

**STAFF REPORT
C37**

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11/29/17
PRC 5549.1
D. Tutov

**TERMINATION AND ISSUANCE OF A
GENERAL LEASE – RECREATIONAL AND PROTECTIVE STRUCTURE USE**

APPLICANT:

Larkspur Shores Homeowners Association

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Corte Madera Creek, adjacent to 635 South Eliseo Drive, Greenbrae, Marin County.

AUTHORIZED USE:

Removal of an existing boat dock and gangway, the construction, use, and maintenance of a new boat dock and gangway, previously authorized by the Commission and the use and maintenance of bank protection, not previously authorized by the Commission.

LEASE TERM:

10 years, beginning November 29, 2017.

CONSIDERATION:

Boat dock and gangway: \$206 per year, with an annual Consumer Price Index adjustment.

Bank protection: 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:

Liability insurance in an amount no less than \$1,000,000 per occurrence.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

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

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Public Trust and State's Best Interests Analysis:

On February 1, 2010, the Commission authorized a General Lease - Recreational Use for an existing boat dock and gangway to Larkspur Shores Homeowners Association ([Item C04, February 1, 2010](#)). That lease expires on February 28, 2019. The Applicant is proposing to replace a floating boat dock and gangway and has requested that the lease be terminated and a new 10-year lease be authorized. The Applicant has also requested that the lease include the existing bank protection.

The Applicant's proposed project includes the removal of the existing boat dock and gangway, and its replacement with a new boat dock and gangway in the same configuration, with a similar footprint. The new dock and gangway will be pre-manufactured off-site and floated in position to reduce the in-water installation time and avoid negative environmental impact to water quality. The dock design will allow for removal in emergency conditions and the existing anchoring system will be used.

The improvements are privately owned and maintained. The boat dock and gangway are 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 bank protection will maintain and improve the integrity of the river channel, which will help protect the Public Trust resource of the river for recreational and navigational purposes by the public, at no cost to the public.

The subject facilities have existed for many years at this location, the lease does not alienate the State's fee simple interest, and neither permanently impairs public rights. 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. Upon 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 recreational occupation of the public land involved.

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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 Applicant plans to reconstruct a gangway and floating boat dock, which will attach to an existing landing and deadman anchors. In addition, existing bank protection is located on the shore within the lease area. 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 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 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 floating boat dock and gangway 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 landing and bank protection 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 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 the issuance of this lease will not substantially interfere with Public Trust needs at this location, at this time,

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and for the foreseeable 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. 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. 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, section 15378, subdivision (b)(5).

3. **Replacement of the Boat Dock and Gangway:** 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 2, Replacement or Reconstruction; California Code of Regulations, title 2, section 2905, subdivision (b).
4. **Existing Bank Protection:** 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 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.

5. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon staff's consultation with the persons nominating such lands and through the CEQA review process, it is staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

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

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RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Replacement of the Boat Dock and Gangway: Find that this activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 2, Replacement or Reconstruction; California Code of Regulations, title 2, section 2905, subdivision (b).

Existing Bank Protection: Find that this 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 interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

1. Authorize termination, upon execution of a new lease as authorized herein, of Lease No. PRC 5549.1, a General Lease – Recreational Use, issued to Larkspur Shores Homeowners Association, effective on November 28, 2017.
2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to Larkspur Shores Homeowners Association beginning November 29, 2017, for a term of 10 years; for the removal of an existing boat dock and gangway, and the construction, use, and maintenance of a new boat dock and appurtenant facilities, previously authorized by the Commission; and the use and maintenance of bank protection, not previously authorized by the Commission; 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 boat dock

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and gangway: \$206 per year, with an annual Consumer Price Index adjustment; consideration for the bank protection: 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

PRC 5549.1

LAND DESCRIPTION

A parcel of sovereign land in the bed of the Corte Madera Creek, County of Marin, State of California, lying adjacent to Lots 69 and 70 of "Bon Air Subdivision No. 5" filed in Book 10 of Maps, at Page 88, Official Records of said County, and being more particularly described as follows:

All those lands underlying an existing floating boat dock that is to be reconstructed, an existing gangway that is to be reconstructed, and existing galvanized ropes lying adjacent to said Lots 69 and 70.

TOGETHER WITH any applicable Impact Area(s).

ALSO TOGETHER WITH that land lying immediately beneath any bank protection structure adjacent to said Lots.

EXCEPTING THEREFROM any portion lying landward of the Corte Madera Canal as shown on that certain map dated 1870 and titled "Map No. 2 of Salt Marsh and Tide Lands situate in the County of Marin, State of California", on file at the Sacramento Office of the California State Lands Commission.

