

**STAFF REPORT  
C49**

A 10  
S 2

08/23/18  
W 27090  
V. Caldwell

**GENERAL LEASE – RECREATIONAL AND PROTECTIVE STRUCTURE USE**

**APPLICANT:**

Brian Durwood

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

Sovereign land in Corte Madera Creek, adjacent to 22 Lucky Drive, near Greenbrae, Marin County.

*AUTHORIZED USE:*

Use and maintenance of a portion of an existing deck, dock, appurtenant facilities, and retaining wall.

*LEASE TERM:*

20 years, beginning August 23, 2018.

*CONSIDERATION:*

**Portion of Deck, Dock, Appurtenant Facilities:** \$546 per year, with an annual Consumer Price Index adjustment.

**Retaining Wall:** Public use and benefit, with the State reserving the right, at any time, to set a monetary rent if the Commission finds such action to be in the State's best interests.

*SPECIFIC LEASE PROVISIONS:*

1. Liability insurance in an amount no less than \$1,000,000 per occurrence.
2. Lessee agrees and acknowledges hazards associated with sea-level rise may require additional maintenance or protection strategies regarding the improvements on the lease premises.

## STAFF REPORT NO. C49 (CONT'D)

### **BACKGROUND:**

Lucky Drive is located along Corte Madera Creek, on the west side of Highway 101 in Marin County. All of the properties on Lucky Drive and adjacent to Corte Madera Creek are improved residential parcels. This area was developed over many years starting with arks (floating homes) landing on the shore and taking up residence, as was commonplace in Larkspur in the early 1900s. Over the years, the arks have transitioned from houses on barges to houses on foundations. Facilities such as decks, docks, and other appurtenant facilities have also been added and now nine of the properties have improvements extending beyond the Ordinary High-Water Mark (OHWM) onto State-owned sovereign land.

The boundary between State and private ownership along tidal waterways is generally the OHWM pursuant to California Civil Code section 830. The OHWM is the legal boundary between tidelands and uplands, as measured by the mean high tide line. In general, when a tidal waterway is unaffected by fill or artificial accretion, the location of the OHWM is the mean high tide line, which is the intersection of the mean high water with the shore. As a result, the boundary may move over time as water levels change. In some situations, the boundary between State and private ownership may be fixed by a court decision or agreement. This is the case for the westerly portion of Corte Madera Creek along Lucky Drive, which is subject to Sovereign Land Location 24, a land exchange agreement between Schultz Construction Company and the State of California. The boundary between the upland and State-owned sovereign land in the remainder of the Corte Madera Creek is not fixed by an agreement or court decision, and is thus considered to be ambulatory.

To determine the relationship between existing improvements and the current mean high tide line, staff conducted a land survey and aerial photography survey in December 2016. This aerial survey was performed to create planimetric mapping of the present improvements and to map the mean high tide line. The 2016 surveyed mean high tide line represents the most accurate data known to exist in the area at this time.

The Commission has one current lease and had lease agreements with four others of the nine property owners on Lucky Drive with improvements extending onto State-owned sovereign land, leaving many of the property owners with unauthorized facilities on State land. To remedy the situation, staff conducted a public outreach effort to educate the Lucky Drive and Boardwalk One community on the Commission's jurisdiction, leasing practices, and lease application process. On October 9, 2017, staff held a public meeting in Corte Madera for the Lucky Drive property owners and other interested parties. Since that time, through the development of a frequently asked questions document, meetings,

## STAFF REPORT NO. C49 (CONT'D)

and many phone conversations and email communications, staff worked with property owners to reach agreement on lease terms and conditions acceptable to the involved parties.

### **STAFF ANALYSIS AND RECOMMENDATION:**

#### **Authority:**

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 6501.1, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

#### **Public Trust and State's Best Interests Analysis:**

The public's right to use California's waterways for navigation, fishing, and waterborne commerce is protected by the common law Public Trust Doctrine. Historically, the Public Trust Doctrine ensures the right of the public to use its waterways to engage in commerce, navigation, and fisheries. More recently, the Public Trust Doctrine was broadened by court decisions to include various forms of water-dependent recreation, and preservation of lands in their natural state in order to protect scenic and wildlife habitat values. The Public Trust, as a common law doctrine, is not static but is continuously evolving to protect the public's needs and values inherent in the use of California's waterways.

The dock and ramp are privately owned and maintained for the docking and mooring of boats. Recreational boating is water-dependent and 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 will maintain and improve the integrity of the creek channel, which will help protect the Public Trust resources of the creek for recreational and navigational purposes by the public, at no cost to the public.

The deck, however, is not associated with traditional Public Trust uses. The Commission has issued leases on a limited basis for existing non-water-dependent uses that encroach onto sovereign land where such encroachments do not significantly interfere with Public Trust needs and values.

