

Staff Report 48

LESSEE:

Anthony Howard Good, Trustee of the Anthony Howard Good 1999 Revocable Trust; and Maria Helena Del Llano Good, Trustee of the Maria Helena Del Llano Good 1999 Revocable Trust

APPLICANT:

Michael I. Thompson

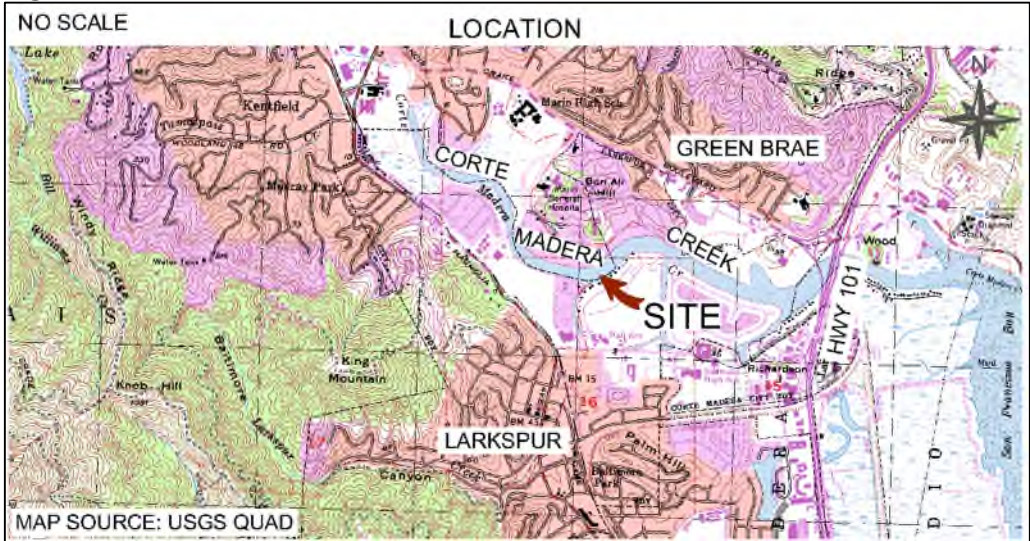
PROPOSED ACTION:

Termination of a General Lease – Recreational and Protective Structure Use and Issuance of a General Lease - Other.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Corte Madera Creek, adjacent to 23 Boardwalk One, Larkspur, Marin County (as shown in Figure 1).

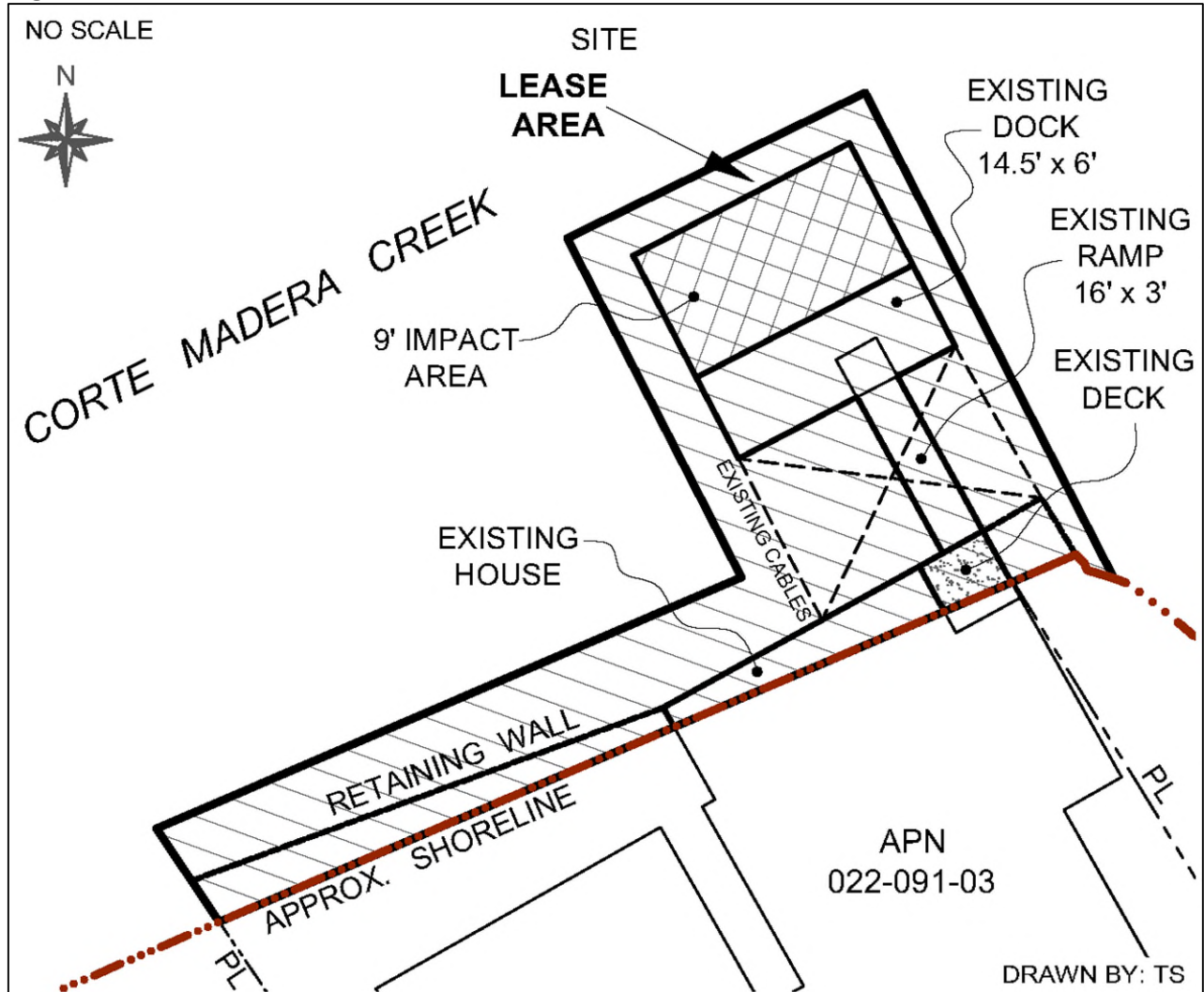
Figure 1. Location



AUTHORIZED USE:

Use of an existing portion of residence, deck, dock, appurtenant facilities, and retaining wall (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:

14 years, beginning August 23, 2024.

CONSIDERATION:

\$494 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 the provisions of Section 3, Paragraph 11 shall also extend to the period of Lessee's unauthorized occupation of state-owned lands from July 31, 2023 to August 22, 2024.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 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 a General Lease – Residential, Recreational, and Protective Structure Use to Anthony Howard Good, Trustee of the Anthony Howard Good 1999 Revocable Trust and Maria Helena Del Llano Good, Trustee of the Maria Helena Del Llano Good 1999 Revocable Trust, for a 20-year term for the use and maintenance of a portion of an existing residence, deck, dock, appurtenant facilities, and retaining wall ([Item 53, August 23, 2018](#)). The lease expires August 22, 2038.

On July 31, 2023, ownership interest in the upland property was transferred to Michael I. Thompson. Staff recommends terminating the existing lease because the Lessee did not notify staff of the sale of the upland parcel nor sign a quitclaim deed. The proposed termination date is July 31, 2023, the day the Applicant took ownership of the upland parcel. Annual rent for this lease is paid through August 22, 2024.

The Applicant is applying for issuance of a General Lease – Other for the use of a portion of an existing residence, deck, dock, appurtenant facilities, and retaining wall.

Staff recommends issuing a 14-year lease term beginning August 23, 2024 to remain consistent with the other leases in the area and the expiration of the previous lease. The lease provisions regarding indemnity will be extended to apply for the period of July 31, 2023, the day the Applicant took ownership of the upland property, through August 14, 2024, the day before the beginning of the proposed lease.

The Applicant owns the uplands adjoining the lease premises and the subject facilities are located directly waterward of the upland property. The dock and appurtenant facilities on the lease premises occupy a relatively small area and facilitate recreational boating. Recreational boating is water-dependent and 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 lands. (Pub. Resources Code, § 6503.5)

The retaining wall on the lease premises is maintained by the Applicant and serves to stabilize the bank and support the integrity of both the creek and the upland property. Loss or degradation of this structure could result in property damage and adverse impacts to Public Trust resources in the lease area and the surrounding waterway. As such, this improvement provides a benefit to both the public and the upland owner and does not negatively impact Public Trust uses in this location.

The portion of the residence and deck on the lease premises serves as an extension of the upland property and is not consistent with the Public Trust. However, the Commission has issued leases on a limited basis for existing facilities that are not generally consistent with the Public Trust when such facilities do not significantly interfere with Public Trust needs and values at the time. The existing portion of the residence and deck on the lease premises meets these qualifications, as it has existed for many years, does not significantly interfere with Public Trust needs and values at this location.

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 adjacent to a salt marsh, that occasionally floods during king tides and storms. 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. According to the sea level rise viewer, [Our Coast Our Future](#), the lease premises and surrounding salt marsh will become permanently submerged with just 0.8 feet 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

Source: 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 ramp 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 pilings, portion of the residence, deck, and retaining wall 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 ramp to the upland parcel, as the top of the ramp may experience increased inundation with rising water levels and more frequent winter storm flooding. Use of these facilities while they are inundated may create a safety hazard for the user(s). The lessee should consider fortifying the bank of the Creek around the structures by using nature-based strategies, such as increasing the amount of vegetation on the bank to 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 believe approval of this lease will not substantially interfere with Public Trust needs at this location, at this time, nor for the term of the lease; and is in the best interests of the State.

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.

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 improvements and restore the lease 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, sections 15060, subdivision (c)(3), and 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 15061 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:

1. Find that the existing and, for a limited period, use of the dock and appurtenant facilities do not substantially interfere with Public Trust needs and values at this location and are consistent with the common law Public Trust Doctrine.
2. Find that the existing and, for a limited period, continuing use of the retaining wall is not inconsistent with the Public Trust Doctrine and does not substantially interfere with the Trust.
3. Find the existing and, for a limited period, continuing use of the portion of the residence and deck is generally not consistent with the Public Trust Doctrine, but that this use does not substantially interfere with the Trust.
4. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

1. Authorize termination, effective July 31, 2023, of Lease 9478, a General Lease – Residential, Recreational, and Protective Structure Use, issued to Anthony Howard Good, Trustee of the Anthony Howard Good 1999 Revocable Trust and Maria Helena Del Llano Good, Trustee of the Maria Helena Del Llano Good 1999 Revocable Trust.
2. Authorize issuance of a General Lease – Other to the Applicant beginning August 23, 2024, for a term of 14 years, for the use of an existing portion of residence, deck, dock, appurtenant facilities, and retaining wall; annual rent in the amount of \$494, with an annual Consumer Price Index adjustment; and liability insurance in amount no less than \$1,000,000 per occurrence.