not limited to, boating, fishing, hunting, or swimming.

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 April 28, 1966, the Commission authorized a 49-year Right-of-Way Easement to the Applicant for the use and maintenance of a flood control channel within Corte Madera Creek from the Bon Air Bridge to San Pablo Bay as Phase I of an approved flood control project (Project) by the U.S. Army Corps of Engineers (Corps) ([Item C43, April 28, 1966](#)). That easement expired on May 22, 2015, and the Applicant submitted an application for a General Lease – Public Agency Use for the continued use and maintenance of a flood control channel within Corte Madera Creek.

On April 28, 1966, the Commission authorized a Dredging Permit to Applicant for removal of 380,000 cubic yards of material from Corte Madera Creek under authorization of the U.S. Congress. The authorized dredging was completed in 1966. Any future dredging will require authorization of a dredging lease by the Commission ([Item C44, April 28, 1966](#)).

On April 25, 1968, the Commission authorized a 49-year Right-of-Way Easement to construct a flood control channel within Corte Madera Creek from the Bon Air Bridge upstream to the College Avenue Bridge as Phase II of the approved Project ([Item C04, April 25, 1968](#)). The improvements include a portion of a concrete-lined channel that extends from an upstream fish ladder above the College Avenue Bridge downstream to the earthen channel bed of Corte Madera Creek and may include storm drain outfall structures.

A levee system was originally constructed along Corte Madera Creek in the early 1970's as part of the Project that extends approximately 4.3 miles from San Pablo Bay to the Sir Francis Drake Boulevard Bridge. The Commission did not receive as-built plans confirming the final location of the levee. Under the proposed lease, the Applicant will be required to provide as-builts and a boundary survey. If any activities are to be conducted within the lease area authorization of an amendment would be required from the Commission.

Corte Madera Creek is actively used by the public for fishing, boating and public access. Maintenance of the flood control channel has been ongoing for many years with no impacts to the Public Trust uses of the waterway. The flood control

channel provides flood protection to the communities in the area and is necessary to protect the overall health and safety.

The proposed lease includes certain provisions protecting the public use of the proposed lease area including a limited lease term of 20 years and a non-exclusive use provision, does not alienate the State's fee simple interest or permanently impair public rights, does not grant the lessee exclusive rights to the lease premises, and reserves an easement to the public for Public Trust-consistent uses.

The proposed lease requires the lessee to indemnify the State for any liability incurred as a result of the lessee's activities thereon. The flood control channel will allow the Applicant the ability to manage floods to protect the public; 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.

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 project is located on the 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 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.

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 Corte Madera Creek Flood Risk Management Project's primary goal is to provide increased 25-year flood protection to residents and businesses within the Town of Ross and Kentfield and improve fish passage and habitat, which would also reduce the conditions noted above. Regular maintenance within the lease area, as required by the terms of the lease, will also help reduce the likelihood of degradation due to 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.
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. 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 proposed lease will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the remaining term of the lease; and is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Public Agency Use to the Applicant beginning December 17, 2020, for a term of 20 years, for the continued use and maintenance of a flood control channel, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration: the public 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.

