

Staff Report 35

PARTY:

California State Lands Commission

PROPOSED ACTION:

Approve the 2024 Category 2 Corte Madera Creek Benchmark rental rate.

LAND TYPE AND LOCATION:

Sovereign land in Corte Madera Creek, Marin County.

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.

The California Constitution specifically prohibits the Legislature from making or authorizing any gift of public money or thing of value to any individual, municipality, or corporation (Cal. Const., art. XVI, § 6). A “thing of value” includes the use of State-owned land for private benefit.

The Commission has broad discretion in all aspects of leasing state lands, including the method or amount of rent that is most appropriate, and how rent should be adjusted during the term. (Pub. Resources Code, §§ 6501.1, 6503, 6503.5; Cal. Code Regs., tit. 2, §§ 2000, 2003.) Rents must be in the best interests of the State, and may be based on one or more of the following methods, including, but not limited to:

- 9 percent of the appraised value of the leased land.
- A percentage of annual gross income, where the percentage is based on an analysis of the market for like uses and other relevant factors.

- A comparison to rents for other similar land or facilities.
- Benchmarks for regions with large concentrations of similar facilities, with benchmark rental rates to be based on analysis of similar or substitute facilities in the local area.
- Other such methods or information that are based on commonly accepted appraisal practices and principles; and for leases for recreational piers or buoys, rent shall be based on local conditions and local fair annual rental values. (Cal. Code Regs., tit. 2, § 2003; Pub. Resources Code, §§ 6503, 6503.5.)

The Commission may consider the amount of rent the State would receive under various rental methods, and whether relevant, reliable, and comparable data are available concerning the value of the leased land in determining which rent method should apply. (Cal. Code Regs., tit. 2, § 2003, subd. (d)(1), (2).)

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Benchmarks are used to establish uniform rental rates in specific geographic regions with large concentrations of similar facilities, mostly private recreational improvements within the Commission's jurisdiction. (Cal. Code Regs., tit. 2, § 2003, subd. (a)(5).) The use of benchmarks improves consistency, transparency, and efficiency in how the Commission establishes rent for large numbers of similar leases, saving time, resources, and money for both the applicant and the State. Periodic benchmark adjustments ensure that the people of the State are fairly compensated according to current market rates for the private use of State-owned land, consistent with the California Constitution. Generally, staff recommend updates to the benchmarks every 5 years. The Commission's current benchmarks and benchmark map may be found at <https://www.slc.ca.gov/leases-permits/benchmarks/>.

The Commission has two types of benchmarks for rental rates:

- Category 1, which is generally applied to private docks, piers, and buoys.
- Category 2, which is generally applied to protective structures, cantilevered decks, sundecks, or other non-water dependent uses.

This staff report addresses the Category 2 benchmark for Corte Madera Creek leases that mostly include portions of homes, decks, and other residential-related improvements.

METHODOLOGY:

The Commission has been using the Category 2 Corte Madera Creek benchmark since 2014. The benchmark was last updated in June 2019 when the Category 2 rate was set at \$5.40 per square foot ([Item 25, June 28, 2019](#)). Category 2 benchmarks are based on and associated with nearby upland land values because sovereign lands generally do not sell in the open market. Improvements on sovereign land (for example, portions of homes, decks, or other non-water dependent encroachments) represent an extension of the private upland residence – a purpose unrelated to the docking and mooring of boats.

Commission appraisal staff uses the following general process to establish and update a Category 2 benchmark. First, the staff conducts research to identify recent nearby upland residential sales. The initial research seeks to identify vacant land sales only because the subject properties within the benchmark area are the underlying sovereign land, not the privately-owned residential improvements. If vacant land sales are unavailable, rather than use comparable sales that do not front the water, which would necessitate adjustments for location, an allocation method is employed. For the improved residential sales deemed similar to the subject properties, the land values are extracted through use of the improvement percentage assigned by the local Assessor's Office. For instance, if a house sold for \$1,000,000 and had an improvement percentage of 40%, then the allocated value of the land is 60%, or \$600,000. For analysis purposes, the unit of comparison used is the price per square foot of land area. Next, staff analyzes the compiled sale data to determine a per-square foot value representative of the area. The benchmark is calculated by applying a 9 percent annual rate of return to the appraised value of the leased land consistent with California Code of Regulations, title 2, section 2003, subdivision (a)(1).

