

**STAFF REPORT  
27**

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06/28/19  
PRC 1977.1  
M. Schroeder

**CONSIDER WAIVER OF PENALTY, AND INTEREST,  
AMENDMENT OF LEASE, AND REVISION OF RENT**

**APPLICANT/LESSEE:**  
City of Larkspur

**AREA, LAND TYPE, AND LOCATION:**  
Sovereign land in Corte Madera Creek, adjacent to Bon Air Road, near Larkspur, Marin County.

**AUTHORIZED USE:**  
Demolition and removal of the existing Bon Air Road Bridge; relocation of existing utilities; and construction, use, and maintenance of temporary cofferdams, two temporary trestle bridges, and a new Bon Air Road Bridge.

**LEASE TERM:**  
25 years, beginning April 23, 2015.

**CONSIDERATION:**  
**Demolition and removal of the existing Bon Air Road Bridge, construction, use, and maintenance of temporary cofferdams, two temporary trestle bridges, a new Bon Air Road Bridge, and subleases to AT&T and Marin Municipal Water District utilities:** 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.

**Comcast, and Pacific Gas and Electric (PG&E) utilities:** Annual rent in the amount of \$900, with an annual Consumer Price Index adjustment.

**PROPOSED AMENDMENT:**  
Amend the lease to:

- In Section 1, Basic Provisions:
  - Removal of PG&E utility as a sublessee.

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- Under “Land Use or Purpose:”, add installation, use, and maintenance of one 1.5-inch diameter PVC conduit and sensors for seismic instrumentation.
- Replace the current Consideration for Comcast, and PG&E utilities with: **Comcast utilities:** Annual rent in the amount of \$499, with an annual Consumer Price Index adjustment.
- In Section 1, Authorized Improvements:
  - Under “To be Constructed/Relocated:”, add installation of one 1.5-inch diameter PVC conduit and sensors for seismic instrumentation.
- Replace the existing Exhibit A-1 and A-2, Land Description and Exhibit B, Site and Location Map, with the attached Exhibit A and A-1, Land Description and Exhibit B, Site and Location Map (for reference purposes only).

All other terms and conditions of the lease shall remain in effect without amendment.

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

#### **Authority:**

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

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

On April 23, 2015, the Commission authorized a General Lease – Public Agency Use to the City of Larkspur (City) and Endorsement of Sublessees for the demolition and removal of the existing Bon Air Road Bridge; relocation of existing utilities; and construction, use, and maintenance of temporary cofferdams, two temporary trestle bridges, and a new Bon Air Road Bridge (Bridge) ([Item C47, April 23, 2015](#)). That lease will expire on April 22, 2040. The City is now applying for an amendment to the lease for removal of PG&E as a sublessee and to install one 1.5-inch diameter PVC conduit and sensors for seismic instrumentation.

The Lessee paid annual rent through April 22, 2020. Commission staff sent an annual rent invoice (number 47082) to the Lessee for the 2019-2020 lease period. However, submittal of payment for the invoice was late.

On January 22, 2019, the Lessee submitted an application for removal of PG&E as a sublessee. On March 15, 2019, PG&E submitted an application for an Indemnity Agreement with the Commission. The

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application submitted by PG&E is for two 6-inch-diameter 12-kilovolt electrical distribution ducts owned and operated by PG&E that are proposed for attachment to the Bridge. The City has a Franchise Agreement in place with PG&E dated August 18, 1954, ordinance number 223. PG&E's application is also on the June 28, 2019 Commission meeting agenda.

Staff believes it is not in the State's best interests to pursue collection of penalty and interest from the Lessee in light of staff's recommendation to remove PG&E as a sublessee thereby reducing the annual rent effective April 23, 2019. The Lessee will continue to pay annual rent for the remaining sublessee, Comcast. Therefore, staff recommends waiving the penalty and interest due under invoice number 47082.

Installation of the 1.5-inch diameter PVC conduit and sensors for seismic instrumentation is required by the California Geological Survey for the California Strong Motion Instrumentation Program (Program). The Program obtains critical data for structural engineering and seismological purposes through a statewide network of strong-motion instruments. The instruments, installed both on the ground and attached onto hundreds of different types of structures, are monitored and maintained by the Program. This Program currently oversees approximately 1,300 strong motion stations (over 8,500 instruments) across the state.

