

Staff Report 29

APPLICANT:

Greenbrae Improvement Club, Inc.

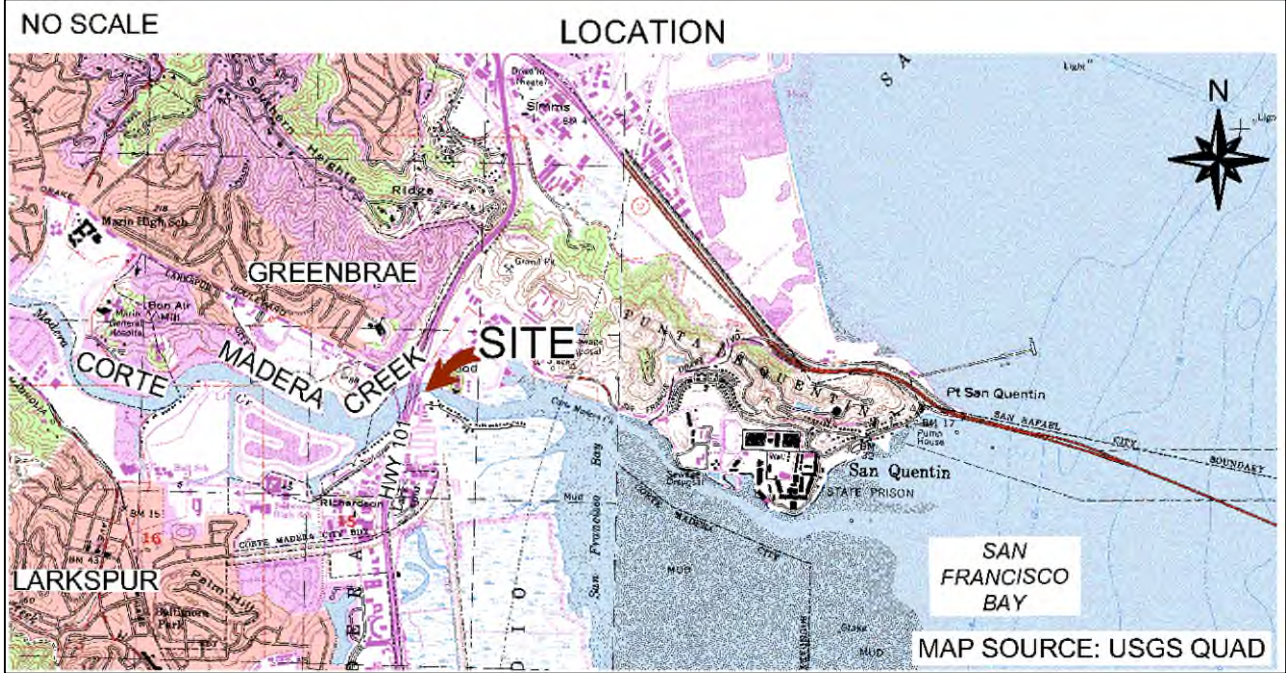
PROPOSED ACTION:

Issuance of a General Lease – Recreational Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Corte Madera Creek, adjacent to 2170 Redwood Highway, near Greenbrae, Marin County (as shown in Figure 1).