The subject facilities have existed for many years at this location, and the lease does not alienate the State's fee simple interest or permanently impair public rights. The proposed lease includes certain provisions protecting the public use of the proposed lease area, including a limited lease term of 20 years and a non-exclusive use provision. Upon

STAFF REPORT NO. C49 (CONT'D)

termination of the lease, the lessee may be required to remove any improvements 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 subject facilities are located on Corte Madera Creek, a tidally influenced site vulnerable to flooding at current sea levels that will be at higher risk of flood exposure given projected scenarios of sea-level rise.

The risk of flood exposure for the lease premises is likely to increase with time. The region could see up to 1 foot of sea-level rise (from year 2000 levels) by 2030, 2 feet by 2050, and possibly more than 5 feet by 2100 (National Research Council 2012). Rising sea levels can lead to more frequent flood inundation in low-lying areas and larger tidal events. In addition, as stated in *Safeguarding California* (California Natural Resources Agency 2014), climate change is projected to increase the frequency and severity of natural disasters related to flooding, fire, drought, extreme heat, and storms (especially when coupled with sea-level rise). 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. In rivers, creeks, and tidally influenced waterways, flooding and storm flow will likely increase scour, decreasing bank stability and structure.

The combination of these projected conditions could increase the likelihood of damage to structures within the lease premises during the term of the lease. The ramp and floating boat dock are adaptable to variable water levels but may require more frequent maintenance to avoid dislodgement and ensure continued function during and after storm seasons. The fixed deck and retaining wall may need reinforcement to withstand higher levels of flood exposure. Regular maintenance, as required by the lease, will reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the

STAFF REPORT NO. C49 (CONT'D)

Applicant acknowledges that the lease premises and adjacent upland are located in an area that may be subject to effects of climate change, including sea-level rise.

**Conclusion:**

For all the reasons above, staff believes issuing 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; and is in the best interests of the State.

**OTHER PERTINENT INFORMATION:**

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
2. 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.

**EXHIBITS:**

- A. Land Description
- B. Site and Location Map

**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).

STAFF REPORT NO. **C49** (CONT'D)

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

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

**AUTHORIZATION:**

Authorize issuance of a General Lease – Recreational and Protective Structure Use to Brian Durwood beginning August 23, 2018, for a term of 20 years, for a portion of an existing deck, dock, appurtenant facilities, and retaining wall, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration for the portion of an existing deck, dock, and appurtenant facilities: \$546 per year, with an annual Consumer Price Index adjustment; consideration for the retaining wall: the public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**W 27090**

**LAND DESCRIPTION**

A parcel of tide and submerged land situate in the bed of the Corte Madera Creek, in the Unincorporated area of Greenbrae, County of Marin, State of California, and being more particularly described as follows:

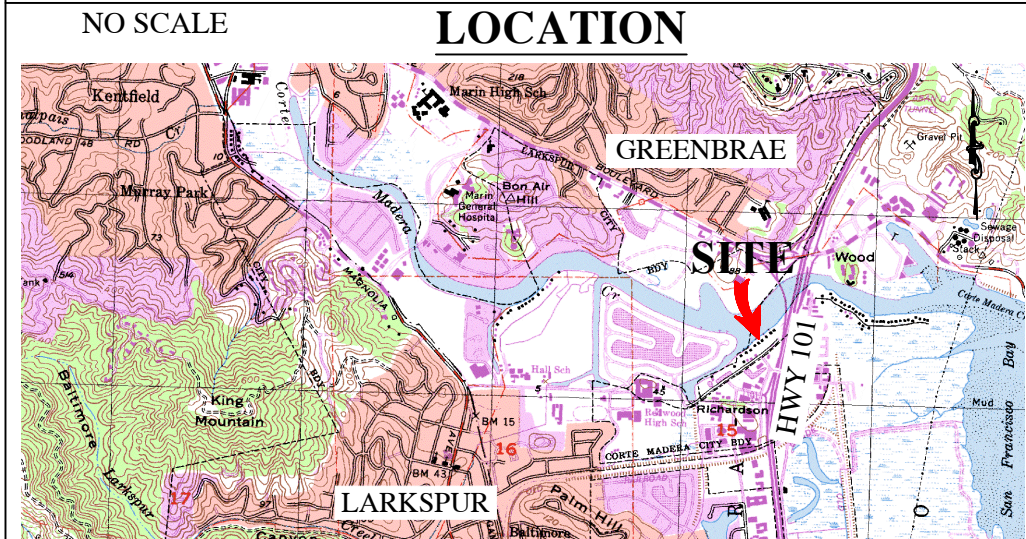
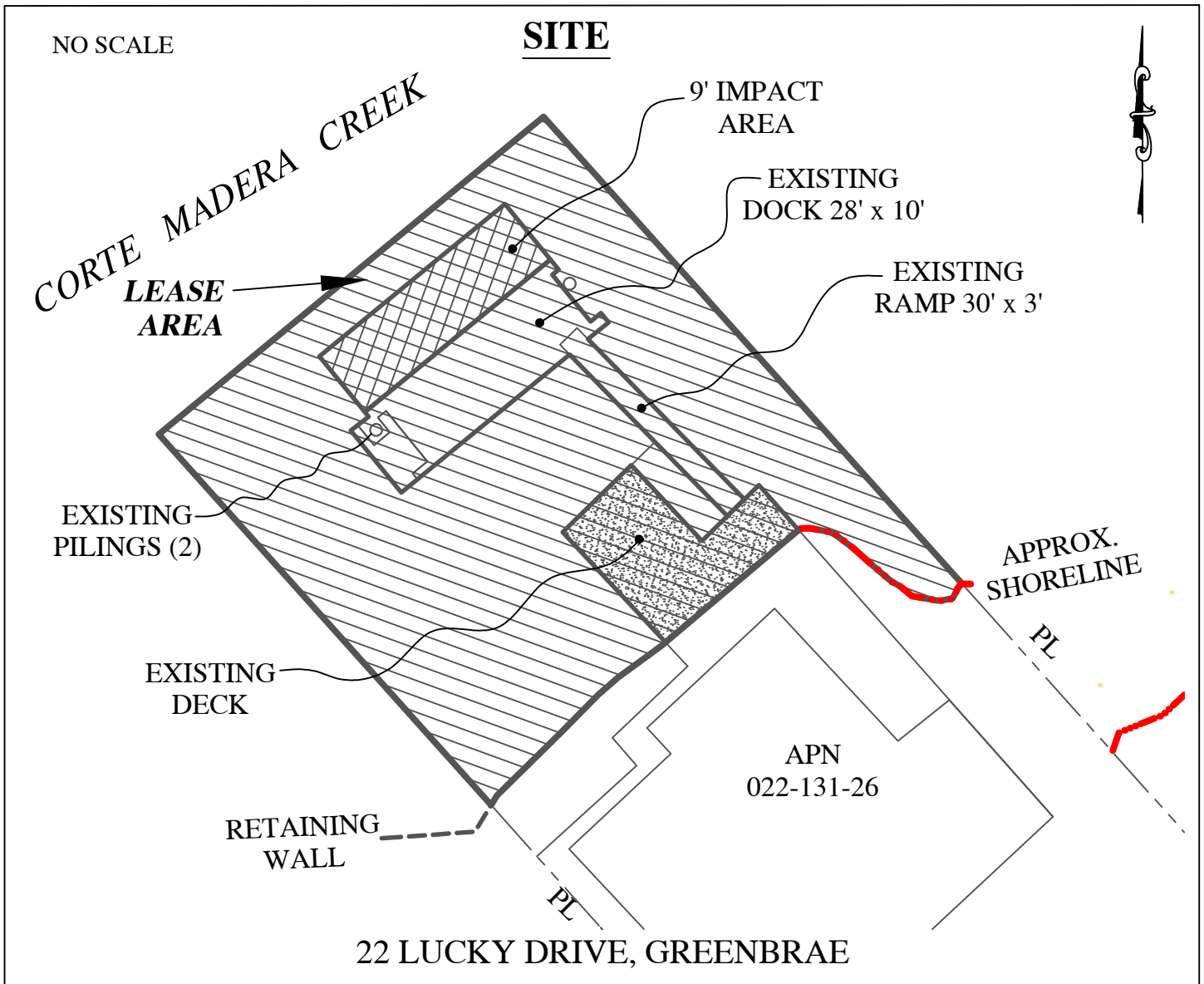
COMMENCING at the southwest corner of Parcel One described in that certain Grant Deed recorded as Document No. 2016-0032424, Official Records of said county; thence along the southwesterly boundary of said parcel, North 41° 52' 00" West 180.00 feet to the POINT OF BEGINNING; thence continuing along the southwesterly boundary and northwesterly prolongation thereof, North 41° 52' 00" West 83.00 feet; thence leaving said boundary prolongation North 50° 30' 00" East 62.52 feet to a point on the northwesterly prolongation of the northeasterly boundary of said parcel of said deed; thence southeasterly along said prolongation and northeasterly boundary, South 41° 52' 00" East 83.00 feet; thence leaving said northeasterly boundary, South 50° 29' 49" West 62.52 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portions lying landward of the Ordinary High Water Mark on the right bank of said Corte Madera Creek.

**END OF DESCRIPTION**

Prepared 06/05/2018 by the California State Lands Commission Boundary Unit.





**Exhibit B**  
 W 27090  
 DURWOOD  
 APN 022-131-26  
 GENERAL LEASE -  
 RECREATIONAL &  
 PROTECTIVE STRUCTURE USE  
 MARIN COUNTY



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.