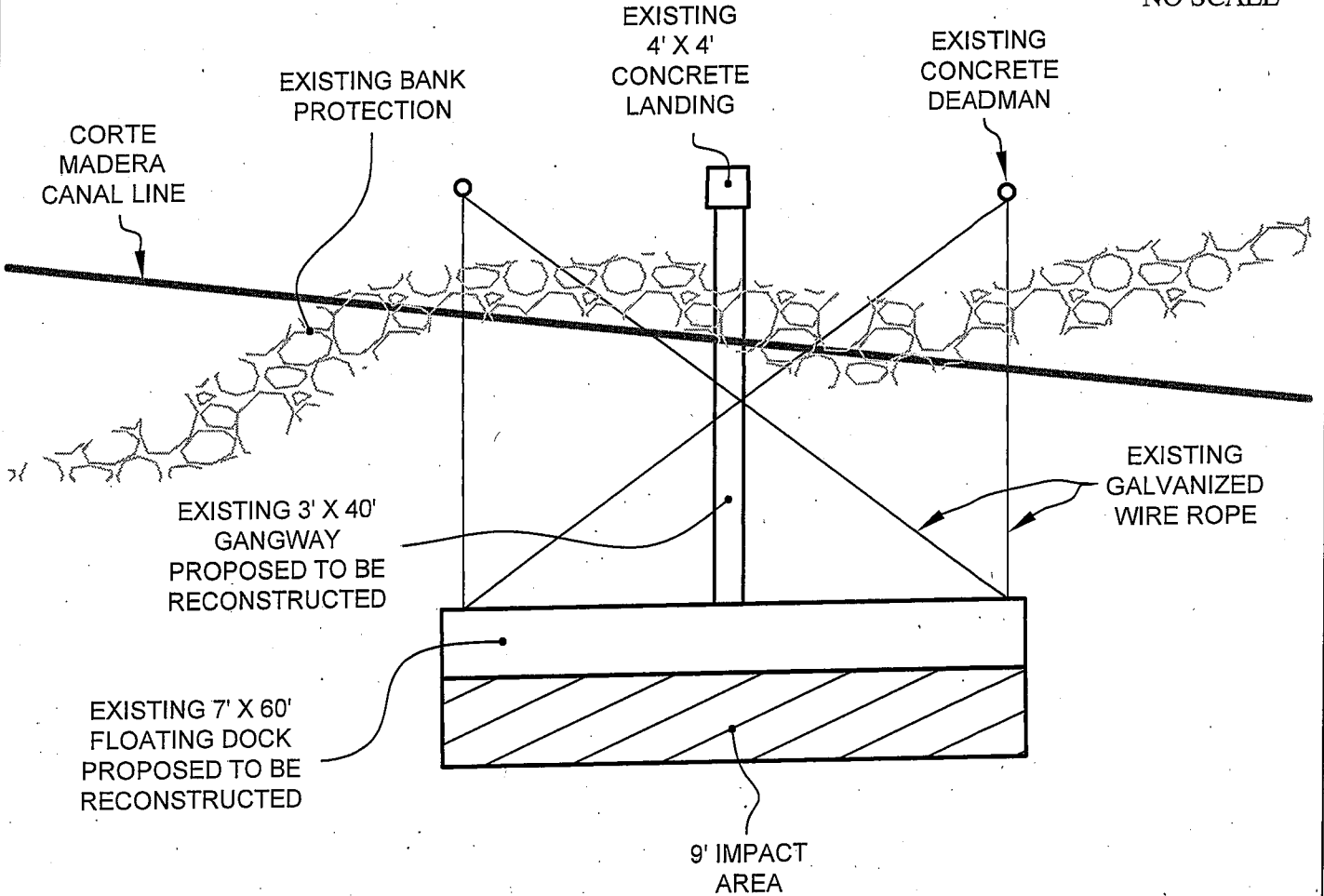
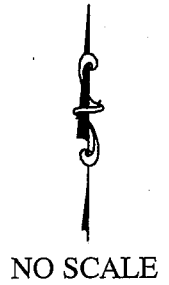
Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 09/27/2017 by the California State Lands Commission Boundary Unit.