The Category 2 benchmark may then be discounted to reflect that the sovereign land to be leased may not have the same utility or intensity of use as the upland properties from which the data were drawn. While the subject properties contribute to the overall value of the upland properties, they also have significant physical characteristics which limit their development potential including their submerged nature, waterway location with limited access, sloping topography, unavailable offsite improvements, and no public utilities. Therefore, a discount may be warranted.

Using the methodology described above, Commission appraisal staff identified ten home sales fronting Corte Madera Creek near Greenbrae, Kentfield, and Larkspur

in Marin County. The sales occurred between June 2020 and September 2023, with a sales range of \$490,000 to \$1,500,000 and a corresponding land value range of \$33 to \$97 per square foot. Due to the physical uniqueness of each subject property and lack of significant land value trends relating to the comparable sales, the appraisal staff concluded that no particular sale was deemed a better indicator than any other sale in setting a land value benchmark. Therefore, an analysis of the overall dataset was warranted and deemed appropriate in concluding land value for the Category 2 Corte Madera Creek Benchmark. Based on all the data gathered and analyzed, appraisal staff concluded that a unit value between the mean and median was reasonable for the typical upland residential property. The concluded land value based on these sales figures is \$58 per square foot. Taking all the previously described inputs into account, the proposed undiscounted rental rate for the Corte Madera Creek Benchmark is calculated as follows:

$\$58 \times 9\% = \5.22 per square foot.

The 2019 Category 2 Corte Madera Creek Benchmark was set at \$5.40 per square foot. As proposed, the new benchmark rate of \$5.22 per square foot represents a decrease of \$0.18 per square foot, or -3.33% overall. The lower rental rate is attributed to decreased residential land values fronting Corte Madera Creek in Marin County. According to the 2019 Category 2 Corte Madera Benchmark, after allocating out the value of the improvements, the average land value of the homes fronting Corte Madera Creek was \$603,256, while the median was \$625,000. The most recent survey indicates an average land value of \$576,869, while the median was \$568,099. According to the Marin County Assessor's Office, multiple areas in Corte Madera have been experiencing a recent increase in the number of Proposition 8 reviews or reassessments due to declines in value. Under Proposition 8, qualifying properties are given a reduction in their taxable assessed value when the market value of those properties decline.

Although there is a decrease in the benchmark, the methodology used is consistent with all other Category 2 benchmarks and the data used to establish this specific proposed benchmark was derived almost exclusively from the upland land values directly adjacent to the leases covered by this benchmark. The Commission is required by statute to charge fair market value for the use and occupation of its lands. Staff believes that use of this methodology and the proposed benchmark best achieve that statutory requirement.

This benchmark rate applies to residential encroachments that should be given no reduction in utility or intensity of use as compared to the upland land value. For features such as open or covered decks, staff recommend the application of a discount up to 75 percent to reflect the reduced utility and intensity of use of the sovereign lands occupied. This approach is consistent with how staff apply discounts for similar facilities throughout the state.

CONCLUSION:

Staff's methodology for setting the proposed Category 2 Corte Madera Creek Benchmark rental rate is consistent with the methodology used for the Commission's other Category 2 benchmarks, as well as all the relevant statutes and regulations that govern the Commission's rent-setting authority. Staff believes the recommended benchmark rate represents a fair and equitable rate for the type of use based on the most current and relevant data available. Approval of the new benchmark rental rate will not result in a change in the use of, or substantially interfere with or impact Public Trust resources. Staff believes that the benchmark provides a reasonable and consistent method for determining rent in the geographic coverage area and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. In 2014, the Commission adopted amendments to Sections 1900, 2002, and 2003 under articles 1 and 2 of title 2, division 3, chapter 1 of the California Code of Regulations that included regulations on rent-setting methods approving the use of benchmarks and the application of the Consumer Price Index ([Item 5, January 23, 2014](#)).
2. This action is consistent with Goal 4 of the Commission's Strategic Plan "Meeting Evolving Public Trust Needs," specifically Section 3 – "Maintain fiscal integrity through transparency, accountability", and subheading 3.a. "Efficient and effective management of the revenue-generation portfolio."
3. Approval of the 2024 Category 2 Corte Madera Creek Benchmark rental rate is not a project as defined by the California Environmental Quality Act 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).