EXHIBIT A

LEASE 3485

LAND DESCRIPTION

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

COMMENCING at Monument 10 which bears South $76^{\circ}55'30''$ East 1,583.48 feet from Monument 3, said monuments shown on that certain map titled "Map of State Sovereign Lands in Corte Madera Creek" on file at the Sacramento office of the California State Lands Commission, (CB 1290 thru CB 1298, inclusive); thence North $87^{\circ}47'28''$ East 1,556.54 feet to the POINT OF BEGINNING; thence from said point of beginning, North $68^{\circ}38'27''$ West 273.04 feet; thence along the arc of a 610.00 foot radius curve to the left, having a central angle of $23^{\circ}59'59''$, and an arc length of 255.51 feet; thence South $87^{\circ}21'34''$ West 1,545.34 feet; thence along the arc of a 1150.00 foot radius curve to the right, having a central angle of $30^{\circ}26'07''$, and an arc length of 610.88 feet; thence North $62^{\circ}12'19''$ West 324 feet more or less to point on the Ordinary High Water Mark on the right bank of the Corte Madera Creek; thence along the meanders of said Ordinary High Water Mark, in a generally northwesterly direction, 700 feet more or less to point on the Marin County Flood Control Right-Of-Way Line as shown on said map; thence leaving said Ordinary High Water Mark and along said Right-Of-Way Line, along the arc of a non-tangent 1010.00 foot radius curve to the left, from which the center of said curve bears South $2^{\circ}57'53''$ East, having a central angle of $0^{\circ}18'56''$, and an arc length of 5.56 feet; thence along the arc of a 393.12 foot radius compound curve to the left, having a central angle of $50^{\circ}14'01''$, and an arc length of 344.66 feet; thence South $36^{\circ}29'10''$ West 231.97 feet; thence along the arc of a 814.08 foot radius curve to the right, having a central angle of $38^{\circ}11'51''$, and an arc length of 542.72 feet; thence along the arc of a 1790.00 foot radius compound curve to the right, having a central angle of $3^{\circ}20'43''$, and an arc length of 104.51 feet; thence leaving said Right-Of-Way Line, North $3^{\circ}45'00''$ East 72.58 feet to the Channel Realignment Line as shown on said map; thence along said Channel Realignment Line, along the arc of a non-tangent 1500.00 foot radius curve to the right, from which the center of said curve bears North $15^{\circ}37'55''$ West, having a central angle of $32^{\circ}11'44''$, and an arc length of 842.88 feet; thence along the arc of a 5000.00 foot radius compound curve to the right, having a central angle of $22^{\circ}20'31''$, and an arc length of 1949.70 feet; thence along the arc of a non-tangent 790.00 foot radius curve to the left, from which the center of said curve bears South $38^{\circ}54'13''$ West, having a central angle of $8^{\circ}02'56''$, and an arc length of 110.98 feet; thence leaving said Channel Realignment Line, North $1^{\circ}12'10''$ East 29.17 feet to a point on the 1961 Mean High Tide Line as shown on said map; thence along said 1961 Mean High Tide Line the following twelve (12) courses:

1. North 32°28'00" West 25.21 feet,
2. North 76°45'34" West 69.86 feet,
3. North 83°05'20" West 33.24 feet,
4. North 56°02'27" West 59.08 feet,
5. North 64°41'55" West 60.84 feet,
6. South 79°55'51" West 108.67 feet,
7. South 85°19'59" West 98.33 feet,
8. South 67°08'43" West 131.31 feet,
9. South 58°04'10" West 81.30 feet,
10. South 43°52'36" West 180.35 feet,
11. South 38°59'28" West 81.06 feet, and
12. South 41°42'39" West 27.93 feet to a point on said Right-Of-Way Line;

thence leaving said 1961 Mean High Tide Line, and along said Right-Of-Way Line, South 47°01'34" West 278.50 feet; thence along the arc of a 992.25 foot radius curve to the right, having a central angle of 53°33'08", and an arc length of 927.42 feet; thence North 79°25'18" West 118.34 feet to a point on the 1941 Mean High Tide Line as shown on said map; thence leaving said Right-Of-Way Line, and along said 1941 Mean High Tide Line the following twenty-one (21) courses:

1. North 71°14'16" West 75.63 feet,
2. North 57°42'14" West 125.40 feet,
3. North 83°12'40" West 42.30 feet,
4. North 48°00'46" West 26.91 feet,
5. North 86°43'46" West 35.06 feet,
6. North 73°56'24" West 68.68 feet,
7. North 84°11'04" West 108.56 feet,
8. North 61°15'37" West 35.36 feet,
9. North 70°33'36" West 54.08 feet,
10. North 66°22'14" West 69.86 feet,
11. North 78°59'47" West 36.67 feet,
12. North 70°24'58" West 110.39 feet,
13. North 66°02'15" West 68.94 feet,
14. North 57°12'02" West 107.07 feet,
15. North 50°30'01" West 95.90 feet,
16. North 48°00'46" West 80.72 feet,
17. North 44°36'37" West 103.95 feet,
18. North 20°59'34" West 92.11 feet,
19. North 01°06'06" West 52.01 feet,
20. North 26°07'52" West 59.03 feet, and
21. North 14°37'11" West 85.26 feet;

