

Staff Report 26

APPLICANT:

Nara Gardens Homeowners Association

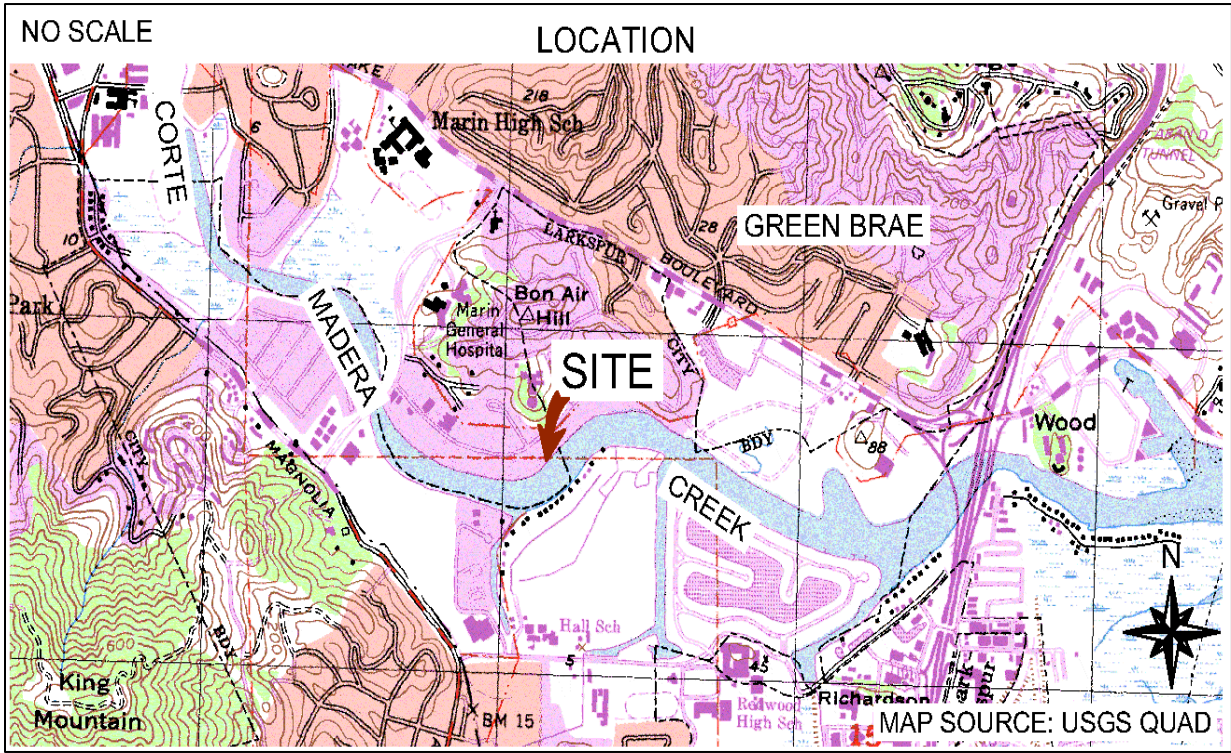
PROPOSED ACTION:

Issuance of a General Lease – Recreational Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Corte Madera Creek, adjacent to 823 South Eliseo Drive, Greenbrae, Marin County (as shown in Figure 1).

