

**STAFF REPORT**  
**25**

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06/28/19  
I 1093  
V. Caldwell

**CONSIDER APPROVAL OF THE 2019 CATEGORY 2  
CORTE MADERA CREEK BENCHMARK RENTAL RATE**

**INTRODUCTION:**

As described in this staff report, staff recommends the Commission approve the 2019 Category 2 Corte Madera Creek Benchmark, which will apply to annual rents for leases authorizing the use and occupation of sovereign land in the Corte Madera Creek, near Greenbrae and Larkspur, Marin County.

**OVERVIEW OF BENCHMARKS FOR RENTAL RATES:**

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).) For proposed leases involving certain types of structures in regions where benchmarks have been approved, staff will recommend an annual rent based on the applicable benchmark rental rate 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 updates the benchmarks for rental rates every 5 years. The use of benchmarks not only improves consistency and transparency throughout a geographic region, it also improves staff efficiency in setting and adjusting rent for large numbers of leases, saving time and money for both the applicant and the State.

The Commission has two types of benchmarks for rental rates:

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

This staff report only addresses a Category 2 benchmark. A map showing all the Commission's current benchmark areas is attached as Exhibit A ([Benchmark Map](#)), and a list of all the Commission's current benchmark rental rates is attached as Exhibit B ([Current Benchmark Rates](#)). The Category 1 benchmark for this area is the San Francisco Bay Area Benchmark which was established in 2016 and is scheduled for an update in 2021.

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### **Category 2 Benchmark Methodology**

The Corte Madera Creek Benchmark has been used by the Commission since 2014, when staff undertook a compliance effort at the Greenbrae Boardwalk Community. This recommendation will be the first update to the Benchmark. Category 2 benchmarks are based on nearby upland land values because the improvements (residences, decks, or certain other non-water-dependent encroachments) generally represent an extension of the residence or private backyard of the upland residence—a purpose unrelated to the docking and mooring of boats.

Staff uses the following general process to establish and update a Category 2 benchmark. First, staff conducts research to identify recent nearby upland property sales. The initial research seeks to identify land value because the property being leased is the underlying sovereign land, and not the privately-owned improvements. If vacant land sales are not available, and only improved sales are found, then the assessed improvement values are subtracted from the sales prices to reflect the land value of the sale property. Next, staff analyzes the sales data and determines a per-square-foot value representative of the area. The benchmark rental rate is calculated by applying a 9 percent annual rate of return to the per-square-foot value. The Category 2 benchmark may 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, due to topography or other physical characteristics, the nature of the sovereign land use, certain legal constraints, or the upland owner's decision, but nevertheless still contributes to the value of the upland property.

### **Category 2 Corte Madera Creek Benchmark**

Using the methodology described above, staff conducted research for vacant residential lot sales in the vicinity of the Greenbrae Community. As the area is largely built up, no vacant lot sales were found. Consequently, staff identified eight home sales adjoining sovereign land along the Corte Madera Creek within the Greenbrae Community. The sales occurred between 2014 and 2019, with a price range of \$510,000 to \$1,385,000 (with a land value range of \$234,445 to \$635,685). The mean unit value derived from these sales is \$63.14 per square foot while the median is \$56.85 per square foot. Based on all of the data gathered and analyzed, a unit value of \$60 per square foot is concluded as reasonable for the typical upland residential property.

The undiscounted benchmark rate, with the 9 percent rate of return applied, is \$5.40 per square foot. This is unchanged from 2014. 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 an open or covered deck, staff recommends the application of a discount of 75

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percent to reflect the lower intensity of use of the sovereign land occupied. This approach is consistent with how staff applies discounts for similar facilities throughout the state.

Table 1 summarizes the comparison between the 2014 and 2019 Category 2 benchmark rental rates, expressed on a per-square-foot (sf) basis.

