

# Staff Report 62

## **APPLICANT:**

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San Pan Bay Homeowners Association

## **PROPOSED ACTION:**

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Issuance of a General Lease – Recreational Use

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

Sovereign land in Corte Madera Creek, adjacent to 517–533 Larkspur Plaza Drive, Larkspur, Marin County.

## **AUTHORIZED USE:**

Use and maintenance of an existing boat dock, walkway, and anchor lines.

## **TERM:**

10 years, beginning March 1, 2023.

## **CONSIDERATION:**

\$369 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:**

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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 December 2, 2013, the Commission authorized issuance of a General Lease – Recreational Use to the San Pan Bay Homeowners Association, for an existing boat dock, walkway, and anchor lines ([Item C25, December 2, 2013](#)). On February 27, 2018, the Commission authorized an amendment of lease and revision of rent to replace exhibits and modify the annual rent ([Item C56, February 27, 2018](#)). The lease will expire on February 28, 2023.

The Applicant is now applying for a General Lease – Recreational Use, for the use and maintenance of an existing boat dock, walkway, and anchor lines 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. 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 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 fixed walkway will not be able to rise and fall with changing water levels. The existing floating dock will be able to rise and fall with changing water levels, increasing its resiliency to sea level rise. The structures in the lease area 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 interest 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 boat dock, walkway, and anchor lines 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 "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:**

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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 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 March 1, 2023, for a term of 10 years, for the use and maintenance of an existing boat dock, walkway, and anchor lines, 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 \$369, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**LEASE 4867**

**LAND DESCRIPTION**

A parcel of tide and submerged land situate in the bed of the Corte Madera Creek, lying adjacent to Swamp and Overflowed Lands Survey No. 44, patented September 6, 1872, Marin County, State of California and being more particularly described as follows:

All those lands underlying an existing floating boat dock, existing walkway, and existing anchor lines adjacent to that certain parcel of land as shown on "Map of San Pan Bay, A Condominium" filed in Book 15 of Maps at Page 83, Marin County Records.

TOGETHER WITH any applicable Impact Area(s).

EXCEPTING THEREFROM any portions lying landward of the Mean High Tide Line 1941 (Per Superior Court Case No. 14851), as shown on that certain map titled "Map of State Sovereign Lands in Corte Madera Creek vicinity of Green Brae" 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**

