

# Staff Report 26

## **LESSEE:**

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Andrew Majit and Ansley Majit

## **APPLICANT:**

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Adam Willner, Trustee and Marta Benson, Trustee of The Willner-Benson Family Trust

## **PROPOSED ACTION:**

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Termination of General Lease – Recreational Use; Rescission of Authorization to Amend Lease and Agree and Consent to Encumber the Lease; and Issuance of a General Lease – Recreational Use

## **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 dock and a portion of an existing deck.

## **TERM:**

20 years, beginning October 28, 2020.

## **CONSIDERATION:**

\$1,147 per year, with an annual Consumer Price Index adjustment.

## **SPECIFIC LEASE PROVISIONS:**

- Liability insurance in an amount of 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:**

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### **AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, 6503.5, and 6505.5; California Code of Regulations, title 2, sections 2000 and 2003.

### **PUBLIC TRUST AND STATE'S BEST INTERESTS:**

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](#)). The lease will expire on August 22, 2038. On October 24, 2019, the Commission authorized an amendment of lease to remove Andrew Majit as Lessee, extend the term of the lease, and approve the encumbrance agreement ([Item C35, October 24, 2019](#)). That amendment would have extended the lease to August 22, 2055.

On October 28, 2020, the upland property and lease improvements were transferred to Marta Benson and Adam Willner, Trustees of The Willner-Benson Family Trust. The Applicant is now applying for a General Lease – Recreational Use for the continued use and maintenance of a dock and a portion of an existing deck.

Staff recommends termination of the existing lease because although the Lessee notified the Commission of the sale or transfer of the upland property an application was not submitted. Staff also recommends rescission of the authorization to amend the lease and agree and consent to encumber the lease because neither the amendment nor the encumbrance agreement were executed or recorded. The former approved Secured Party Lender, PNC Bank, no longer desires or needs to be a party to the lease; and staff has no forwarding address for the Lessee to complete the amendment. The Applicant has asserted ownership of the lease improvements by purchasing the upland property and applying for a new lease. Staff recommends issuance of a new lease beginning October 28, 2020.

The dock is a water-dependent facility used for the docking and mooring of boats for recreational navigation of Corte Madera Creek and other navigable waterways in the greater region. This particular facility promotes and accommodates recognized Public Trust needs and values consistent with Public Trust Doctrine.

The deck has existed in the Corte Madera Creek for many years and has a relatively small footprint. Although decks are not generally a trust-consistent use, the deck does not substantially interfere with the needs and values of the Public Trust Doctrine at this location and for the foreseeable term of the proposed lease.

The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 20-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 proposed lease, the lessee may be required to remove all improvements from State land and restore the lease premises to their original condition.

The proposed lease requires the lessee to ensure 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 project is located on Corte Madera Creek, in a tidally influenced site vulnerable to flooding at current sea levels and will be at high risk of flood exposure during the term of the lease based on the projected scenarios of sea-level rise in this area.

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**

<b>Year</b>	<b>Projection (feet)</b>
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.

Sea-level rise will raise the total water levels of Corte Madera Creek and likely cause frequent inundation of the lease area if no measures are taken to control the flooding and elevate the shoreline. 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 storms and rain events, causing

more flooding in low-lying areas. In rivers, creeks, and tidally influenced waterways, higher water levels from sea-level rise and flooding may cause damage such as bank erosion to the lease area. Storm debris and water-borne contaminants may constitute additional hazards to the lease area, deck, and dock. Higher rates of erosion and sedimentation from flooding, storm flow, and runoff will likely increase scour and further decrease bank stability.

As the total water levels of Corte Madera Creek increase with sea-level rise, the lease area, deck, and dock will be at higher risk to damage, degradation, and loss from the combined impacts of sea-level rise, storms, and rain events. The lessee is responsible for protecting the lands, resources, and values of the Public Trust within the lease area and should be aware that these changes are very likely to occur and impact not only the current footprint of the lease area, but the adjacent upland area as well over the course of the lease.