EXHIBIT:

A. 2024 Category 2 Corte Madera Creek Benchmark

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that approval of the benchmark will not result in a change in the use of, or impact on, Public Trust resources; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Approve the 2024 Category 2 Corte Madera Creek Benchmark rental rate of \$5.22 per square foot, effective June 7, 2024.
2. Approve the application of up to a 75 percent discount to the Category 2 Corte Madera Creek benchmark to adjust for any reduced utility or intensity of use of the sovereign land subject to this benchmark, effective June 7, 2024.

Exhibit A

State of California

State Lands Commission

Memorandum

Date: March 20, 2024

To: Brian Bugsch, Chief
Land Management Division

Grace Kato, Assistant Chief
Land Management Division

From: Chaun Wong
Associate Property Appraiser
Land Management Division

Subject: Corte Madera Creek Category 2 Benchmark 2024 - Rental rate for non-water dependent use areas extending onto and over sovereign land in Corte Madera Creek, Marin County, California

As requested, I have conducted research relevant to establishing a benchmark rental rate for non-water dependent use areas extending onto and over sovereign land in Corte Madera Creek, Marin County, California. These non-water dependent uses consist of portions of homes, decks, and other residential-related improvements that extend onto and over sovereign lands and essentially represent extensions of the usable area of the adjoining residential lots.

An appraisal is the act or process of developing an opinion of value that must be numerically expressed as a specific amount, as a range of numbers, or as a relationship to a previous value opinion or numerical benchmark. This report constitutes an appraisal as defined by the Uniform Standards of Professional Appraisal Practice (USPAP). The compiled research, analyses, and conclusions presented in this appraisal represent a correlation of residential land values into benchmark rental rates for non-water dependent use areas located on Corte Madera Creek. The benchmark is intended to be used by Commission staff in negotiations with lessees. It should be noted that this appraisal has been performed and the report has been prepared in substantial compliance with USPAP as it relates to the value of sovereign land. Presented on the following pages are the introduction, the scope of the research, and discussions of the pertinent findings resulting in the benchmark rental rate.

Benchmarks establish uniform rental rates in specific geographic regions with concentrations of similar facilities within the Commission's jurisdiction. (Cal. Code Regs., tit. 2, § 2003, subd. (a)(5).) For proposed leases involving certain types of improvements or uses in regions where benchmarks have been approved, staff will recommend an annual rent based on the applicable benchmark and the lease area. Benchmark rental rates are based on an analysis of similar land uses or substitute facilities in the local area. Generally, staff recommend updates to the benchmarks every

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5 years. The use of benchmarks improves consistency and transparency throughout a geographic region, improves staff efficiency in setting and adjusting rent for large numbers of leases, and saves time and money for both the applicant and the State. The Corte Madera Creek Category 2 benchmark was last updated on March 14, 2019.

Introduction

The subject properties consist of tidelands located along Corte Madera Creek in Marin County. More specifically, these areas are defined as the sovereign land located waterward of Boardwalk One, Greenbrae Boardwalk, and Lucky Drive in Marin County. While these three areas are not physically connected, they do exhibit comparable traits. These similar characteristics include, but are not limited to, areas containing homes elevated on stilts over marshlands, decks, portions of residences, and other residential-related improvements extending waterward, beyond the Mean High Tide Line.

Located in parts of Greenbrae, Kentfield, and Larkspur; all three areas were originally constructed in the early 1900s with arks (or houseboats). According to the Marin County Assessor's Office, most of these residences were built over marshlands between 1905 and 2004. Subsequently, the uplands and adjoining subject tidelands were subdivided and developed into residential lots of various sizes. Over the years, many of these arks, located landward of the Mean High Tide Line, transitioned from residences on barges into residences on foundations. All encroachments onto sovereign lands are required to come under lease with the State of California. This benchmark report is intended to establish the updated fair market rental rate for non-water dependent use areas.