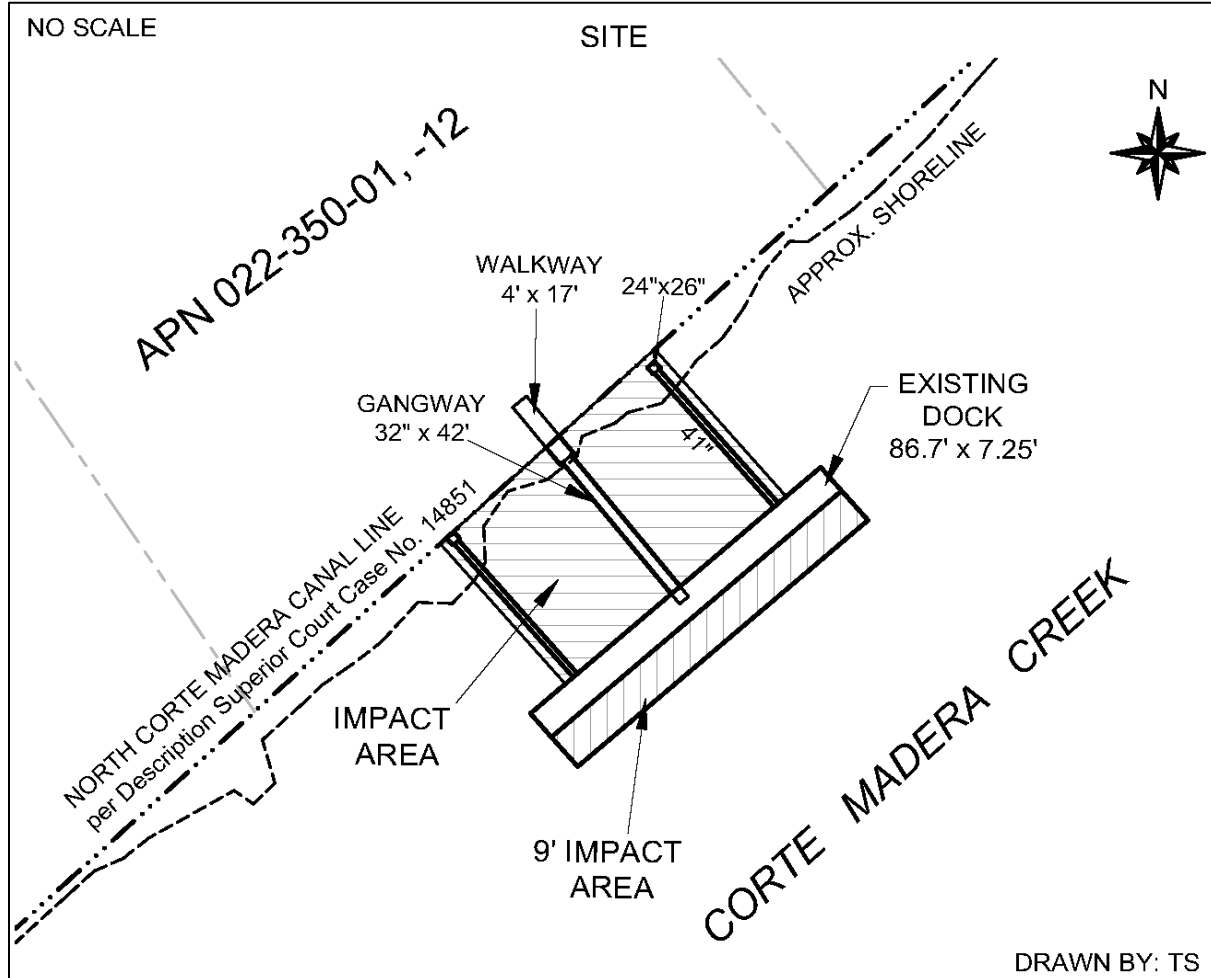
Figure 1. Location Map



AUTHORIZED USE:

Use of an existing dock, walkway, gangway, and two anchor arms (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 October 19, 2023.

CONSIDERATION:

\$1,021 per year, with annual Consumer Price Index adjustment and \$818 compensation for unauthorized occupation of State Land for the period through October 18, 2023.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee agrees and acknowledges that 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, 6503.5 and 6505.5; California Code of Regulations, title 2, section 2000.

PUBLIC TRUST AND STATE’S BEST INTERESTS:

On August 14, 2012, the Commission authorized the issuance of a General Lease – Recreational Use to Nara Gardens Homeowners Association for the use of an existing dock, gangway, ramp, and two anchor arms ([Item 39, August 14, 2012](#)). On October 19, 2017, the Commission authorized an Amendment of Lease and Revision of Rent. The amendment included an adjustment in the lease area, a revision of rent from \$289 to \$327 per year, and the replacement of Exhibit B, Site and Location Map. The lease expired on October 30, 2022.

