

# Staff Report 11

## **LESSEE:**

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Jeremiah G. Murphy and Melody Murphy

## **APPLICANT:**

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Spencer Jackson and Kristin Morrison

## **PROPOSED ACTION:**

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Consider Waiver of Rent, Penalty, and Interest; and Termination and Issuance of a General Lease – Recreational Use

## **AREA, LAND TYPE, AND LOCATION:**

Sovereign land in the Corte Madera Creek, adjacent to 113 Greenbrae Boardwalk, Greenbrae, Marin County.

## **AUTHORIZED USE:**

Use and maintenance of an existing deck, boat dock, and appurtenant facilities.

## **TERM:**

20 years, beginning October 21, 2021.

## **CONSIDERATION:**

\$472 per year, with an annual Consumer Price Index adjustment; and \$1,073 to compensate for the unauthorized occupation of state sovereign land for the period beginning July 12, 2019 to October 20, 2021.

## **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:**

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### **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 December 18, 2015, the Commission authorized a 20-year General Lease – Recreational Use to Jeremiah G. Murphy and Melody Murphy, for the continued, use, and maintenance of an existing deck, boat dock, pilings, and ramp with railing. ([Item C60, December 18, 2015](#)). The lease will expire on December 17, 2035. On July 12, 2019, the ownership of the upland property was sold to the Applicant. The Applicant is applying for a General Lease – Recreational Use for the use and maintenance of an existing deck, boat dock, and appurtenant facilities in Corte Madera Creek.

Staff recommends termination of the existing lease because the Lessee sold the upland property and lease improvements without notifying staff, failed to execute a lease quitclaim, and defaulted on lease payments. The Lessee paid annual rent through December 18, 2018; however, the Lessee did not pay invoice number 48655 covering annual rent for December 18, 2019, and invoice number 51226 covering annual rent for December 18, 2020. Staff recommends the Commission void invoice number 48655, in the amount of \$560.29 and invoice number 51226, in the amount of \$579.02. Staff believes it is not in the State's best interests to pursue the unpaid rent from the Lessee since the Applicant was the upland owner as of July 12, 2019, and has applied for a lease to assume responsibility for the improvements.

The Applicant agreed to pay compensation for the unauthorized occupation of state land from July 12, 2019 through October 20, 2021, the day before the October Commission meeting when the new lease begins. Staff further recommends the Commission accept compensation from the Applicant in the amount of \$1,073 for the unauthorized occupation of state land prior to the commencement of the proposed lease.

The Applicant owns the upland adjoining the lease premises. The existing boat dock and appurtenant facilities are privately owned and maintained, used for the

docking, and mooring of boats, and 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 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 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 in the underlying land, nor will it permanently impair public rights. Approval of this lease is limited to a term of 20-years and will not result in a change in the use of, or impacts to, Public Trust resources at this location, at this time, and for the remaining term of the lease. Upon termination of the 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 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 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 lease area is located on the Corte Madera Creek, in a tidally influenced site vulnerable to flooding at current sea levels that will be at high risk of flood exposure 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 and structures. 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 existing residence with walkway (not under lease) will not be able to rise with increased water level. The existing deck, boat dock, and ramp, will be able to rise and fall with storms and droughts, increasing their resiliency to some climate change impacts, but will remain at higher risk of 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 proposed lease is a 20-year General Lease –Recreational Use, that will begin on October 21, 2021 and will be subject to the climate change effects of the projected sea-level rise scenario provided above. Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation and dislodgement. Further climate change impact analyses on the leased facilities will be assessed at the time the lease is up for renewal in 2041 and would be based on projected sea-level rise scenarios at that time.

## **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. If the Commission denies the application, the Applicant may be required to remove the deck, boat dock, and appurtenant facilities 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.
2. This action is consistent with the "Meeting Evolving Public Trust Needs" and "Leading Climate Activism" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
3. Termination of the lease 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:

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

1. 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.
2. Find that the existing and, for a limited period, continuing use and maintenance of the dock and appurtenant facilities will not substantially interfere with the Public Trust needs and values at this location and are consistent with the common law Public Trust Doctrine.
3. Find that the termination of the lease and issuance of 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:**

1. Waive annual rent, penalty, and interest due for the period of July 12, 2019 through October 20, 2021, and void annual rent invoice numbers 48655 and 51226 issued to Jeremiah G. Murphy and Melody Murphy.
2. Terminate, effective October 21, 2021, Lease Number PRC 8211, a General Lease – Recreational Use, issued to Jeremiah G. Murphy and Melody Murphy.
3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning October 21, 2021, for a term of 20 years, for the use and maintenance of a deck, boat dock 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 \$472, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.
4. Authorize acceptance of compensation from the Applicant in the amount of \$1,073 for unauthorized occupation of State land for the period beginning July 12, 2019 through October 20, 2021.

## EXHIBIT A

LEASE 8211

### LAND DESCRIPTION

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

COMMENCING at the southeast corner of Parcel One as described in that certain Grant Deed recorded as Document No. 87-57730, Official Records of said county; thence along the easterly boundary of said parcel, North 5° 37' 30" West 142.03 feet to the POINT OF BEGINNING; thence along said easterly boundary and northerly prolongation thereof, North 5° 37' 30" West 87.25 feet; thence leaving said boundary prolongation South 85° 35' 08" West 38.16 feet to a point on the northerly prolongation of the westerly boundary of said parcel of said deed; thence along said prolongation and westerly boundary, South 4° 25' 00" East 87.23 feet; thence leaving said westerly boundary, North 85° 35' 08" East 40.00 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 02/23/2021 by the California State Lands Commission Boundary Unit.



NO SCALE

## SITE

CORTE MADERA CREEK

LEASE  
AREA

9' IMPACT  
AREA

EXISTING  
DOCK  
8' x 29'

EXISTING  
PILINGS (2)

EXISTING  
RAMP  
WITH RAILS  
3' x 14'

EXISTING  
DECK  
12' x 18'

APPROX.  
SHORELINE

EXISTING  
WALKWAY  
5' WIDE

APN  
023-021-18

113 GREENBRAE BOARDWALK, GREENBRAE

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 8211  
JACKSON / MORRISON  
APN 023-021-18  
GENERAL LEASE -  
RECREATIONAL USE  
MARIN COUNTY



TS 02/23/2021