**TABLE 1**

Benchmark		2014	2019
Category 2 Corte Madera Creek	Undiscounted	\$5.40/sf	\$5.40/sf
	Discounted*	\$1.35/sf	\$1.35/sf

\*Represents a 75 percent discount.

**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.

**Public Trust and State’s Best Interests Analysis:**

The California Constitution, article XVI, section 6, expressly prohibits the Legislature from making or authorizing any gift of public money or thing of value to any individual, municipality, or corporation. A “thing of value” includes the use of State-owned land, and to allow its use for private benefit with no rent or consideration would constitute an impermissible gift.

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. Rent must be in the best interests of the State and is generally based on one or more of the following methods:

- 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 methods or information that are based on commonly accepted appraisal practices and principles
- For leases for recreational piers or buoys, rent is be based on local conditions and local fair annual rental values

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(Cal. Code Regs., tit. 2, § 2003; Pub. Resources Code, §§ 6503, 6503.5.)

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

Use of benchmarks improves the consistency and transparency of how the Commission establishes rent throughout a specific geographic region for a certain category of leases. It also 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. Approval of the new benchmark rental rates will not result in a change in the use of, or impacts to, Public Trust resources, and considering the requirements discussed above, provides a reasonable method for determining rents in the geographic regions covered by the benchmarks. Review and adjustment of the benchmark when warranted assures 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 State Constitution. Staff believes approval of the new benchmarks will not substantially interfere with Public Trust uses and values and is in the best interests of the State.

**OTHER PERTINENT INFORMATION:**

1. This action is consistent with Strategy 2.1 of the Commission's Strategic Plan to optimize returns for the responsible development and use of State Lands and resources, both onshore and offshore; and Strategy 2.2 to ensure timely receipt of revenues and royalties from the use and development of State lands and minerals.
2. Approval of the 2019 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).

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**EXHIBITS:**

- A. Benchmark Map
- B. Current Benchmark Rates
- C. 2019 Category 2 Corte Madera Creek Benchmark Memorandum

**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 impacts to, Public Trust resources, will not substantially interfere with Public Trust uses and values, and is in the best interests of the State.

**AUTHORIZATION:**

Approve the 2019 Category 2 Corte Madera Creek Benchmark rental rate of \$5.40 per square foot, and application of a discount as appropriate to adjust for any reduced utility or intensity of use of the sovereign lands occupied, effective after June 28, 2019.