Methodology

The Commission's authority to lease lands and charge rent comes from the California State Constitution, the Public Resources Code, and the California Code of Regulations.

The Commission's mandate to charge rent comes from the Gift Clause of the California State Constitution, which states in part that:

"The Legislature shall have no power to...make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever..." Cal. Const. Art. XVI -6.

Section 6503 of the Public Resources Code states that:

"The Commission shall appraise the lands and fix the annual rent or other consideration thereof."

The California Code of Regulations¹ provides the Commission with broad discretion in all aspects of leasing.

¹ Title 2, Administration, Division 3, State Property Operations, Article 2 Section 2000, General (b).

“Leases or permits may be issued to qualified applicants and the Commission shall have broad discretion in all aspects of leasing including category of lease or permit and which use, method or amount of rental is most appropriate...based on what it deems to be in the best interest of the State”

The Regulations then outline the types of leases and the methods of setting rent for each. Of these, the “9% of the appraised value of the leased land”² method is considered the most directly applicable. The land to be leased is sovereign land located waterward of the high-water mark. Since there is not an active real estate market for sovereign land, the basis for the benchmark rental rate is the adjoining upland property. At Corte Madera Creek, the adjoining upland property generally consists of single-family homes on residential lots. The rent to be set is based on the value of the underlying land and does not include the value of any improvements. Thus, for valuation purposes, the value of waterfront residential lots at Corte Madera Creek is the basis of the rental rate.

The market value of residential land is typically estimated through use of the Sales Comparison Approach. In this approach, recent sales and current listings of similar properties are compared to the subject on the basis of pertinent factors such as location, size, shape, etc. Typically, an indication of value is then concluded based on a comparative analysis of these factors. Waterfront residential lots are typically valued on either a per-lot or on a per-waterfront-foot basis. However, because the lease areas generally do not represent a full residential lot, the unit of comparison used is the price per square foot of land area. Per Regulations, rent is then set based on 9% of the appraised value of the leased land. It should be noted that because this is a benchmark appraisal – intended to be applied to a number of different lease areas – there is no specific subject property or lease area. Accordingly, there are no specific adjustments (for location, size, shape, etc.) made. Instead, the benchmark rental rate is intended to represent the general characteristics of the benchmark’s geographic area.

Market Value of Upland Property

On LandVision³, a search was made to find recent sales⁴ of vacant residential lots, typical in size, fronting Corte Madera Creek in Marin County. However, due to its built-up nature, no comparable sales of vacant waterfront residential lots were found. Rather than use comparable sales that do not front the water, which would necessitate

² Title 2, Administration, Division 3, State Property Operations, Article 2 Section 2003(a)(1).

³ LandVision is a map-based real estate application that provides real estate, government, and many other industries with comprehensive map-based property search, analysis, management, and presentation capabilities.

⁴ It should be noted that current listings were also considered, however, the sales utilized were deemed the strongest indicators of market value for the subject property.

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adjustments for location, an allocation method⁵ is employed. For the improved residential sales deemed similar to the subject property, the land values are extracted through use of the improvement percentage assigned by the Marin County Assessor's Office. For instance, if a house sold for \$1,000,000 and had an improvement percentage of 40%, then the allocated value of the land is 60%, or \$600,000. For analysis purposes, the unit of comparison used is the price per square foot of land area.

Summarized in the Comparable Sales Table (see Table 2) are the pertinent details of ten residential sales fronting Corte Madera Creek in Marin County. The sales took place between June 2020 and September 2023. According to the Indications of Comparable Sales Table (see Table 3), the lot sizes range from 5,016 to 13,200 square feet, with a mean of 9,727 square feet and a median of 9,600 square feet. The sale prices for the waterfront lots ranged from a low of \$490,000 to a high of \$1,500,000, with a mean of \$1,000,900, and a median of \$938,500. According to the Assessor's allocations, the value of the land in these transactions accounted for between 26.64% and 93.09% of the total price. Based on these percentages, the value of unimproved residential waterfront land lies between \$33 and \$97 per square foot. The mean unit value is \$59 per square foot, while the median is \$56 per square foot.

