

**STAFF REPORT
C45**

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02/04/19
PRC 4523.1
J. Holt

GENERAL LEASE – RECREATIONAL AND PROTECTIVE STRUCTURE USE

APPLICANT:

Pine Creek Owners Association, Inc.

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Corte Madera Creek, adjacent to 755-775 South Eliseo Drive, near Greenbrae, Marin County.

AUTHORIZED USE:

Use and maintenance of an existing floating boat dock, gangway, ramp, two pilings, and bank protection.

LEASE TERM:

10 years, beginning September 29, 2018.

CONSIDERATION:

Floating boat dock, gangway, ramp, and two pilings: \$128 per year, with an annual Consumer Price Index Adjustment.

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.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$2,000,000 per occurrence.
- 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 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.

STAFF REPORT NO. **C45** (CONT'D)

Public Trust and State's Best Interests Analysis:

On August 11, 2009, the Commission authorized issuance of a General Lease – Recreational and Protective Structure Use to Pine Creek Owners Association, Inc. (PCOA) ([Item C32, August 11, 2009](#)). That lease expired on September 28, 2018. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use, for the continued use and maintenance of an existing floating boat dock, gangway, ramp, two pilings, and bank protection in Corte Madera Creek.

PCOA is governed by a formal board of directors, currently consisting of Mark Neenan (President), Nancy Ryan (Vice President), and Lisa Lange (Treasurer). The Board performs due diligence in risk management and managerial oversight of the facilities. The subject facilities are regularly inspected by board members and professionals at Reserve Analysis Consulting. The rules and regulations associated with the facilities are documented in Section 6.16 of the association's Covenants, Conditions, and Restrictions (CC&Rs). This section cites allowable behaviors and promotes safety measures, such as life vests for children under 12 years of age. The CC&Rs are reinforced by a hold harmless agreement, required of all PCOA members.

The proposed lease area contains the same facilities as the prior lease. These facilities are used for recreational boating and fishing purposes, as well as shoreline protection. They have existed at this location for many years. Recreational boating and fishing are water-dependent activities, 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 enhances the integrity of the river channel for public navigation purposes.

The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 10-year term; does not grant the lessee exclusive rights to the lease premises; and reserves an easement to the public for Public Trust-consistent uses. Upon termination of the lease, the lessee may be required to remove all improvements from State land.

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.

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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, in a tidally influenced site vulnerable to flooding at current sea levels and at a higher risk of flood exposure given projected scenarios of sea-level rise. The lease premises consist of a floating boat dock, gangway, ramp, two pilings, and bank protection.

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 region as listed in Table 1.

Table 1. Projected Sea-Level Rise for San Francisco¹

Year	Projection (feet)
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: ¹ Projections are with respect to a 1991 to 2009 baseline.

This effect could increase Corte Madera Creek’s inundation levels within the lease area. In addition, as stated in *Safeguarding California Plan: 2018 Update* (California Natural Resources Agency 2018), 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 as well as decreased bank stability and structure. Conversely, climate-change induced droughts could decrease creek levels and flow for extended periods of time. Climate change and sea-level rise will further influence riverine areas by changing erosion and sedimentation rates. Flooding and storm flow, as well as runoff, will likely increase scour and decrease bank stability at a faster rate.

STAFF REPORT NO. C45 (CONT'D)

The combination of these projected conditions could increase the likelihood of damage and affect access to structures within the lease premises during the term of the lease. For example, the potential for more frequent and stronger storm events may expose the lease area structures to higher flood risks and cause facilities to be damaged or dislodged, presenting hazards to public safety as well as dangers for navigation within the channel. Conversely, prolonged drought conditions could lower water levels, exposing previously submerged structures to the elements and potentially leading to increased wear-and-tear on the pilings, ramp, and boat dock. Lowered water levels could also reduce navigability of the channel, thereby increasing hazards and impacting the function and utility of the lease area structures.