The Applicant is now applying for a General Lease – Recreational Use, for the use of an existing dock, walkway, gangway, and two anchor arms.

Staff is requesting compensation from the Applicant for the unauthorized use of State land from the period beginning October 31, 2022 (the day after expiration of the previous lease) through October 18, 2023 (the day preceding the issuance of the proposed lease). After the previous lease expired, the Applicant continued to pay rent at the holdover rate from October 31, 2022 through February 28, 2023, which totaled \$170. After adjusting for rent paid by the Applicant at the holdover rate, the total amount of compensation due is \$818. The lease provisions regarding indemnity would also apply to the period of the Applicant's unauthorized occupation of State-owned land.

The subject facilities are privately owned and maintained by the Applicant. The dock and appurtenant 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 subject facilities are located directly waterward of the upland property and occupy a relatively small area of Corte Madera Creek. The proposed lease will not interfere with navigation and does not substantially interfere with any Public Trust needs at this time or for the term of the lease.

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 (Creek), in a tidally influenced site consisting of low-elevation reclaimed floodplains. This area is vulnerable to flooding at current sea levels and will be at higher risk of flood exposure given projected scenarios of sea level rise.

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 lease area 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

Sources: Table 13, [State of California Sea-Level Rise Guidance: 2018 Update](#)

Note: Projections are with respect to a 1991 to 2009 baseline.

Rising sea levels can lead to more frequent flood inundation in low-lying areas and larger tidal events. 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, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris. Climate change and sea level rise will further influence coastal and riverine areas by changing erosion and sedimentation rates. Near-coastal riverine areas will be exposed to increased wave force and run up, potentially resulting in greater bank erosion than previously experienced. Finally, in rivers and tidally influenced waterways, flooding and storm flow will likely increase scour, decreasing bank stability and structure.

The existing floating boat dock and gangway will be able to adapt to rising water levels in the Creek because they can float on top of the water. The fixed structures, such as the walkway and anchor arms, may be vulnerable to flooding and will remain at higher risk of damage, degradation, and loss from the combined impacts of sea level rise, storms, and rain events. The [Town of Corte Madera 2020 Climate Action Plan](#) warns that homes along the tributaries to the Creek may be vulnerable to sea level rise. Further, the [Marin Shoreline Sea Level Rise Vulnerability Assessment: Bay Waterfront Adaptation & Vulnerability Evaluation](#) (2017, County of Marin) determined that 78 percent of the parcels in the lease area could experience increased tidal flooding. This would put approximately 1,200 homes at risk along the Creek.

The combination of these projected conditions could increase the likelihood of damage to structures within the lease premises from rising seas and flooding events during the term of the lease. While some of the current and future vulnerabilities may be partially reduced by the presence of the Corte Madera Baylands¹, the fixed structures on the lease premises are at low elevation and will likely need reinforcement or replacement in the future to withstand higher levels of flood exposure. This is true particularly for the structures affixing the walkway to the upland parcel, as the top of the walkway may experience increased inundation with rising water levels and more frequent winter storm flooding, creating a public safety hazard. The lessee should consider fortifying the bank of the Creek around the structures by using nature-based strategies, such as increasing the amount of

¹ The [BCDC Corte Madera Baylands Conceptual Sea Level Rise Adaptation Strategy](#), 2013, explains that these wetlands at the mouth of Corte Madera Creek help to reduce wave height and energy from the San Francisco Bay.

vegetation on the bank; this will stabilize the sediment and reduce erosion from sea level rise and storm flooding.

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 (not within the lease area) 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 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 existing boat dock and appurtenant facilities and return 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 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 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 Public Trust needs and values at this location, at this time, and for the 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 \$818 for the unauthorized occupation of State land for the period through October 18, 2023.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning October 19, 2023, for a term of 10 years, for the use of an existing dock, walkway, gangway, and two anchor arms; annual rent in the amount of \$1,021, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.