EXHIBIT A

CALIFORNIA STATE LANDS COMMISSION  
BENCHMARKS

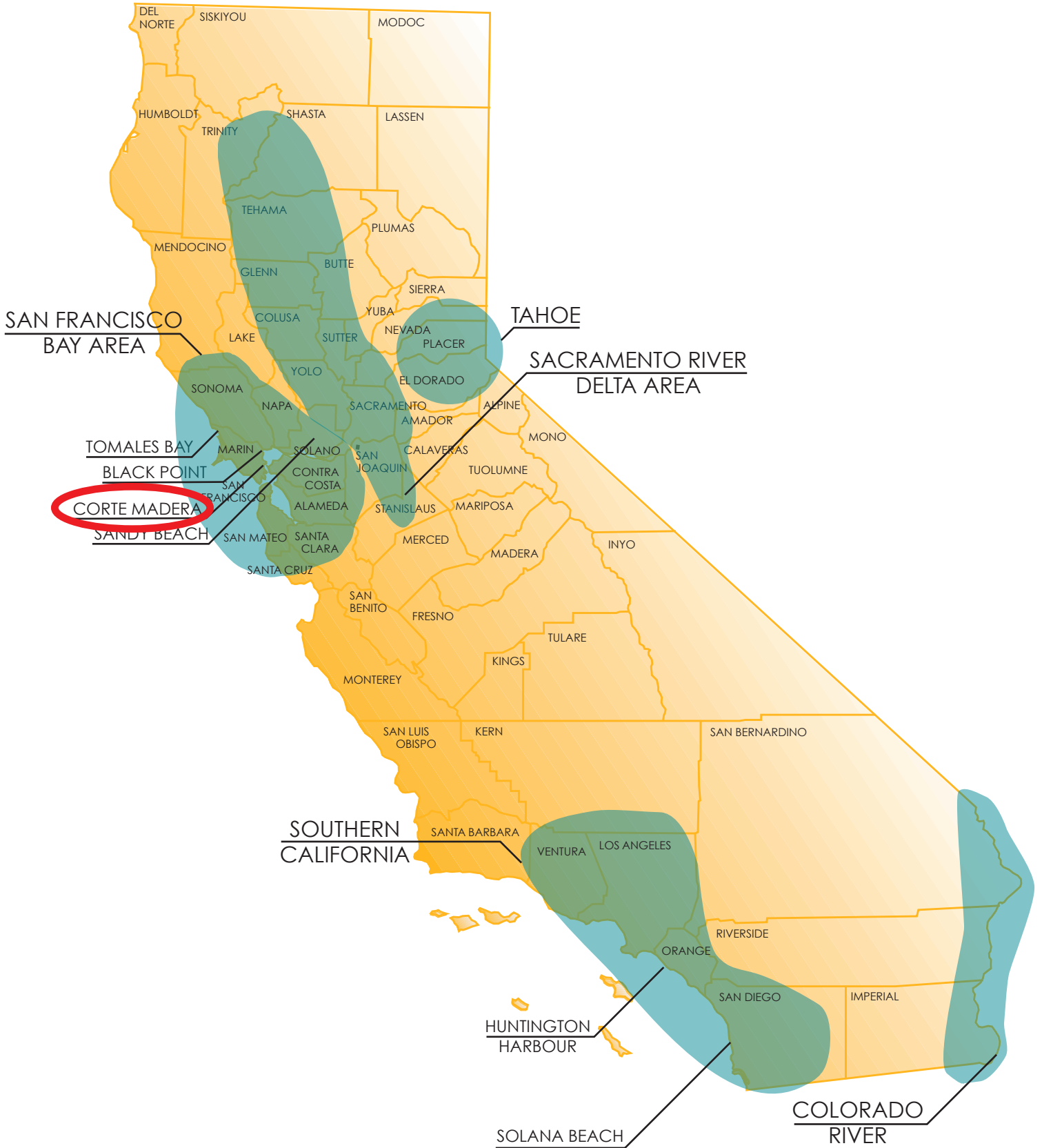


EXHIBIT B

# State Lands Commission Benchmarks

Location	Rental Rate (\$/SF)	Last Updated	Proposed Update
<b>Category 1</b>			
Colorado River	\$ 0.171	February 2017	2022
San Francisco Bay Area	\$ 0.198	June 2016	2021
Lake Tahoe Berths	\$ 0.79	February 2018	2023
Lake Tahoe Buoys*	\$ 377	February 2018	2023
Sacramento River	\$ 0.214	March 2015	2020
Delta Area	\$ 0.165	March 2015	2020
Southern California	\$ 0.374	October 2016	2021
Tomales Bay Berths	\$ 0.114	December 2015	2020
Tomales Bay Buoys*	\$ 125	December 2015	2020
<b>Category 2**</b>			
Sandy Beach	\$ 3.69	August 2018	2023
Corte Madera	\$ 5.40	March 2014	2019
Black Point	\$ 0.35	May 2015	2020
Huntington Harbour	\$ 31.50	October 2016	2021
Solana Beach	\$ 46.80	October 2017	2022

\*per buoy

\*\* The Category 2 Benchmark may be discounted to reflect that the sovereign land being leased may not have the same utility as the upland property.