Analysis of the sales revealed no recognizable trends relating to date of sale and land value. Analysis of the sales also revealed no recognizable trends relating to typical lot area and land value relationships (i.e., unit prices decreasing as sizes increase). The lack of a size/price relationship is illustrated in the following table. The presentation of the sales is based on the lot area (SF) of the sales, going from smallest to largest.

Table 1. Lot Area to Land Value Per SF Table

Lot Size (SF)	Land Value Per SF
5,016	\$45
6,160	\$55
8,000	\$75
8,256	\$46
9,300	\$97
9,900	\$58
12,190	\$72
12,500	\$33
12,750	\$44
13,200	\$68

⁵ Allocation is the general process of separating value between the component parts of a property. A method of estimating land value in which sales of improved properties are analyzed to establish a typical ratio of land value to total property value and this ratio is applied to the property being appraised or the comparable sale being analyzed.

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As mentioned earlier, lease areas impacted by the Corte Madera Creek Category 2 Benchmark are of various lot areas, waterfrontages, locations, shapes, topography, zonings, etc. Due to the uniqueness of each lease area and the lack of significant land value trends relating to the above elements of comparison, no particular sale is deemed a better indicator in concluding a land value benchmark. Therefore, an analysis of the overall dataset is warranted and deemed appropriate in concluding land value for the Corte Madera Creek Category 2 Benchmark. As previously stated, the value of the unimproved land lies between \$33 and \$97 per square foot. The mean unit value is \$59 per square foot, while the median is \$56 per square foot. Based on all the data gathered and analyzed, a unit value of \$58 per square foot is concluded as reasonable for the typical upland residential property.

Market Value of Upland Property \$58 per square foot

Benchmark Rental Rate

Applying the 9% annual rate of return to the previously concluded market value of the upland property results in an annual rental rate of \$5.22 per square foot⁶.

Benchmark Rental Rate

\$5.22 per square foot

The concluded value is based on the leased land having the same utility as the adjoining upland. If the leased land does not have the same utility, then a discounted benchmark rental rate may be warranted.

⁶ Calculated as $\$58 \times 0.09 = \5.22 .

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Table 2. Comparable Sales Table

No.	APN	Address	Sale Date	Lot Area (SF)	Sale Price	% Assessed Land Value	Land Value	Land Value Per SF
1	023-021-05	137 Greenbrae Boardwalk	9/15/2023	6,160	\$490,000	68.57%	\$336,002	\$55
2	022-091-03	23 Boardwalk One	7/31/2023	8,256	\$1,190,000	32.15%	\$382,557	\$46
3	023-013-08	41 Greenbrae Boardwalk	6/20/2023	5,016	\$850,000	26.64%	\$226,431	\$45
4	022-131-27	20 Lucky Dr	6/13/2022	12,190	\$940,000	93.09%	\$875,000	\$72
5	023-021-26	69 Greenbrae Boardwalk	3/29/2022	9,900	\$875,000	65.71%	\$575,000	\$58
6	023-021-01	147 Greenbrae Boardwalk	8/24/2021	12,750	\$937,000	59.89%	\$561,198	\$44
7	022-131-11	30 Lucky Dr	4/28/2021	13,200	\$1,445,000	62.28%	\$900,000	\$68
8	022-091-15	35 Boardwalk One	10/28/2020	9,300	\$1,500,000	60.00%	\$900,000	\$97
9	022-131-08	38 Lucky Dr	7/13/2020	8,000	\$957,000	62.70%	\$600,000	\$75
10	023-013-20	52 Greenbrae Boardwalk	6/29/2020	12,500	\$825,000	50.00%	\$412,500	\$33

Table 3. Indications of Comparable Sales Table

Indications	Lot Area (SF)	Sale Price	% Assessed Land Value	Land Value	Land Value Per SF
Low	5,016	\$490,000	26.64%	\$226,431	\$33
High	13,200	\$1,500,000	93.09%	\$900,000	\$97
Mean	9,727	\$1,000,900	58.10%	\$576,869	\$59
Median	9,600	\$938,500	61.14%	\$568,099	\$56