Strong shaking on the ground and in structures caused by earthquakes is recorded and provided to structural engineers to help design earthquake-resilient structures. The Program data is also used to aid emergency response personnel following an earthquake, help improve building codes, and assist local governments in their general plan development process. The Program has partnered with the U.S. Geological Survey to establish the Center for Engineering Strong Motion Data, which processes, archives, and makes available to the structural engineering community vital earthquake strong motion data from around the world.

Based on review of the bridge plans staff believes the conduit and sensors for seismic instrumentation will be attached in a way that does not interfere, inhibit, or cause an unreasonable risk to public access or navigation on sovereign land. Although the Bridge does not facilitate water-dependent activities, the Bridge does not interfere with navigation, water-dependent recreation, or other Public Trust uses along Corte Madera Creek and is in the State's best interests as it promotes public safety.

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The proposed lease amendment does not alienate the State’s fee simple interest, or permanently impair public rights. The lease requires the lessee to indemnify the State for any liability incurred as a result of the lessee’s activities thereon. The lease also has a limited term of 25 years, which allows the Commission flexibility to determine if the Public Trust needs of the area change over time.

**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 in Corte Madera Creek, which is a tidally influenced site vulnerable to flooding at current sea levels; therefore, this area will likely be at a higher risk of flood exposure given future projection 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 as listed in Table 1.

**Table 1. Projected Sea-Level Rise for San Francisco<sup>1</sup>**

| <b>Year</b> | <b>Projection (feet)</b> |
|-------------|--------------------------|
| 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: <sup>1</sup> Projections are with respect to a 1991 to 2009 baseline.

Because the PVC conduit and sensors for seismic instrumentation would be installed on the new bridge above Corte Madera Creek, the effects of sea-level rise would likely be minimal. However, regular inspection and maintenance of the sensors and the cabling during the lease term will reduce the likelihood of degradation or dislodgement. Further climate change impact analyses on the leased facilities, including the sensors and the cabling, will be assessed at the time the lease expires in 2040 if an

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application is submitted for a new lease, and would be based on projected sea-level rise scenarios at that time.

**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; Strategy 1.3 to protect, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways; and Strategy 2.2 of the Commission's Strategic Plan to ensure timely receipt of revenues and royalties from the use and development of State lands and minerals.
2. Approval or denial of the amendment 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. Upon expiration or prior termination of the lease, the Lessee also has no right to a new lease or to renewal of any previous lease.
3. The amendment of lease to remove PG&E as a sublessee 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, section 15378, subdivision (b)(5).

4. **Installation of PVC Conduit and Sensors for Seismic Instrumentation:** Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 6, Information Collection; California Code of Regulations, title 2, section 2905, subdivision (e)(5).

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
- A-1. Land Description
- B. Site and Location Map

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**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

**Installation of PVC Conduit and Sensors for Seismic**

**Instrumentation:** 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 6, Information Collection; California Code of Regulations, title 2, section 2905, subdivision (e)(5).

**AUTHORIZATION:**

1. Waive penalty and interest due for the period of April 23, 2019, through April 22, 2020, and void annual rent invoice number 47082 issued to the City of Larkspur.
2. Approve the revision of rent for Lease No. PRC 1977.1 from \$900 per year to \$499 per year, effective April 23, 2019.
3. Authorize application of excess annual rent received for the 2019-2020 lease period towards future annual rent amounts due.
4. Authorize the Amendment of Lease No. PRC 1977.1, a General Lease – Public Agency Use, effective April 23, 2019, to authorize removal of PG&E as a sublessee.
5. Authorize the installation, use, and maintenance of one 1.5-inch diameter PVC conduit and sensors for seismic instrumentation.
6. Replace the existing Exhibit A-1 and A-2, Land Description and Exhibit B, Site and Location Map, with the attached Exhibit A and A-1, Land Description and Exhibit B, Site and Location Map (for reference purposes only) attached and by this reference made a part hereof; all other terms and conditions of the lease will remain in effect without amendment.

