

Staff Report 57

LESSEE:

Paul B. Tietjen & Lana T. Tietjen, Trustees of the Paul B. Tietjen and Lana T. Tietjen Declaration of Trust dated August 6, 2002; and Howard A. Cooper

APPLICANT:

Paul B. Tietjen & Lana T. Tietjen, Trustees of the Paul B. Tietjen and Lana T. Tietjen Declaration of Trust dated August 6, 2002; and Strawberry Ridgewood Holdings, a California Limited Liability Company

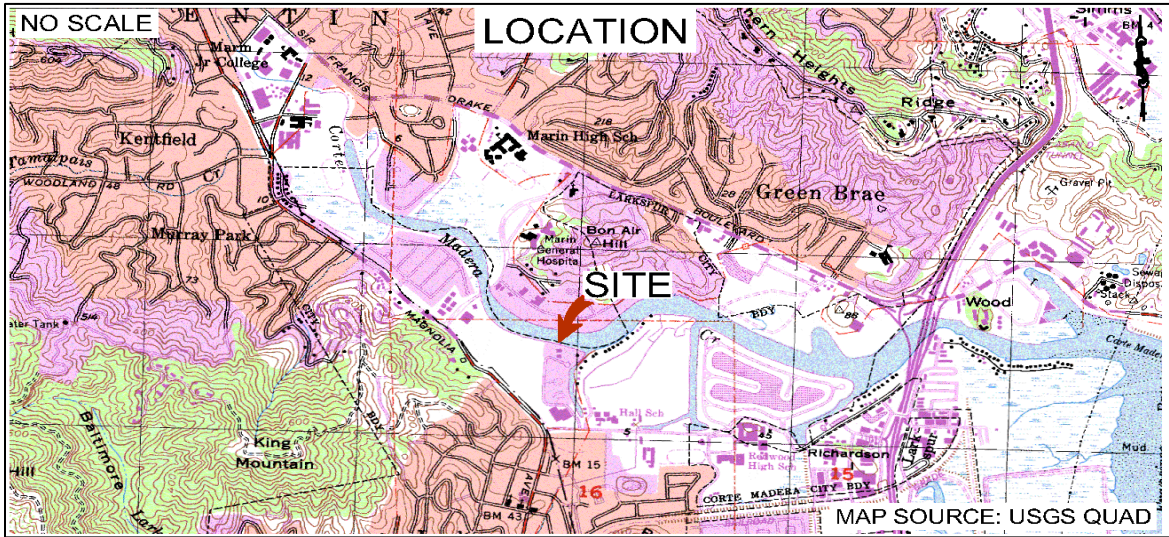
PROPOSED ACTION:

Termination of a General Lease – Recreational Use and Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Corte Madera Creek, adjacent to 555 and 575 Larkspur Plaza Drive, Larkspur, Marin County (as shown in Figure 1).