The lease is a 20-year General Lease –Recreational Use that will begin on October 28, 2020, and will be subject to the climate change effects of the projected sea-level rise scenario provided above. Regular maintenance and implementation of best management practices, as required by the terms of the lease, will help reduce the likelihood of severe structural degradation and dislodgement.

### **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:**

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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. The lessee has no right to a new lease or to renewal of any previous lease. Denial of the application may result in a determination that the proposed activity on or use of state land is unauthorized and may result in legal action.
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. Termination of the lease and rescission of prior authorization 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).

4. 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.

## **EXHIBITS:**

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- A. Land Description
- B. Site and Location Map

## **RECOMMENDED ACTION:**

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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:**

1. Find that the existing and, for a limited period, continuing use and maintenance of the dock will not substantially interfere with the Public Trust needs and values at this location and are consistent with the common law Public Trust Doctrine.
2. Find that the existing, and for a limited period, continuing use and maintenance of the deck is not generally consistent with the Public Trust Doctrine, but the current use does not substantially interfere with the trust.

3. Find that issuing the proposed lease is in the best interests of the State.

**AUTHORIZATION:**

1. Terminate General Lease – Recreational Use, effective October 27, 2020, of Lease No. PRC 9488 issued to Andrew Majit and Ansley Majit.
2. Rescind the authorization to amend Lease No. PRC 9488 to remove Andrew Majit as Lessee and extend the term of the lease, effective October 27, 2020.
3. Rescind the authorization to agree and consent to encumber Lease No. PRC 9488 in favor of PNC Bank, a Secured-Party Lender, effective October 27, 2020.
4. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning October 28, 2020, for a term of 20 years, for the continued use and maintenance of a dock and a portion of an existing deck, as described in Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof; annual rent in the amount of \$1,147, with an annual Consumer Price Index adjustment; and liability insurance in the amount of no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**LEASE 9488**

**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° 35' 30" West 140.00 feet to the POINT OF BEGINNING; thence continuing along the northeasterly boundary and northwesterly prolongation thereof, North 51° 35' 30" West 45.00 feet; thence leaving said boundary prolongation South 42° 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° 35' 30" East 45.00 feet; thence leaving said boundary line North 42° 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 11/09/2020 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

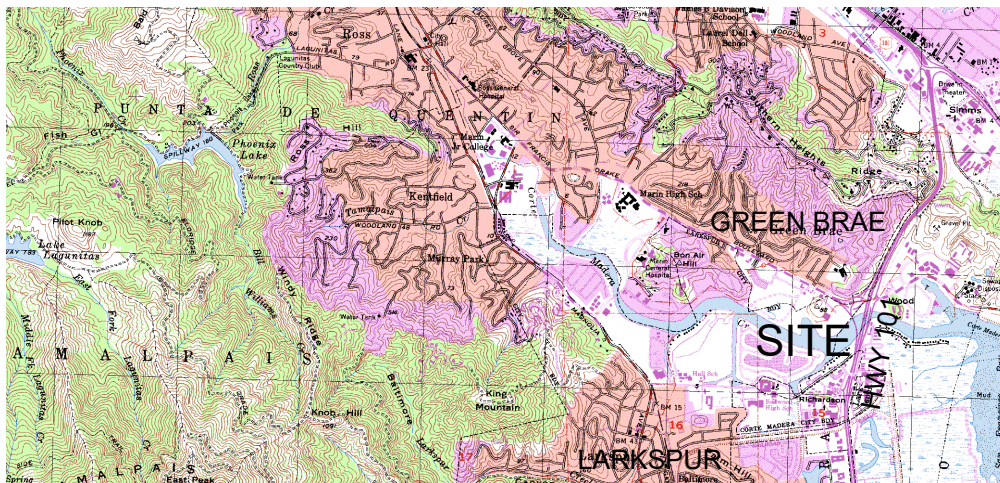
APPROX.  
SHORELINE

APN  
022-091-15

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  
WILLNER-BENSON FAMILY  
TRUST  
APN 022-091-15  
GENERAL LEASE -  
RECREATIONAL USE  
MARIN COUNTY



TS 11/09/2020