The floating boat dock and adjustable gangway are adaptable to variable water levels, allowing them to rise and fall with storms and droughts and increasing their resiliency to some climate change impacts, but may require more frequent maintenance or replacement to ensure continued function during and after storm seasons and to avoid dislodgement. The fixed features like the pilings, ramp, and bank protection may need reinforcement and possibly replacement to withstand higher levels of flood exposure and more frequent storm events. For example, the pilings appear to be at a sufficient height to withstand projected changes in water levels, but additional fortification may be needed, because damage to these pilings could lead to a public safety hazard. The bank is also vegetated, which provides additional stability and will reduce the amount of erosion and scour pressure experienced during future events because of the vegetation's underground root system; but remains at risk of accelerated deterioration from currents and floods. Regular maintenance, as required by the terms of 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 (not within the lease area) 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, is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

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OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest level 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:

Find that the proposed lease will not substantially impair the public rights to navigation and fishing or 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.

AUTHORIZATION:

Authorize issuance of a General Lease – Recreational and Protective Structure Use, to the Applicant beginning September 29, 2018, for a term of 10 years, for the continued use and maintenance of an existing floating boat dock, gangway, ramp, two pilings, 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 floating

STAFF REPORT NO. **C45** (CONT'D)

boat dock, gangway, ramp, and two pilings: \$128 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 \$2,000,000 per occurrence.

EXHIBIT A

PRC 4523.1

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 315 and 316 of "Bon Air Sub. No. Eight" filed in Volume 14 of Maps, at Page 56, Records of said County, and being more particularly described as follows:

All those lands underlying an existing floating boat dock, gangway, ramp, and two pilings lying adjacent to said Lots 315 and 316.

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 11/20/2018 by the California State Lands Commission Boundary Unit.





NO SCALE

APNs
022-450-01 thru
022-450-10

EXISTING
BANK
PROTECTION

CORTE
MADERA
CANAL LINE

EXISTING
24' x 2.75' RAMP

EXISTING
30' x 8'
FLOATING
BOAT DOCK

EXISTING
28' x 4'
GANGWAY

9' IMPACT
AREA

EXISTING
PILING (2)

CORTE MADERA CREEK

EXHIBIT A

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JWP 11/20/18

LAND DESCRIPTION PLAT
PRC 4523.1 PINE CREEK OWNERS
ASSOCIATION, INC.
MARIN COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE

APNs
022-450-01 thru
022-450-10

EXISTING
BANK
PROTECTION

CORTE
MADERA
CANAL LINE

EXISTING
24' x 2.75' RAMP

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9' IMPACT
AREA

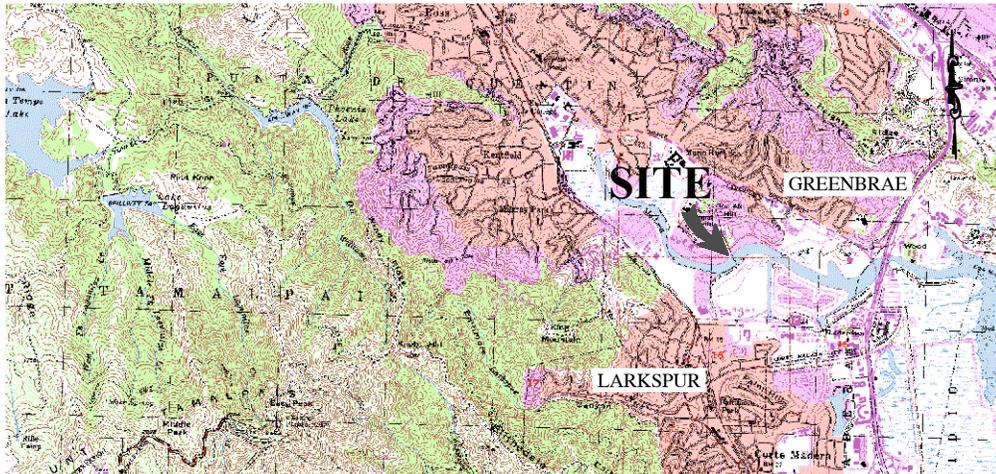
EXISTING
PILING (2)

CORTE MADERA CREEK

755 - 775 SOUTH ELISEO DRIVE, GREENBRAE

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 4523.1

PINE CREEK OWNERS
ASSOCIATION, INC.

APNs 022-450-01 thru 10

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.