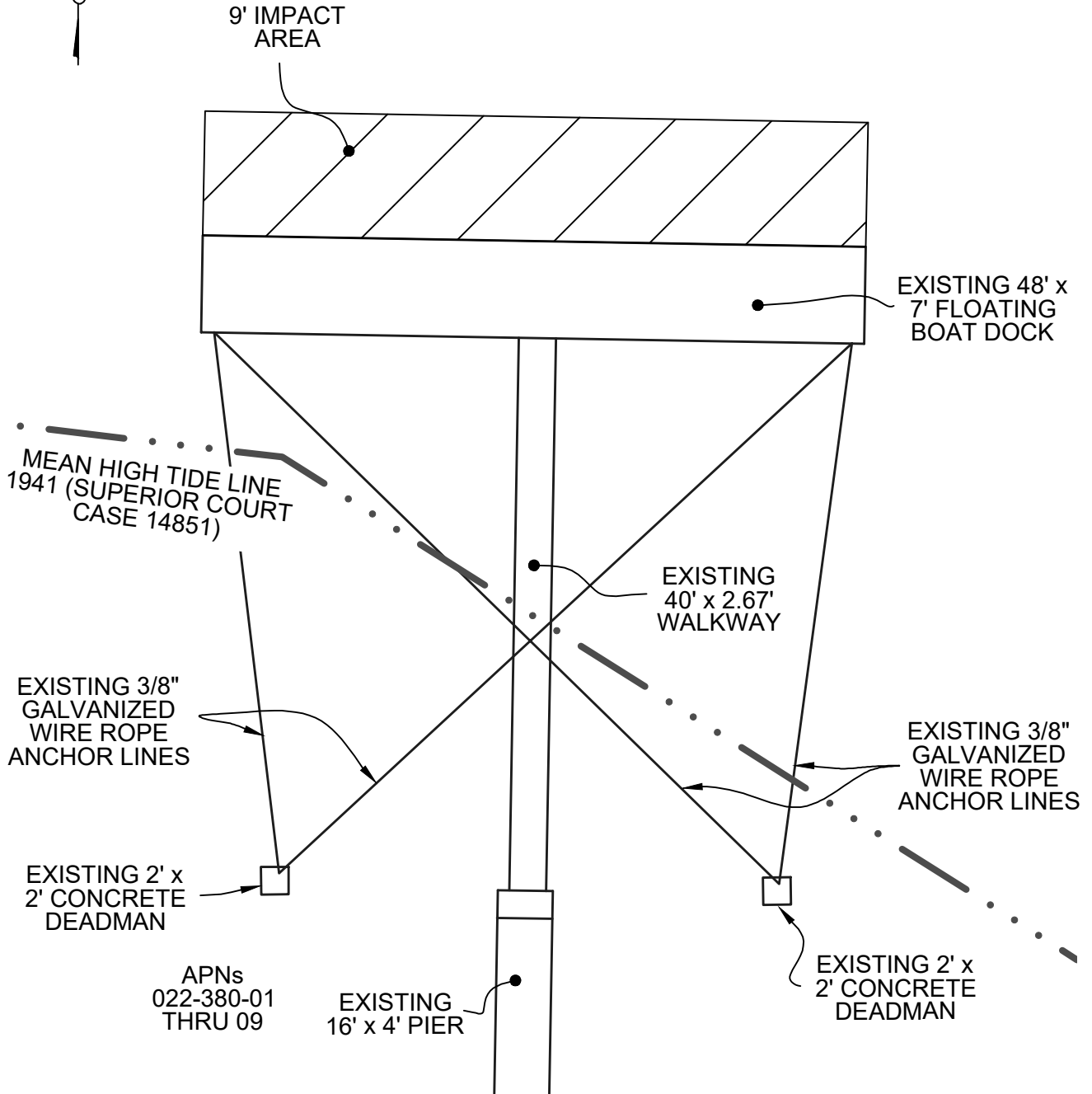
Prepared 3/30/2022 by the California State Lands Commission Boundary Unit



NO SCALE



# CORTE MADERA CREEK



## EXHIBIT A

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LAND DESCRIPTION PLAT  
 LEASE 4867, SAN PAN BAY  
 HOMEOWNERS ASSOCIATION  
 MARIN COUNTY