**Note:** Benchmarks are generally updated every five years.

## EXHIBIT C

State of California

State Lands Commission

### Memorandum

Date: March 14, 2019

To: Brian Bugsch, Chief  
Land Management Division

Grace Kato, Assistant Chief  
Land Management Division

From: Chaun Wong CW  
Associate Property Appraiser  
Land Management Division

Subject: Corte Madera Category 2 Benchmark 2019 - Rental rate for non-water dependent use areas extending on and over sovereign land in Corte Madera Creek, Marin County, California

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. It should be noted that this report does constitute an appraisal as defined by the Uniform Standards of Professional Appraisal Practice (USPAP). It should also be noted that this appraisal has been performed and the report has been prepared in substantial compliance with USPAP as it relates to value of sovereign land. The compiled research, analyses, and conclusions presented in this appraisal represents a correlation of residential land values into a benchmark rental rate 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. Presented on the following pages are the introduction, the scope of the current research, and discussions of the pertinent findings resulting in the updated benchmark rental rates.

I have conducted research relevant to establishing a benchmark to determine rent 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.

#### 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 Regulations<sup>1</sup> provides the Commission with broad discretion in all aspects of leasing.

*"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 Code of Regulations then goes on to 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"<sup>2</sup> method is considered the most directly applicable. For purposes of this analysis, the land to be leased is sovereign land located waterward of the ordinary high-water mark.

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

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

Since there is not an active real estate market for sovereign land, the basis for the annual rent 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 these three locations along 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. 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. An indication of value is then concluded based on a comparative analysis of these factors. Per the California Code of Regulations, rent is then set based on 9% of the concluded value of the leased land.

### **Market Value of Upland Property**

A search was made for recent sales of vacant residential lots (typical in size, ranging from 0.10 acre to 0.50 acre)<sup>3</sup> fronting Corte Madera Creek in Marin County, more specifically along Boardwalk One, Greenbrae Boardwalk, and Lucky Drive. However, due to its built-up nature, only one recent sale of a vacant waterfront lot was found. Rather than use comparable sales that do not front the water, which would necessitate adjustments for location, an allocation technique is employed. In this analysis, residential land values are extracted from recent sales of improved residential properties located along Boardwalk One, Greenbrae Boardwalk, and Lucky Drive 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 the land area.

Summarized in the table on page 6 are the pertinent details of ten sales of improved residential properties and one vacant residential lot along Boardwalk One, Greenbrae Boardwalk, and Lucky Drive. All of these sales involve waterfront lots along Corte Madera Creek in Marin County. The sales took place between November 2014 and January 2019. The lot sizes range from 5,500 to 17,600 square feet, with a mean of 10,012 square feet and a median of 9,300 square feet. The sale prices for the improved waterfront lots ranged from a low of \$510,000 to a high of \$1,385,000, with a mean of \$893,364, and a median of \$950,000. According to the Assessor's allocations, the value of the land in these transactions accounted for between 45.97% and 100.00% of the

<sup>3</sup> The typical residential lot size along Boardwalk One, Greenbrae Boardwalk, and Lucky Drive is judged to be between approximately 0.10 acre and 0.50 acre. Properties below 0.10 acre in size are typically sales of condominiums or townhouses, where the lot size is usually determined by the footprint of the building. These sales are not considered comparable in the appraiser's opinion of land value. Properties above 0.50 acre in size are not considered in the appraiser's land value dataset due to the scarcity of these sales along the waterfront.

total price. Based on these percentages, the value of the unimproved land lies between \$40.96 and \$87.30 per square foot. The mean unit value is \$63.14 per square foot, while the median is \$56.85 per square foot.

Analysis of the sales revealed no recognizable trends relating to typical lot area and land value relationships (i.e., unit prices decreasing as size 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.

Lot Area (SF)	Land Value Per SF
5,500	\$45.97
6,300	\$87.30
7,600	\$82.24
8,640	\$59.03
9,240	\$56.85
9,300	\$85.84
9,500	\$80.25
10,000	\$53.60
12,190	\$51.68
14,260	\$50.84
17,600	\$40.96

Similarly, analysis of the sales revealed no recognizable trends relating to typical water frontage and land value relationships (i.e., unit prices increasing as water frontages increase). The lack of a water frontage/price relationship is illustrated in the following table. The presentation of the sales is based on the water frontage (LF) of the sales, going from smallest to largest.

