

## STAFF REPORT

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V. Caldwell

### GENERAL LEASE – RESIDENTIAL, RECREATIONAL, AND PROTECTIVE STRUCTURE USE

#### APPLICANT:

Nathan Foran

#### PROPOSED LEASE:

##### *AREA, LAND TYPE, AND LOCATION:*

Sovereign land in Corte Madera Creek, adjacent to 20 Lucky Drive, near Greenbrae, Marin County.

##### *AUTHORIZED USE:*

Proposed construction, use, and maintenance of a dock extension; and use and maintenance of a portion of an existing residence and deck; a dock, ramp, appurtenant facilities, and bank protection.

##### *LEASE TERM:*

20 years, beginning December 21, 2018.

##### *CONSIDERATION:*

**Portion of Residence, Deck, Dock, Dock Extension, Ramp, Appurtenant Facilities:** \$2,200 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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3. Lessee is authorized to maintain the existing residential and related residential structure(s) but prohibited from expanding the existing residence, deck, and appurtenant facilities within the Lease Premises without prior authorization from the Commission.

### **BACKGROUND:**

Lucky Drive is located along Corte Madera Creek, on the west side of Highway 101, Marin County. All the properties on Lucky Drive and adjacent to Corte Madera Creek are improved residential parcels. This area was developed over many years starting with arks (floating homes) landing on the shore and taking up residence, as was commonplace in Larkspur in the early 1900s. Over the years, the arks have transitioned from houses on barges to houses on foundations. Facilities such as decks, docks, and other appurtenance have also been added and nine of the 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 decision or agreement. This is the case for the westerly portion of Corte Madera Creek along Lucky Drive, which is subject to Sovereign Land Location 24, a land exchange agreement between Schultz Construction Company and the State of California. The boundary between upland and state-owned sovereign land in the remainder of the Corte Madera Creek 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, Commission 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.

Staff conducted a public outreach effort 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 Lucky Drive property owners and other interested parties. Since that time, through the development of a frequently asked questions document, meetings, and many

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telephone conversations and email communications, staff worked with property owners to come to an agreement on lease terms and conditions acceptable to the parties involved. The Commission now has lease agreements with eight property owners on Lucky Drive with improvements extending onto State-owned sovereign lands.

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

#### **Authority:**

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 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:**

On August 19, 2003, the Commission authorized a Recreational Pier Lease for a pier and pilings to Matthew Ehmann ([Item C57, August 19, 2003](#)). That lease expired August 29, 2013. Since the Commission authorized the lease in 2003, the property changed ownership several times and staff have been unsuccessful in securing a new lease. On December 21, 2018, the upland property was purchased by Nathan Foran. The residence, deck, and bank protection have existed at the site for many years but were not previously authorized by the Commission. The Applicant is now applying for a General Lease – Residential, Recreational, and Protective Structure Use for the proposed construction of a dock extension and use and maintenance of a portion of an existing residence and deck, a dock, ramp, appurtenant facilities, and bank protection.

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 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 dock and ramp 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 residence and deck are not associated with

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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.

Most of 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.

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. Because the final placement of the dock extension may be different based on conditions at the time of installation, staff recommends that the Commission delegate to the Executive Officer or her designee the authority to amend the proposed lease and exhibits, if necessary, to accurately reflect the final location and configuration of improvements.

### **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 that will be at higher risk of flood exposure given projected 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 region as listed in Table 1.

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**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.

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.

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 residence and deck, dock, ramp, and pilings. 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 proposed lease is a 20-year General Lease – Residential, Recreational, and Protective Structure Use that will be effective beginning on December 21, 2018, and may be subject to the climate change effects of the projected sea-level rise scenario provided above. Regular maintenance and implementing best management practices, as required

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by the terms of the lease, will help reduce the likelihood of severe structural degradation and dislodgement. The lease includes an acknowledgment that the lease premises may be subject to the effects of sea-level rise and may require additional maintenance or protection as a result, for which the lessee agrees to be solely responsible. Further climate change impact analyses on the leased facilities will be assessed at the time the lease expires in 2038 and would be based on projected sea-level rise scenarios at that time.

### **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. Approval or denial of the application 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. If the Commission denies the application, the Applicant may be required to remove the improvements and restore the premises to their original condition. 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.
2. 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.
3. **Construction of Dock Extension**  
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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1).
4. **Existing Facilities**  
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).

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Authority: Public Resources Code section 21084; California Code of Regulations, title 14, section 15300; and California Code of Regulations, title 2, section 2905.

**APPROVAL REQUIRED:**

U.S. Army Corps of Engineers, California Department of Fish and Wildlife, and San Francisco Bay Conservation and Development Commission

**EXHIBITS:**

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

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

**Construction of Dock Extension**

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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1).

**Existing Facilities**

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, ramp, appurtenant facilities, and bank protection, as well as the use and maintenance of a new dock extension, will not substantially interfere with Public Trust needs and values at this location and are consistent with the common law Public Trust Doctrine; and,
2. Find that the existing and, for a limited period, continuing use and maintenance of the property for a portion of a residence and deck are not generally consistent with the Public Trust Doctrine, but 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.

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**AUTHORIZATION:**

1. Authorize issuance of a General Lease – Residential, Recreational, and Protective Structure Use to Nathan Foran; beginning December 21, 2018, for a term of 20 years, for the proposed construction, use, and maintenance of a dock extension; and use and maintenance of a portion of an existing residence and deck, dock, ramp, 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 proposed dock extension; portion of an existing residence and deck; dock, and ramp: \$2,200 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.
2. Delegate to the Executive Officer or her designee the authority to amend the lease and exhibits, if necessary, to accurately reflect the authorized facilities' final location.



## EXHIBIT A

PRC 8474.1

### LAND DESCRIPTION

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

COMMENCING at the southeast corner of Parcel One described in that certain Grant Deed recorded as Document No. 2019-0001018, Official Records of said county; thence along the northeasterly boundary of said parcel, North  $41^{\circ} 52' 00''$  West 105.00 feet to the POINT OF BEGINNING; thence continuing along the northeasterly boundary and northwesterly prolongation thereof, North  $41^{\circ} 52' 00''$  West 131.00 feet; thence leaving said boundary prolongation North  $50^{\circ} 45' 27''$  East 52.99 feet to a point on the northwesterly prolongation of the southwesterly boundary of said parcel; thence southeasterly along said prolongation and southwesterly boundary thereof, South  $41^{\circ} 52' 00''$  East 131.00 feet; thence leaving said southwesterly boundary, South  $50^{\circ} 45' 27''$  West 52.99 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portions lying landward of the Ordinary High Water Mark on the right bank of said Corte Madera Creek.

### END OF DESCRIPTION

Prepared 06/17/2019 by the California State Lands Commission Boundary Unit.



NO SCALE

## SITE

CORTE MADERA CREEK

PROPOSED  
DOCK 17' x 6'

EXISTING  
DOCK 52' x 10' 8"

IMPACT  
AREA

EXISTING  
DECK

EXISTING  
PILINGS (4)

**LEASE  
AREA**

EXISTING  
RAMP

APPROX.  
SHORELINE

EXISTING  
RIP-RAP

EXISTING  
HOUSE

APN  
022-131-27

20 LUCKY DRIVE, GREENBRAE

NO SCALE

## LOCATION



MAP SOURCE: USGS QUAD

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.

## **Exhibit B**

PRC 8474.1

FORAN

APN 022-131-27

GENERAL LEASE -  
RESIDENTIAL, RECREATIONAL  
AND PROTECTIVE  
STRUCTURE USE  
MARIN COUNTY



TS 06/17/19