thence leaving said 1941 Mean High Tide Line, South 1°23'00" West 164.45 feet to a point on the South Corte Madera Canal Line as shown on said map; thence along said South Corte Madera Canal Line, North 49°04'40" West 143.47 feet; thence North 10°50'00" West 166.77 feet more or less to Bon Air Bridge; thence leaving said South Corte Madera Canal Line, North 53°04'07" East 313.25 feet to a point on the North Corte Madera Canal Line as shown on said map; thence along said North Corte Madera Canal Line, South 11°14'40" East 220.00 feet; thence South 50°15'40" East 178.78 feet; thence leaving said North Corte Madera Canal Line, along the arc of a non-tangent 610.00 foot radius curve to the left, from which the center of said curve bears North 58°03'28" East, having a central angle of 36°38'16", and an arc length of 390.06 feet to a point on said North Corte Madera Canal Line; thence along said North Corte Madera Canal Line, South 50°15'40" East 20.50 feet; thence South 67°45'10" East 594.79 feet; thence South 84°59'20" East 482.49 feet; thence North 47°04'20" East 861.34 feet; thence leaving said North Corte Madera Canal Line, along the arc of a non-tangent 649.45 foot radius curve to the right, from which the center of said curve bears South 27°10'44" East, having a central angle of 24°09'18", and an arc length of 273.80 feet to a point on said North Corte Madera Canal Line; thence along said North Corte Madera Canal Line, North 86°58'34" East 125.51 feet; thence South 83°59'22" East 403.09 feet to a point on said Channel Realignment Line; thence leaving said North Corte Madera Canal Line, along said Channel Realignment Line, and along the arc of a non-tangent 950.00 foot radius curve to the right, from which the center of said curve bears South 17°48'24" West, having a central angle of 21°05'31", and an arc length of 349.72 feet; thence along the arc of a non-tangent 4840.00 foot radius curve to the left, from which the center of said curve bears North 38°54'13" East, having a central angle of 22°20'31", and an arc length of 1887.31 feet; thence along the arc of a 1340.00 foot radius compound curve to the left, having a central angle of 34°37'15", and an arc length of 809.69 feet to a point on said North Corte Madera Canal Line; thence leaving said Channel Realignment Line, along said North Corte Madera Canal Line, North 39°09'30" East 877.72 feet; thence leaving said North Corte Madera Canal Line, along the arc of a non-tangent 773.12 foot radius curve to the right, from which the center of said curve bears South 33°21'15" East, having a central angle of 30°04'26", and an arc length of 405.80 feet; thence along the arc of a 1390.00 foot radius compound curve to the right, having a central angle of 5°35'44", and an arc length of 135.75 feet to a point on said North Corte Madera Canal Line; thence along said North Corte Madera Canal Line, South 59°42'50" East 596.62 feet; thence South 61°06'40" East 177.85 feet; thence North 76°35'04" East 293.99 feet; thence leaving said North Corte Madera Canal Line, South 62°12'19" East 45.78 feet; thence along the arc of a 770.00 foot radius curve to the left, having a central angle of 30°26'07", and an arc length of 409.02 feet; thence North 87°21'34" East 1,545.34 feet; thence along the arc of a 990.00 foot radius curve to the right, having a central angle of

23°59'59", and an arc length of 414.69 feet; thence South 68°38'27" East 272.38 feet; thence South 21°21'33" West 380.05 feet to the point of beginning.