Water Frontage (LF)	Land Value Per SF
26.48	\$87.30
38.17	\$45.97
40.67	\$53.60
45.06	\$56.85
45.13	\$80.25
55.18	\$51.68
55.43	\$82.24
60.81	\$59.03
61.31	\$85.84
64.37	\$50.84
74.60	\$40.96

Furthermore, lease areas impacted by the Corte Madera Category 2 Benchmark are also of various lot areas, water frontages, locations, shapes, topographies, zonings, etc.

**Corte Madera Category 2 Benchmark**

Due to the uniqueness of each lease area and the lack of significant land value trends relating to typical lot area or typical water frontage; no particular sale, including the vacant parcel, 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 Category 2 Benchmark. Consequently, emphasis is placed on the mean and median unit prices (\$63.14 and \$56.85 per square foot, respectively). Therefore, a rounded market value of \$60 per square foot is concluded as reasonable for the upland residential property.

**Market Value of the Upland Property: \$60 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 \$5.40 per square foot.<sup>4</sup>

**Benchmark Rental Rate** **\$5.40 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 lower benchmark rental rate may be warranted. A lower utility is generally expressed as a percentage of the full benchmark rental rate.

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<sup>4</sup> Calculated as  $\$60 \times 0.09 = \$5.40$ .

**Corte Madera Category 2 Benchmark**

**LAND VALUE INDICATIONS**

**Allocated Assessed Land Values from Recent Sales**

**Boardwalk One, Greenbrae Boardwalk, and Lucky Drive**

No.	APN	Address	City	County	Sale Date	Lot Area (SF)	Sale Price	% Assessed Land Value	Land Value	Land Value Per SF
1	022-131-27	20 Lucky Dr	Greenbrae	Marin	1/11/2019	12,190	\$700,000	90.00%	\$630,000	\$51.68
2	022-250-09	19 Boardwalk One	Larkspur	Marin	12/31/2018	9,500	\$1,385,000	55.05%	\$762,386	\$80.25
3	023-021-27	65 Greenbrae Boardwalk	Greenbrae	Marin	10/5/2018	10,000	\$670,000	80.00%	\$536,001	\$53.60
4	023-013-07	43 Greenbrae Boardwalk	Kentfield	Marin	6/14/2018	5,500	\$550,000	45.97%	\$252,839	\$45.97
5	022-091-15	35 Boardwalk One	Larkspur	Marin	3/19/2018	9,300	\$1,085,000	73.58%	\$798,328	\$85.84
6	022-250-34	15 Boardwalk One	Larkspur	Marin	5/22/2017	7,600	\$960,000	65.10%	\$625,000	\$82.24
7	022-131-26	22 Lucky Dr	Kentfield	Marin	7/21/2016	14,260	\$950,000	76.32%	\$725,000	\$50.84
8	022-091-01	21 Boardwalk One	Larkspur	Marin	3/18/2016	6,300	\$975,000	56.41%	\$550,000	\$87.30
9	022-131-09	36 Lucky Dr	Greenbrae	Marin	12/3/2015	9,240	\$927,000	56.66%	\$525,284	\$56.85
10	022-131-24	28 Lucky Dr	Kentfield	Marin	7/1/2015	17,600	\$1,115,000	64.66%	\$720,982	\$40.96
11	022-240-07	4 Boardwalk One	Larkspur	Marin	11/12/2014	8,640	\$510,000	100.00%	\$510,000	\$59.03
<b>Overall Indications</b>										
		Low				5,500	\$510,000	45.97%	\$252,839	\$40.96
		High				17,600	\$1,385,000	100.00%	\$798,328	\$87.30
		Mean				10,012	\$893,364	69.43%	\$603,256	\$63.14
		Median				9,300	\$950,000	65.10%	\$625,000	\$56.85