APNs 022-560-01 THRU
022-560-16



CORTE MADERA CREEK

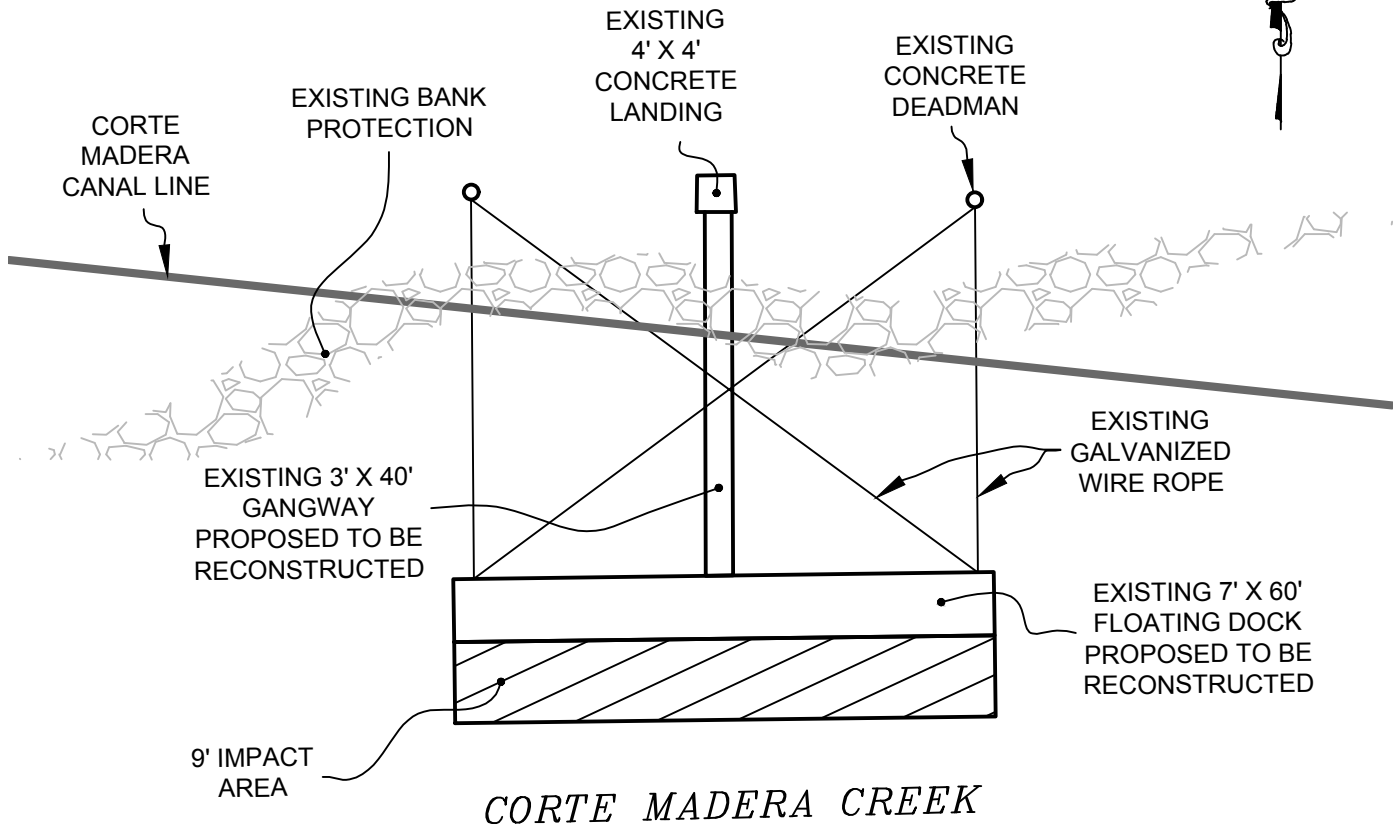
EXHIBIT A



NO SCALE

SITE

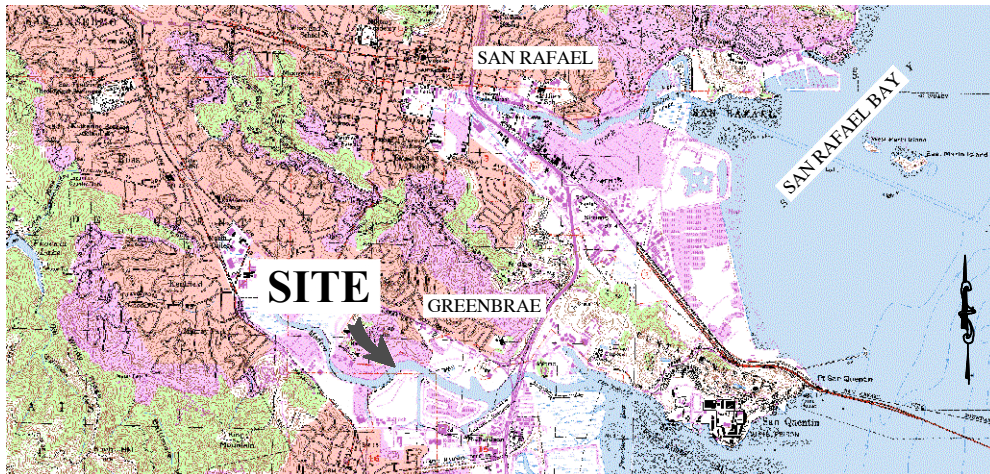
APNs 022-560-01 THRU
022-560-16



635 SOUTH ELISEO DRIVE, GREENBRAE

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 5549.1
 LARKSPUR SHORES
 HOMEOWNERS ASSOCIATION
 APNs 022-560-01 THRU 022-560-16
 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.