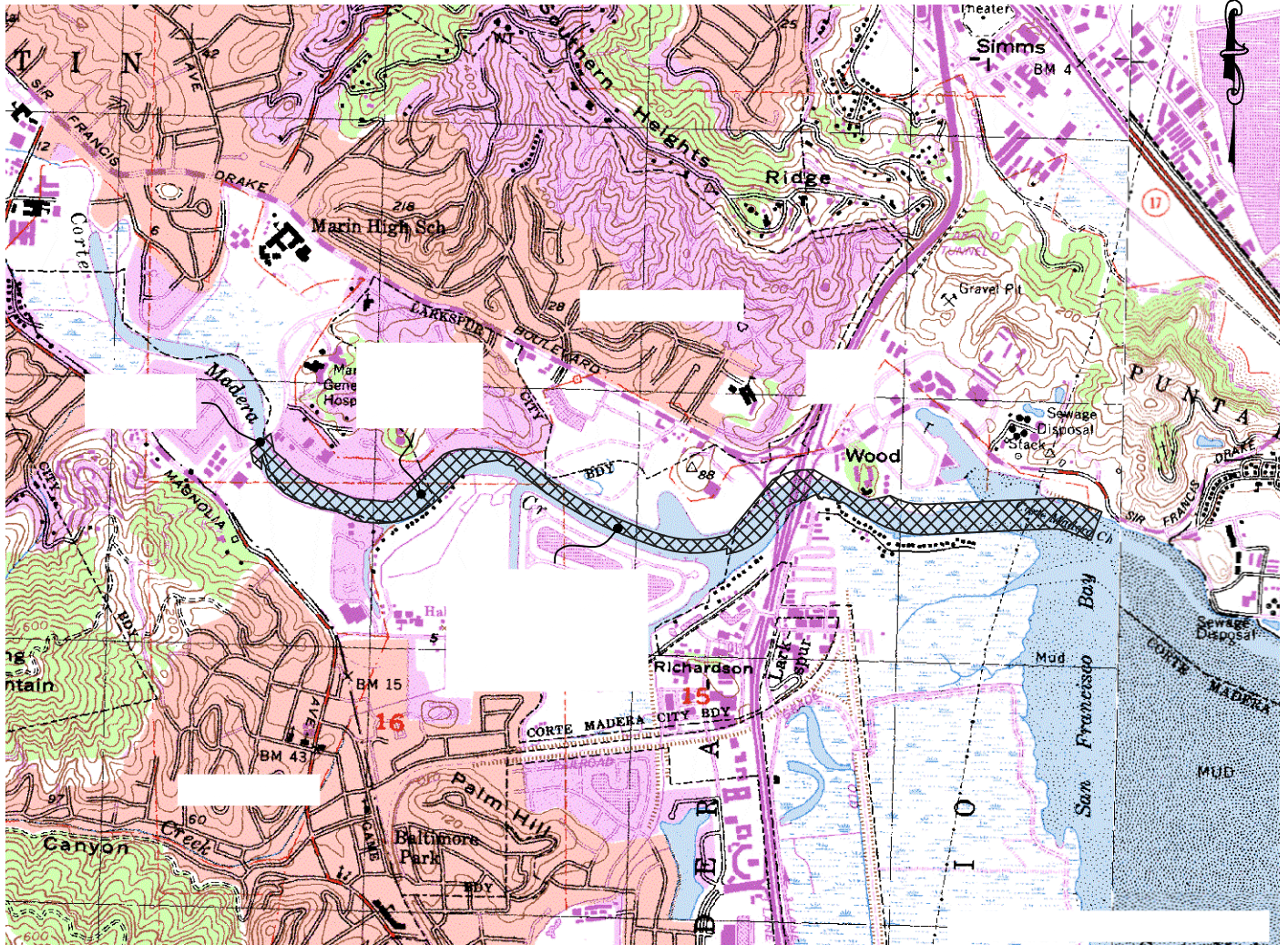
END OF DESCRIPTION

Prepared 10/28/2020 by the California State Lands Commission Boundary Unit.



NO SCALE

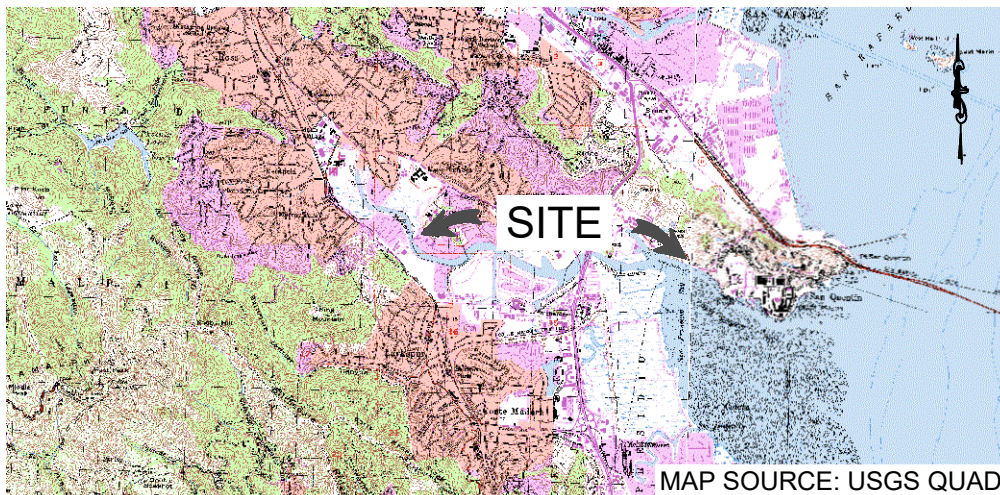
SITE



CORTE MADERA CREEK, NEAR 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 3485
MARIN COUNTY FLOOD
CONTROL AND WATER
CONSERVATION DISTRICT
GENERAL LEASE -
PUBLIC AGENCY USE
MARIN COUNTY



JWP 10/28/2020