

Staff Report 27

APPLICANT:

Calido Bay Homeowners Association

PROPOSED ACTION:

Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Corte Madera Creek, adjacent to 505 Larkspur Plaza Drive, Larkspur, Marin County.

AUTHORIZED USE:

Use and maintenance of an existing boat dock, gangway, and wire cables.

TERM:

10 years; beginning August 31, 2022.

CONSIDERATION:

\$212 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- 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.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

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

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On May 24, 2012, the Commission authorized issuance of a General Lease – Recreational Use to Calido Bay Homeowners Association, for an existing boat dock, gangway, and wire cables ([Item C27, May 24, 2012](#)). That lease will expire on August 30, 2022. The Applicant is now applying for a General Lease – Recreational Use, for the use and maintenance of an existing boat dock, gangway, and wire cables in Corte Madera Creek. The subject facilities have existed at this location for many years, as shown in the lease application and Commission records.

The subject facilities are privately owned and maintained by the Applicant/Lessee. The facilities are used for 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 facilities are located directly waterward of the upland property and occupy a relatively small area of the creek. The proposed lease will not interfere with navigation and does not substantially interfere with any Public Trust needs at this time or the foreseeable future. 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 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 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 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

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.

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 dock, and gangway may not be able to rise and fall with changing water levels. The existing dock is secured with wire cables instead of pilings which may limit its ability to adjust to changing water levels. Therefore, these structures 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.

Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland are in an area that may be subject to the 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 may be required to remove the boat dock, gangway, and wire cables and restore the premises to their original condition. Upon expiration or prior termination of a lease, the lessee also has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Meeting Evolving Public Trust Needs" and "Leading Climate Activism" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
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 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; is consistent with the 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 August 31, 2022, for a term of 10 years, for the use and maintenance of an existing boat dock, gangway, and wire cables, 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 \$212, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 5411

LAND DESCRIPTION

A parcel of tide and submerged land situate in the bed of the Corte Madera Creek, lying adjacent to Swamp and Overflowed Land Survey 44, patented September 6, 1872, Marin County, State of California and more particularly described as follows:

All those lands underlying the existing dock, gangway, pier and wire cables, lying adjacent to the right bank of said creek and being adjacent to Lot 1, as shown on that Map of "CALIDO BAY" a CONDOMINIUM, recorded October 3, 1973 in Volume 15 of Maps at Page 86 in Official Records of said County.

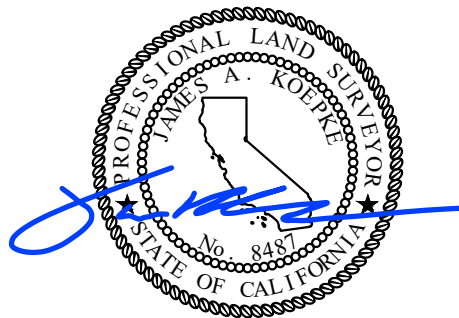
TOGETHER WITH any applicable Impact Area(s).

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the right bank of said creek as per description in Superior Court Case No. 14851, and shown on "Map of STATE SOVEREIGN LANDS in Corte Madera Creek vicinity of Green Brae" on file at the Sacramento office of the State Lands Commission, (CB-1294).