**EXHIBIT A**

**PRC 1977.1**

**LAND DESCRIPTION**

A one-hundred (100) foot wide strip of submerged land situate in the bed of Corte Madera Creek, lying adjacent to, on the left bank, BTLC Lot 27, and on the right bank, BTLC Lot 26 as shown on "Map No 2. Of Salt Marsh and Tide Lands", County of Marin, State of California and lying 40 feet on each side of the following described centerline:

COMMENCING at Station 103 of the Corte Madera Canal Line (Per Superior Court Case No. 14851), as shown on that certain map titled "Map of State Sovereign Lands in Corte Madera Creek Vicinity of Larkspur" on file at the Sacramento office of the California State Lands Commission, (CB-1295); thence along the easterly canal line per said map North  $11^{\circ}14'40''$  West 248.09 feet to the POINT OF BEGINNING; thence South  $50^{\circ}57'00''$  West 326.71 feet to a point on the westerly canal line per said map and the terminus of said centerline.

The sidelines of said strip are to be lengthened or shortened so as to begin and terminate on the Corte Madera Canal Line, of the right and left banks of Corte Madera Creek, per said map.

**END OF DESCRIPTION**

PREPARED 6/06/19 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



**EXHIBIT A-1**

**PRC 1977.1**

**LAND DESCRIPTION**

A two hundred and twenty (220) foot wide strip of submerged land situate in the bed of Corte Madera Creek, lying adjacent to, on the left bank, BTLC Lot 27, and on the right bank, BTLC Lot 26 as shown on "Map No 2. Of Salt Marsh and Tide Lands", County of Marin, State of California and lying 110 feet on each side of the following described centerline:

COMMENCING at Station 103 of the Corte Madera Canal Line (Per Superior Court Case No. 14851), as shown on that certain map titled "Map of State Sovereign Lands in Corte Madera Creek Vicinity of Larkspur" on file at the Sacramento office of the California State Lands Commission, (CB-1295); thence along the easterly canal line per said map North  $11^{\circ}14'40''$  West 248.09 feet to the POINT OF BEGINNING; thence South  $50^{\circ}57'00''$  326.71 feet to a point on the westerly canal line per said map and the terminus of said centerline.

The sidelines of said strip are to be lengthened or shortened so as to begin and terminate on the Corte Madera Canal Line, of the right and left banks of Corte Madera Creek, per said map.