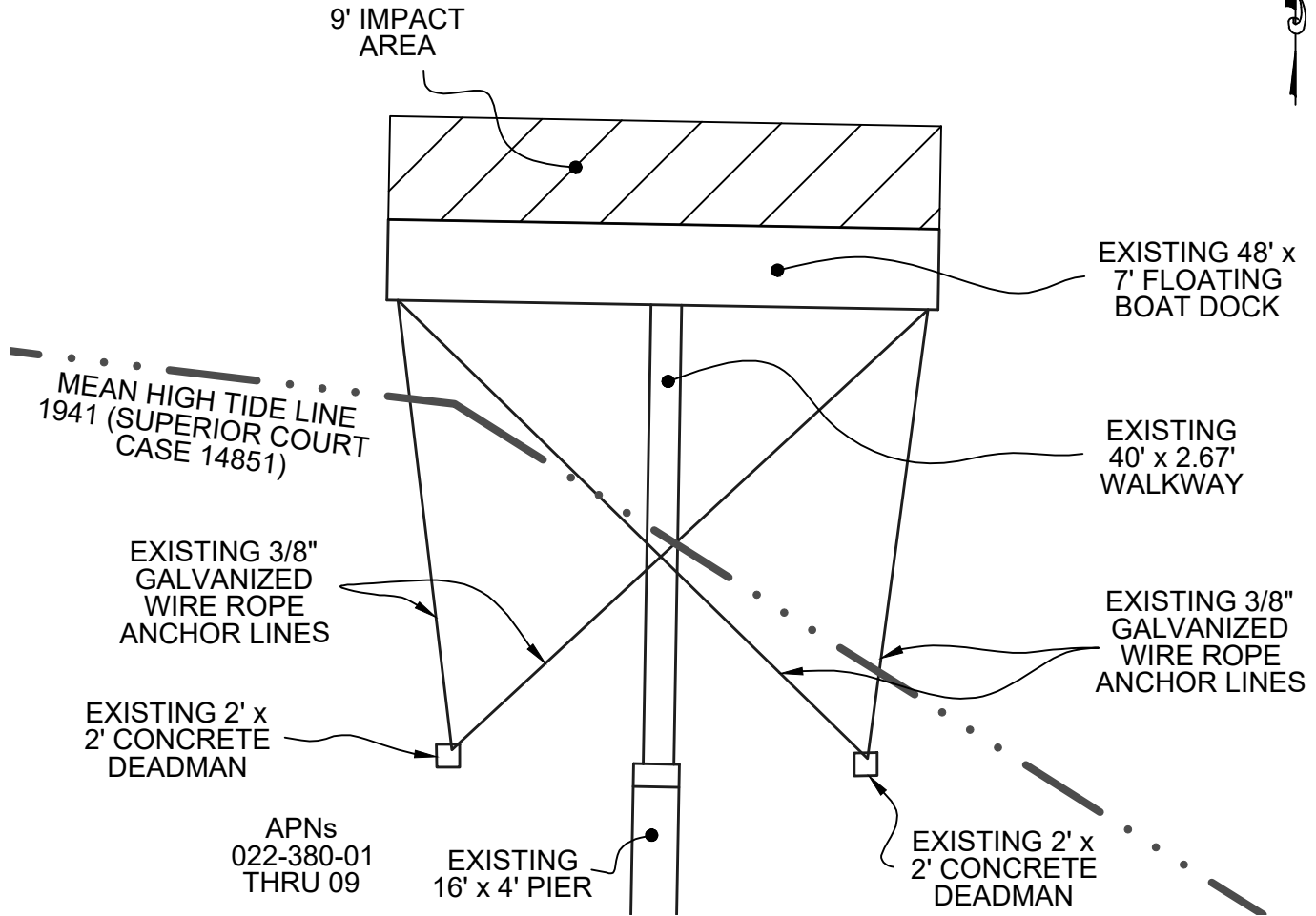
CALIFORNIA STATE  
 LANDS COMMISSION



NO SCALE

# SITE

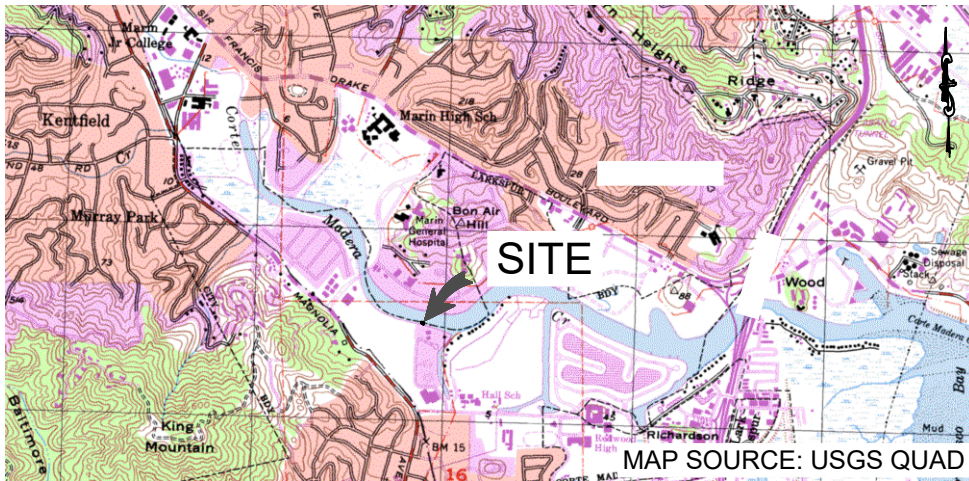
## CORTE MADERA CREEK



517-533 LARKSPUR PLAZA DRIVE, LARKSPUR

NO SCALE

# LOCATION



# EXHIBIT B

LEASE 4867  
 SAN PAN BAY  
 HOMEOWNERS ASSOCIATION  
 APNs 022-380-01 THRU 09  
 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.

JWP 3/30/2022