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

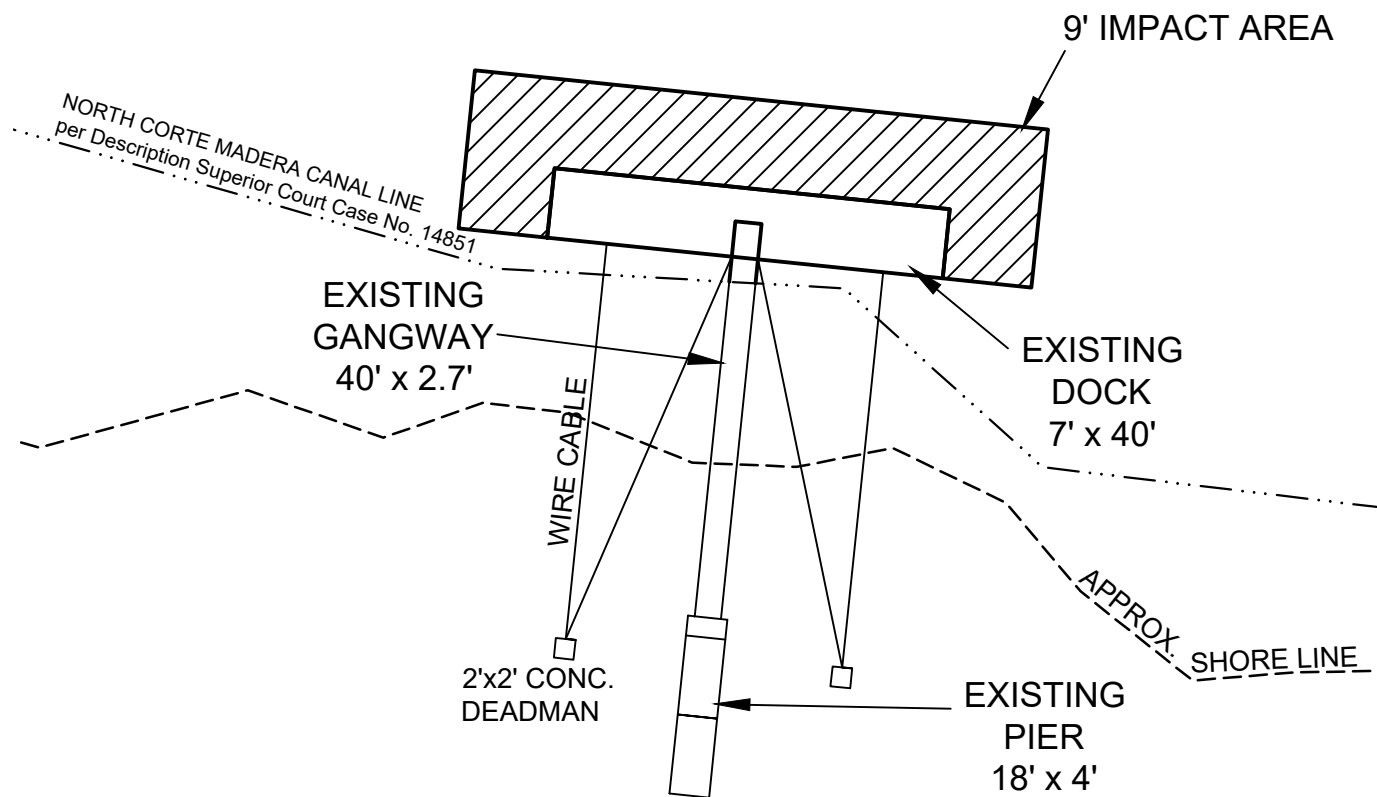
Revised 03/28/2022 by the California State Lands Commission Boundary Unit.



