

Staff Report 28

APPLICANT:

Bon Air Seven Co. L.P., a California Limited Partnership

PROPOSED ACTION:

Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Corte Madera Creek, adjacent to 875 South Eliseo Drive, Greenbrae, Marin County.

AUTHORIZED USE:

Use and maintenance of an existing boat dock with access ramp, stiff arm and cables.

TERM:

10 years, beginning December 9, 2022.

CONSIDERATION:

\$433 per year, with an annual Consumer Price Index adjustment, and \$228 to compensate for the unauthorized occupation of State sovereign land for the period June 1, 2022 through December 8, 2022.

SPECIFIC LEASE PROVISIONS:

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

STAFF ANALYSIS AND RECOMMENDATION:

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 March 29, 2012, the Commission authorized a General Lease – Recreational Use to Bon Air Seven Co. L.P., a California Limited Partnership for the use and maintenance of an existing floating boat dock, access ramp, stiff arm, and cables ([Item 49, March 29, 2012](#)). The lease expired on May 31, 2022. The Applicant is applying for a General Lease – Recreational Use for the use and maintenance of an existing floating boat dock with access ramp and cables.

Staff recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land the existing boat dock with access ramp, stiff arm, and cables in the amount of \$228 for the period from June 1, 2022 to December 8, 2022, the day before the Commission meeting. Further, the new lease will require the Applicant to indemnify the State for the entire period of unauthorized occupation prior to December 9, 2022, ensuring the State is fully protected.

The boat dock with access ramp, stiff arm, and cables are privately owned and maintained 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 facilities are located directly waterward of the upland property and occupy a relatively small area of the creek. 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 facilities are located on the Corte Madera Creek, in a tidally influenced site vulnerable to flooding at current sea levels and at

a higher risk of flood exposure given 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. 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 and upland property (not subject to the proposed lease) will not be able to rise. The existing floating boat dock, access ramp, stiff arm and cables holding the floating boat dock will be able to move up and down with changed water levels but remain at risk of damage, degradation, or 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 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 vegetated bank (not subject to the proposed lease) provides additional stability and reduces the amount of erosion and scour pressure experienced during future events because of the vegetation's underground root system; but remains at risk of accelerated deterioration from currents and floods.

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 that issuance of the 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 common law 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 with access ramp, stiff arm and cables and restore the premises to their original condition. The lessee has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Leading Climate Activism" and "Meeting Evolving Public Trust Needs" 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, 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 common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of compensation from the Applicant in the amount of \$228 for unauthorized occupation of State land for the period June 1, 2022 to December 8, 2022.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning December 9, 2022, for a term of 10 years, for the use and maintenance of a boat dock with access ramp, stiff arm and 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 \$433, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 5314

LAND DESCRIPTION

A parcel of sovereign land in the bed of Corte Madera Creek, lying adjacent to Lot 311, as shown on that certain map entitled "Map of Bon Air Sub. No. Eight and Resubdivision of Lots 200 and 201, Bon Air Sub. No. Seven", filed in the office of Marin County Recorder Office on July 9, 1969, in Volume 14 of Maps at page 56, State of California, and more particularly described as follows:

All those lands underlying an existing boat dock, ramp, stiff arm and cables, lying adjacent to that parcel described in Grant Deed recorded December 9, 1980 in Book 3801, Page 303 in Official Records of said County.

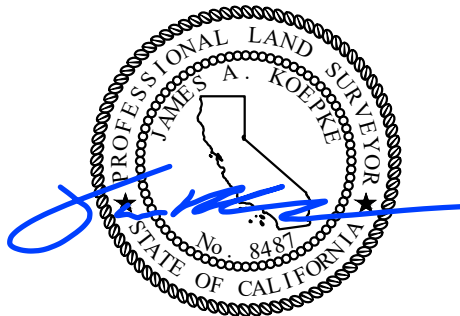
TOGETHER WITH any applicable Impact Area(s).

EXCEPTING THEREFROM any portion lying landward of the North Corte Madera Canal Line as described in Superior Court Case # 14851 and shown on "Map of State Sovereign Lands in Corte Madera Creek vicinity of Green Brae", sheet 5 of 9, on file at the Sacramento Office of the California State Lands Commission (CB-1294).

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 05/23/2022 by the California State Lands Commission Boundary Unit



NO SCALE



APN 022-281-12

NORTH CORTE MADERA CANAL LINE
per Description Superior Court Case No. 14851

EXISTING
CABLES

EXISTING
RAMP
40' x 3'

EXISTING
STIFF ARM

EXISTING
BOAT DOCK
50' x 7'

9' IMPACT
AREA

CORTE MADERA CREEK

EXHIBIT A

PAGE 2 OF 2

DT 05/23/2022

LAND DESCRIPTION PLAT
LEASE 5314, BON AIR SEVEN CO., LP
MARIN COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE

APN 022-281-12

NORTH CORTE MADERA CANAL LINE
per Description Superior Court Case No. 14851

EXISTING CABLES

EXISTING RAMP
40' x 3'

EXISTING STIFF ARM

EXISTING BOAT DOCK
50' x 7'

9' IMPACT AREA

CORTE MADERA CREEK

875 SOUTH ELISEO DRIVE, NEAR GREENBRAE

NO SCALE

LOCATION

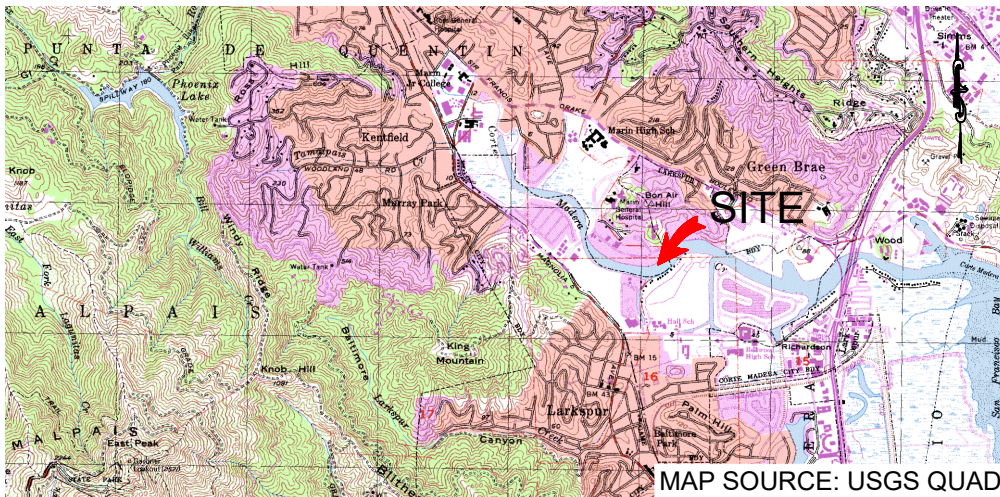


EXHIBIT B

LEASE 5314
 BON AIR SEVEN CO., LP
 APN 022-281-12
 GENERAL LEASE -
 RECREATIONAL USE
 MARIN COUNTY



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.

DT 05/23/2022