

**STAFF REPORT
C67**

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S 2

08/23/18
W 27094
V. Caldwell

GENERAL LEASE – RECREATIONAL AND PROTECTIVE STRUCTURE USE

APPLICANT:

Richard A. Rubenstein and Christina Rossetti McArthur, Trustees of the Rubenstein/McArthur Family Trust, dated January 8, 2003

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Corte Madera Creek, adjacent to 17 Boardwalk One, near Larkspur, Marin County.

AUTHORIZED USE:

Use and maintenance of a portion of an existing deck, dock, appurtenant facilities, and bank protection.

LEASE TERM:

20 years, beginning August 23, 2018.

CONSIDERATION:

Portion of Deck, Dock, Ramp: \$412 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:

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.

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BACKGROUND:

Boardwalk One has 35 homes on the west side of Highway 101 in Marin County. These homes are collectively known as the “Larkspur Boardwalk Community” (Community). These 35 houses are elevated on stilts over marshlands, which are only accessible by foot or bike along a raised wooden walkway. The Community began with arks (houseboats), and, 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 18 of the 35 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 judgment or agreement. This is the case for a portion of the Boardwalk One area, which is subject to a court judgment (AD 111 - *People v. Copeland* – Case No. 14851 of Superior Court in and for the County of Marin). The boundary between upland and State-owned sovereign lands in the remainder of the Community 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.

The Commission has two current leases and had lease agreements with four others of the 18 marshland property owners with improvements extending onto State-owned sovereign lands, leaving many of the property owners with unauthorized facilities on State lands. To remedy the situation, staff conducted public outreach to educate the 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 affected property owners and other interested parties. Since that time, through the development of a frequently asked questions document, meetings, and many telephone conversations and email communications, staff worked with property owners to reach an agreement on lease terms and conditions acceptable to the involved parties.

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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 boat dock and appurtenant facilities 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). However, the dock 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 lands where such encroachments do not significantly interfere with Public Trust needs and values. The bank protection 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 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 termination of the lease, the lessee may be required to remove any improvements and restore the lease premises to their original condition.

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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 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.

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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).

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 bank protection will not substantially interfere with the Public Trust needs and values at this location and are consistent with the common law Public Trust Doctrine; and,

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2. Find that the existing and, for a limited period, continuing use and maintenance of the property for a portion of an existing deck is not generally consistent with the Public Trust Doctrine, but that 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 Richard A. Rubenstein and Christina Rossetti McArthur, Trustees of the Rubenstein/McArthur Family Trust, dated January 8, 2003; beginning August 23, 2018, for a term of 20 years, for a portion of an existing deck, dock, appurtenant facilities, and bank protection 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 ramp: \$412 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

W 27094

LAND DESCRIPTION

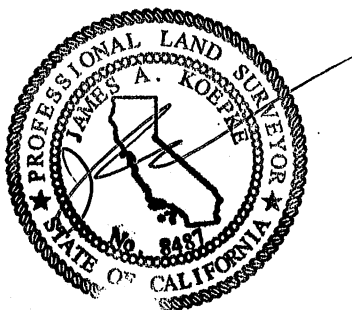
A parcel of tide and submerged land situate in the bed of the Corte Madera Creek, in the City of Larkspur, County of Marin, State of California, and being more particularly described as follows:

COMMENCING at the southwest corner of Parcel One described in that certain Grant Deed recorded as Document No. 2017-0044860, Official Records of said county; thence along the westerly boundary of said parcel, North 19° 40' 30" West 220.00 feet to the POINT OF BEGINNING; thence continuing along the westerly boundary and northerly prolongation thereof, North 19° 40' 30" West 60.00 feet; thence leaving said boundary prolongation North 70° 17' 54" East 50.00 feet to a point on the northerly prolongation of the easterly boundary of said parcel of said deed; thence southerly along said prolongation and easterly boundary, South 19° 40' 30" East 60.00 feet; thence leaving said easterly boundary, South 70° 17' 54" West 50.00 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portions lying landward of the Mean High Tide Line 1941 (Per Superior Court Case No. 14851) on the right bank of said Corte Madera Creek.

END OF DESCRIPTION

Prepared 05/31/2018 by the California State Lands Commission Boundary Unit.



NO SCALE

SITE

CORTE MADERA CREEK



**LEASE
AREA**

9' IMPACT
AREA

EXISTING
DOCK 16.2' x 4'

EXISTING
RAMP
17' x 3'

EXISTING
DECK

EXISTING
DECK

1941 MHTL
(SUPERIOR COURT
CASE 14851)

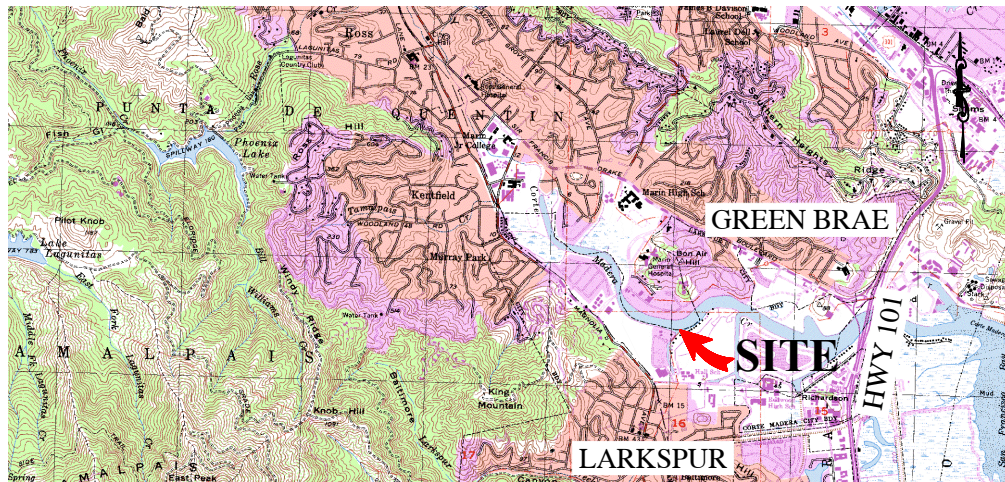
APN
022-250-11

EXISTING
PROTECTIVE
STRUCTURE

17 BOARDWALK ONE, LARKSPUR

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

W 27094
RUBENSTEIN/MCARTHUR TRUST
APN 022-250-11
GENERAL LEASE -
RECREATIONAL AND
PROTECTIVE STRUCTURE USE
MARIN COUNTY



SITE

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.

TS 05/31/18