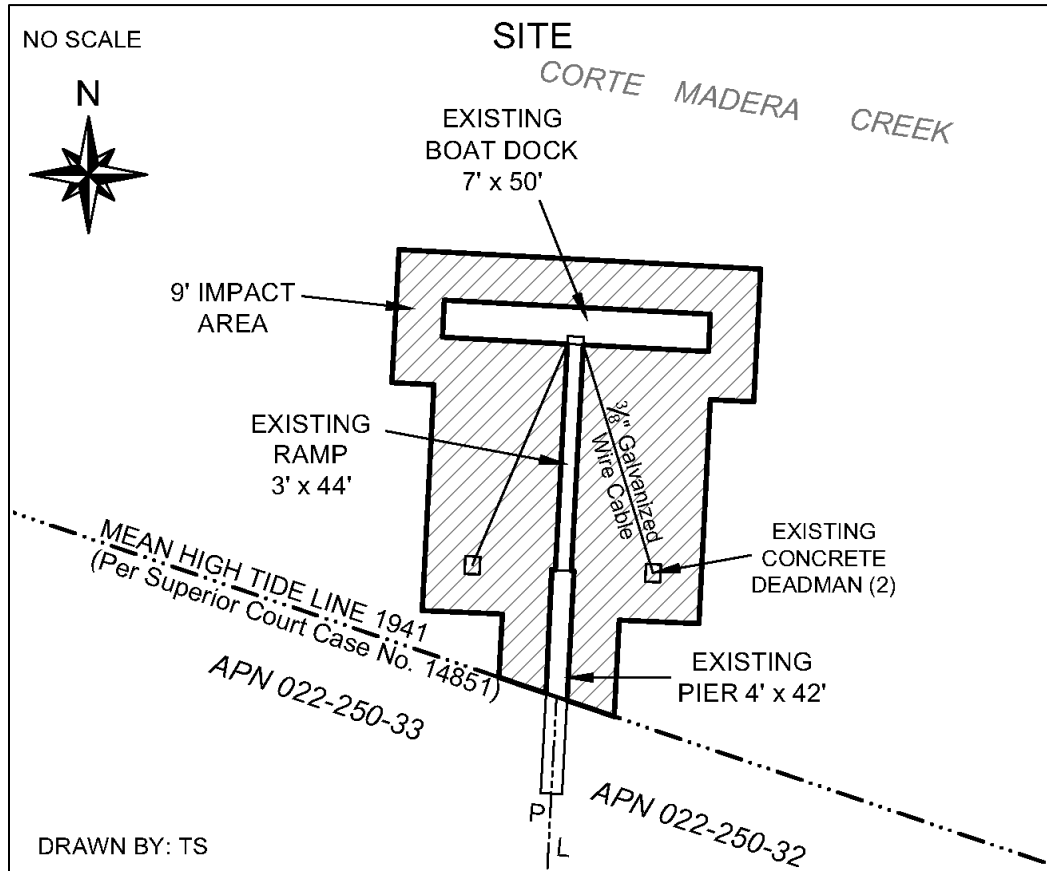
Figure 1. Location



AUTHORIZED USE:

Use of an existing boat dock, pier, ramp, two concrete deadmen, and two wire cables (as shown in Figure 2).

Figure 2. Site Map



NOTE: This depiction of the lease premises is based on unverified information provided by the applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

TERM:

10 years, beginning June 5, 2023.

CONSIDERATION:

\$960 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.
- Lessee agrees the provisions of Section 3, Paragraph 8 shall also extend to the period of Lessee's unauthorized occupation of state-owned lands prior to June 5, 2023.

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 August 23, 2018, the Commission authorized the issuance of a General Lease – Recreational Use to Paul B. Tietjen & Lana T. Tietjen, Trustees of the Paul B. Tietjen and Lana T. Tietjen Declaration of Trust dated August 6, 2002; and Howard A. Cooper, for an existing floating boat dock, pier, ramp, boat lift, two concrete deadmen, and two wire cables ([Item 71, August 23, 2018](#)). The lease expires on June 7, 2028.

On August 26, 2022, ownership interest in the upland parcel, APN 022-250-33, was deeded from Richard L. Caplin, as Executor of the Estate of Howard A. Cooper, deceased, acting with full authority under the Independent Administration of Estates Act as administered in the Superior Court of the County of San Francisco, in Probate Case No. PES-22-305219 to Strawberry Ridgewood Holdings, LLC, a California Limited Liability Company.

Paul B. Tietjen & Lana T. Tietjen, Trustees of the Paul B. Tietjen and Lana T. Tietjen Declaration of Trust dated August 6, 2002; and Strawberry Ridgewood Holdings, a California Limited Liability Company are applying for a General Lease – Recreational Use, for the use of the existing boat dock and appurtenant facilities. Since Howard A. Cooper, the previous Lessee, has passed away and is unable to consent to an assignment of the former interest in a new co-lessee, staff recommends termination of the existing lease and issuance of a new General Lease – Recreational Use, reflecting the current joint use owners.

The subject facilities are privately owned and maintained by the Lessees 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 Corte Madera Creek (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 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 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 the [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 under lease) will not be able to rise. The existing floating boat dock, ramp, boat lift, and two wire cables holding the floating boat dock will be able to move up and down with changing water levels. The fixed structures like the pier and two cement deadmen will not be able to move up and down with 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 and implementing best management practices, as referenced in the lease, may reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Lessees 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 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 Lessees may be required to remove the existing boat dock, pier, ramp, two concrete deadmen, and two wire 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. 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.

RECOMMENDED ACTION:

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:

Find that the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with 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. Terminate Lease 4674, a General Lease – Recreational Use issued to Paul B. Tietjen & Lana T. Tietjen, Trustees of the Paul B. Tietjen and Lana T. Tietjen Declaration of Trust dated August 6, 2002; and Howard A. Cooper, effective June 4, 2023.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning June 5, 2023, for a term of 10 years, for the use of an existing boat dock, pier, ramp, two concrete deadmen, and two wire cables; annual rent in the amount of \$960, with an annual Consumer Price Index adjustment; and Liability insurance in an amount no less than \$1,000,000 per occurrence.