NO SCALE



CORTE MADERA CREEK



APNs 022-380-10 thru 20

EXHIBIT A

Page 2 of 2

TS 03/28/2022

LAND DESCRIPTION PLAT
LEASE 5411, CALIDO BAY HOA
MARIN COUNTY

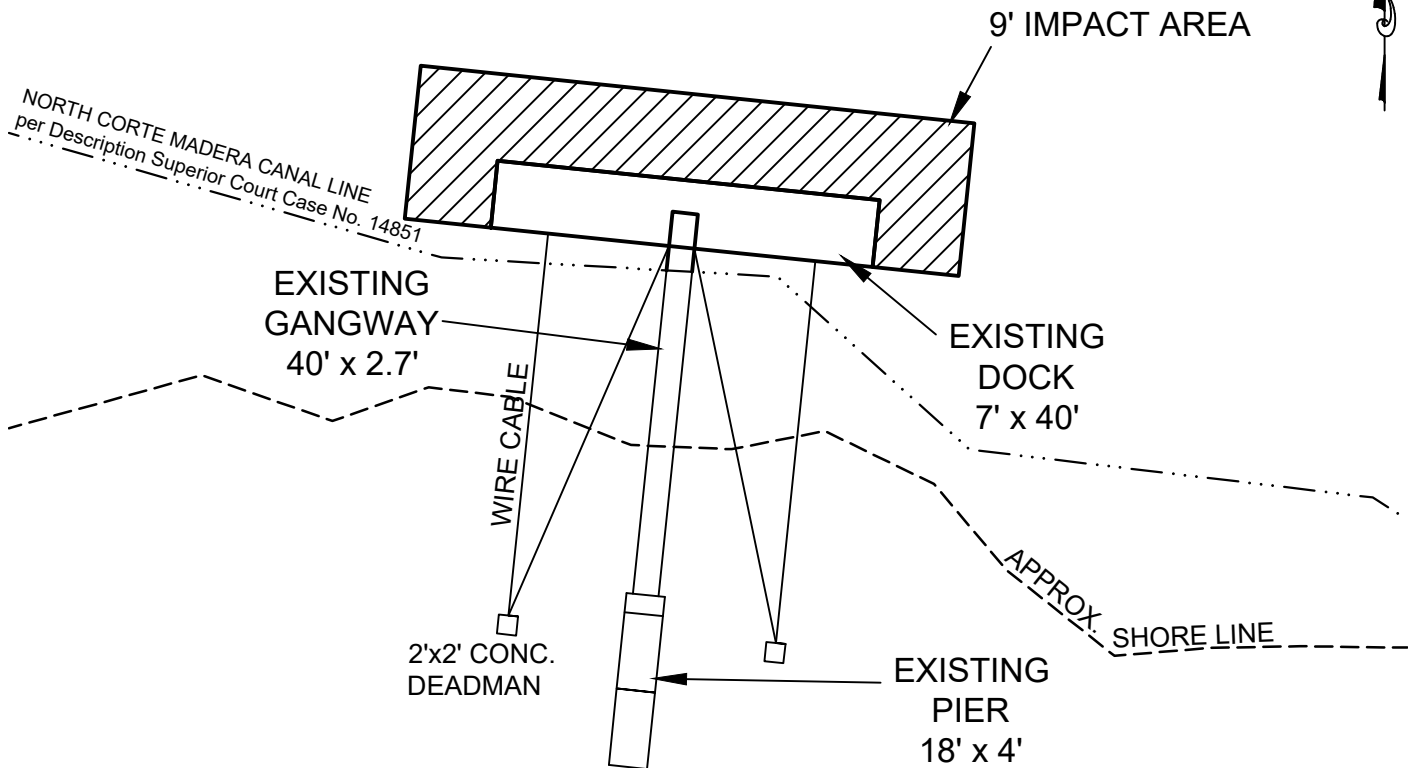
CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE

CORTE MADERA CREEK

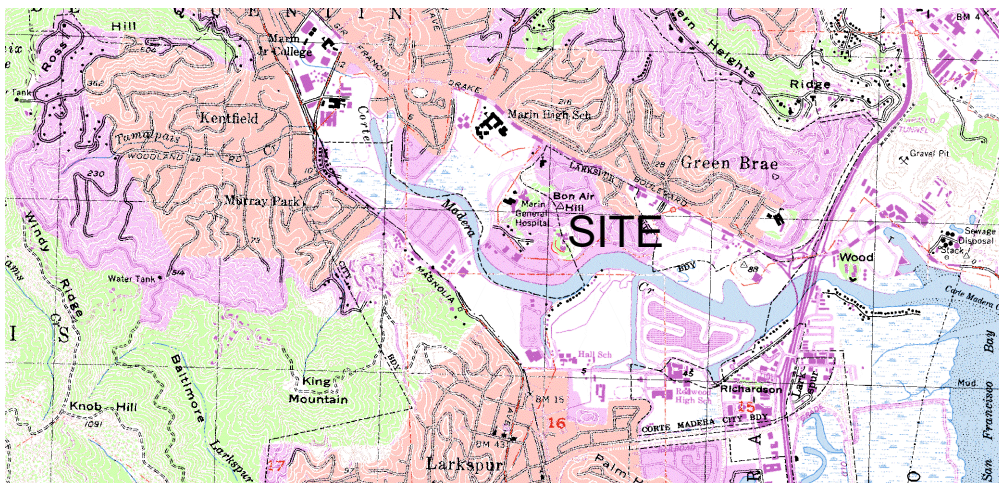


APNs 022-380-10 thru 20

505 LARKSPUR PLAZA DRIVE, CITY OF 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 5411

CALIDO BAY HOA

APNs 022-380-10 thru 20

GENERAL LEASE -
RECREATIONAL USE
MARIN COUNTY



TS 03/28/2022