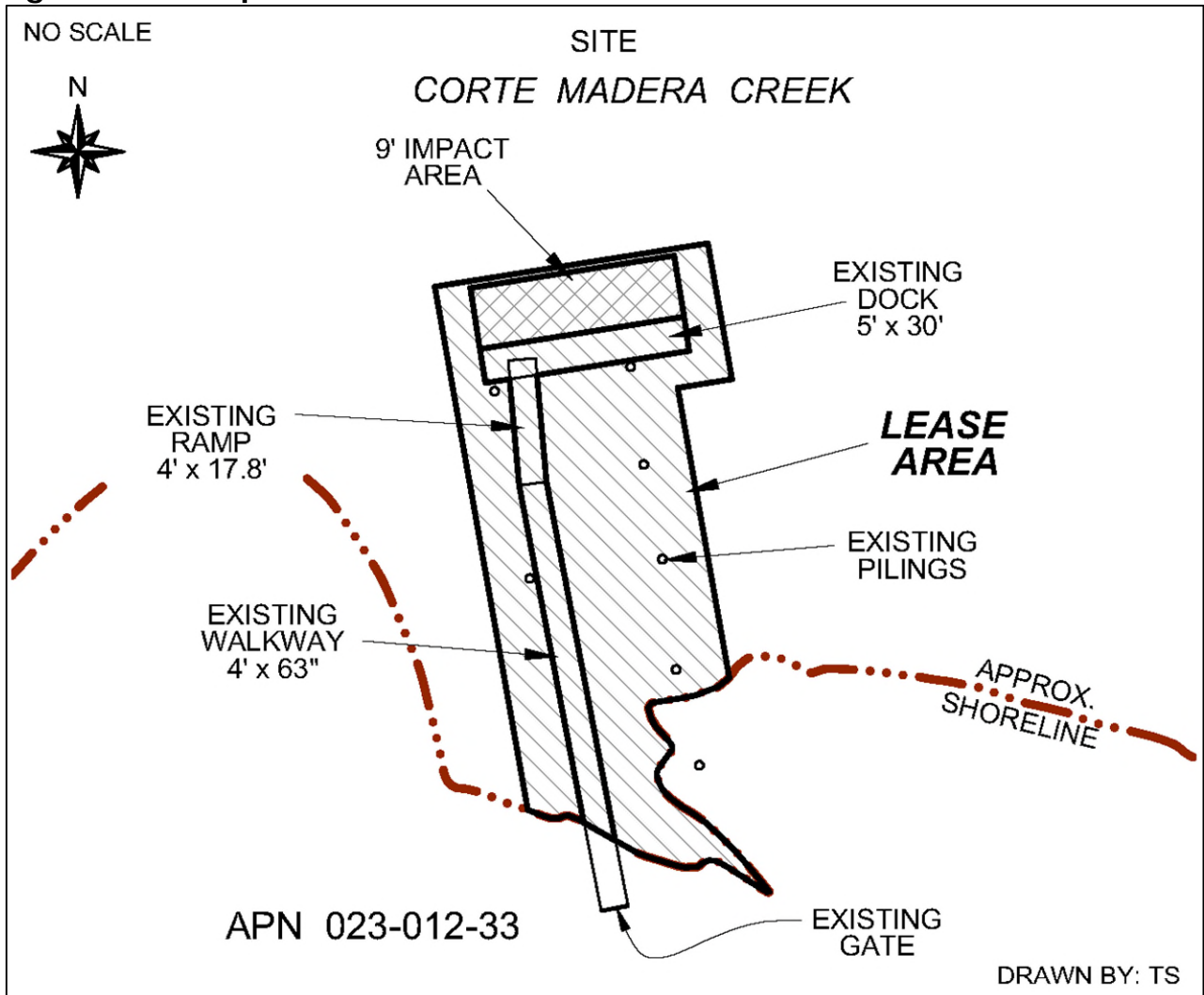
Figure 1. Location



AUTHORIZED USE:

Use of an existing boat dock and appurtenant facilities (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 17, 2024.

CONSIDERATION:

\$323 per year, with an annual Consumer Price Index adjustment; and \$202 for the unauthorized occupation of state land prior to October 17, 2024.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee agrees to submit an application to the Commission for removal or reuse of the existing unattached pilings within 2 years of the lease execution date.
- Lessee agrees the lease indemnity provisions of Section 3, Paragraph 11 shall also extend to the period of Lessee's unauthorized occupation of state-owned lands prior to October 17, 2024.

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 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On February 21, 2014, the Commission authorized the issuance of a General Lease – Recreational Use to the Greenbrae Improvement Club, Inc., for the continued use and maintenance of an existing boat dock, ramp, walkway, and six pilings ([Item 33, February 28, 2014](#)). A revision of rent was then performed by staff on February 4, 2019 ([Item 41, February 4, 2019](#)), this resulted in annual rent being revised from \$119 per year to \$136 per year. This lease expired on February 20, 2024.

The Applicant is now applying for a General Lease – Recreational Use for use of the existing boat dock and appurtenant facilities. The existing boat dock and appurtenant facilities have existed at this location for many years and are located directly adjacent to the Applicant's upland property. The improvements serve to facilitate recreational boating. Recreational boating is a water-dependent activity 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 land. (Pub. Resources Code, § 6503.5) There are three unattached pilings among the appurtenant facilities. The proposed lease contains a provision requiring the Applicant to remove or reuse these pilings within the first two years of the lease.

Staff recommends the Commission accept compensation from the Applicant in the amount of \$202 for the unauthorized occupation of state land by the existing improvements through October 16, 2024. The proposed lease will also require that

the Applicant agree to indemnify the State for its unauthorized occupation of State land.

The proposed lease includes certain provisions protecting the public use of the proposed lease area, including a limited lease term of 10 years and a non-exclusive use provision. The facilities do not significantly alter the land, and the lease does not alienate the State's fee simple interest, nor permanently impair public rights. 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 facilities are 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 at a 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 listed in Table 1, below. According to the sea level rise viewer, [Our Coast Our Future](#), the lease premises will become permanently submerged with 1.9 feet of sea level rise.

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 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 access 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 walkway and pilings, 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 properties 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 within the lease premises from rising seas and flood 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, creating a public safety hazard when accessing the leased facilities. The Creek bank may suffer increased erosion from sea level rise and storm flooding. In the future, if the erosion requires modifications to the bank, Commission staff suggest the lessee consider nature-based solutions such as native vegetation to stabilize the sediment. Any future construction or activities on state land would require a separate authorization from the Commission.

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 located 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 as prior lessee may be required to remove the improvements. The lessee has no right to a new lease or to renewal of any previous lease.

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.

2. Applicant is an incorporated association comprised of homeowners along the Greenbrae Boardwalk.
3. Applicant has access to a court adjudicated easement, granting them access to the lease premises.
4. The subject improvements are adjacent to an upland parcel that is also associated with Lease 5264, a General Lease – Commercial Use for a boat dock, gangway, deck, pilings, four platforms, and a launch ramp. The lease will expire on February 8, 2036.
5. 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 15061 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 the 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 \$202 for unauthorized occupation of State land for the period prior to October 17, 2024.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning October 17, 2024, for a term of 10 years, for the use of an existing boat dock and appurtenant facilities; annual rent in the amount of \$323, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.