**END OF DESCRIPTION**

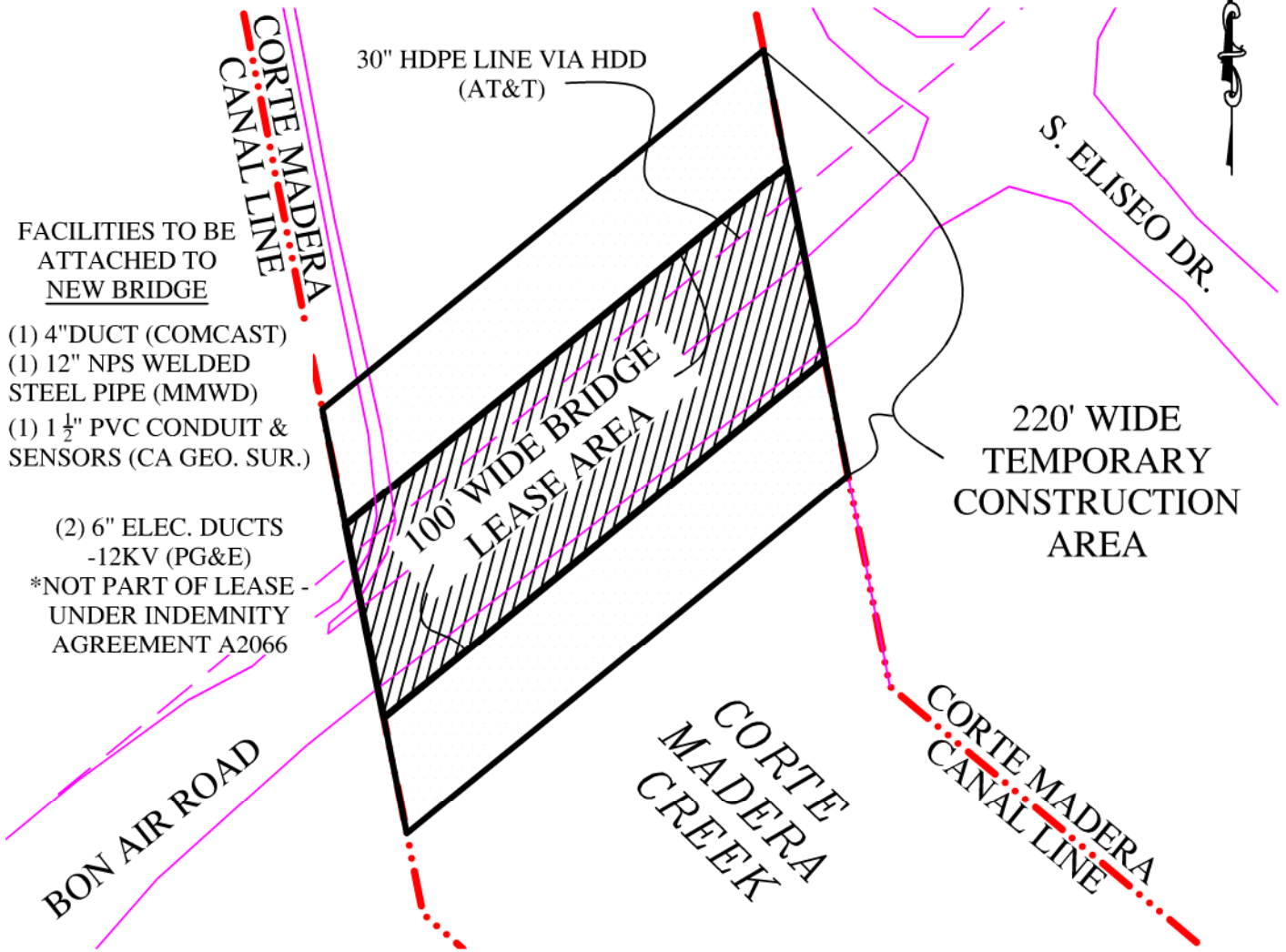
PREPARED 6/06/19 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT





NO SCALE

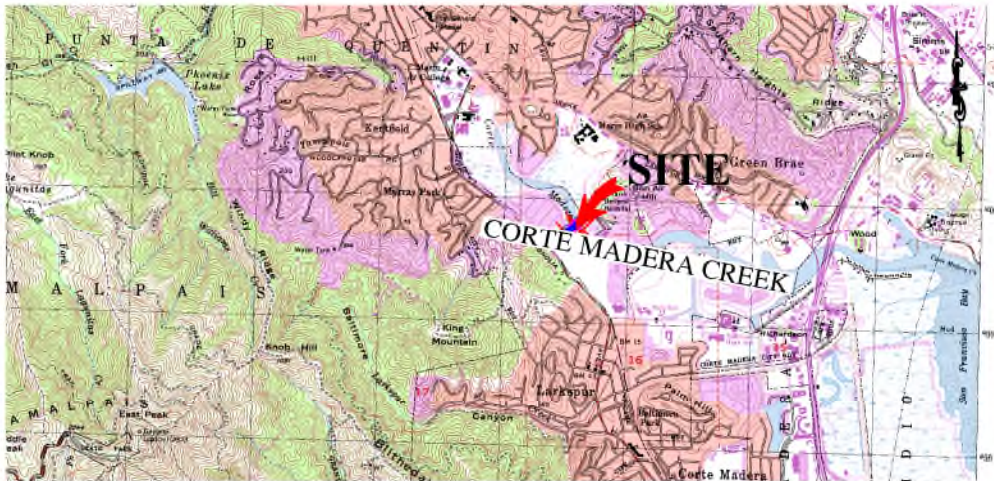
### SITE



Bon Air Road Bridge - Corte Madera Creek

NO SCALE

### LOCATION



MAP SOURCE: USGS QUAD

### Exhibit B

PRC 1977.1  
 CITY OF LARKSPUR  
 GENERAL LEASE -  
 PUBLIC AGENCY USE  
 MARIN COUNTY



SITE

MJF 6/06/19

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.