

Staff Report 33

General Lease – Commercial Use

APPLICANT:

Starbird Mariculture, Inc.

PROPOSED ACTION:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Tomales Bay, adjacent to 18225 State Highway 1, near Marshall, Marin County.

AUTHORIZED USE:

Installation, use, and maintenance of a proposed mooring buoy.

TERM:

8 years, beginning June 1, 2020.

CONSIDERATION:

Rent in the amount of \$671 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

- Lessee shall provide the Commission with proof of current and valid Protection and Indemnity or Watercraft Liability Insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee agrees to comply with the Tomales Bay Mooring Program (TBMP) requirements, available online at www.slc.ca.gov/Leases-Permits/TomalesBay.html, and as it may be modified from time to time. Lessee agrees to abide by any reasonable modifications to the program.

BACKGROUND:

Tomales Bay is a significant biological resource that supports a diversity of habitats, including eelgrass beds, intertidal sand, mud flats, and salt and freshwater marshes.

Thousands of species of birds, other vertebrates, invertebrates, and plants, including numerous threatened and endangered species, inhabit the bay. While Tomales Bay has long been considered a pristine body of water, human activity within the watershed has resulted in some degradation of the bay's habitat, water quality, and special status species.

Vessel use, both recreational and commercial, has played an important role throughout the modern history of Tomales Bay, and boating continues to be a popular activity for residents and visitors to the bay. Boats were identified as one of several pollution sources causing Tomales Bay to be listed as an impaired water body under the federal Clean Water Act. Consequently, a proactive plan to prevent adverse impacts from boating on the bay was developed.

The Tomales Bay Vessel Management Plan (TBVMP) is the result of a long-term multiagency effort to streamline and coordinate vessel management activities for the benefit of the public. Implementation of the TBVMP is expected to improve water quality and protect wildlife, habitat, and public health, as well as facilitate recreational opportunities in Tomales Bay. The TBVMP was developed from 2007 to 2013 by the Gulf of the Farallones National Marine Sanctuary (which was expanded north and west in 2015 and renamed the Greater Farallones National Marine Sanctuary (GFNMS)) and Commission staff in collaboration with nine local, state, and federal agencies with jurisdiction in Tomales Bay. This group is collectively known as the Tomales Bay Interagency Committee (TBIC).

Over time, the concerns of the public and participating agencies evolved from focusing on vessel sewage discharge and impacts from moorings and derelict or abandoned vessels to include the introduction of invasive species, disturbance to wildlife, and discharge of oil, fuel, and vessel maintenance products. The participating agencies determined that they should act in a coordinated manner to address all of these vessel-related management issues including the consideration of vessel storage needs in Tomales Bay. The GFNMS facilitated this collaborative process through the TBIC.

Upon consultation with the TBIC, GFNMS and the Commission established criteria for the siting of moorings on Tomales Bay to achieve the three goals of the plan: 1) protect public health and improve water quality; 2) protect habitat and decrease threats to and disturbance of wildlife; and 3) ensure safe and enjoyable water-related recreation. These criteria are contained within the Tomales Bay Mooring Plan (TBMP). All moorings within Tomales Bay, except those used for aquaculture operations within State water-bottom lease areas, will be required to meet specific criteria protecting seagrass beds, pinniped haul-out areas, state parks, swimming beaches, boat launches, aquaculture lease areas, and navigational channels.

In 2015, the Commission was issued a permit by the National Oceanic and Atmospheric Administration, Office of National Marine Sanctuaries Program to implement the elements of the TBMP, which involve the installation, maintenance, and removal of individual moorings in Tomales Bay. The permit was for a term of 11 years, with an expiration date of May 31, 2026. On April 28, 2016, the expiration date of the permit was extended by 2 years to May 31, 2028. The Commission is not issuing leases that extend beyond this date.

The TBMP caps the total number of moorings allowed in Tomales Bay at 165, including littoral landowner moorings, and the 35 authorized moorings associated with Lawson's Landing. This cap does not include moorings permitted for use by aquaculture operations solely within State water-bottom lease areas. The TBMP is not intended to be a static plan, but rather a living document based on an adaptive management approach, allowing flexibility for the plan to adapt to changing circumstances. To ensure that it is still meeting its goals and objectives, the TBMP will continue to be informally reviewed and evaluated as needed by the members of the TBIC and adapted as necessary.

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:

Starbird Mariculture, Inc., holds an active aquaculture lease from the California Fish and Game Commission (State Water Bottom Lease No. M-430-06). Although buoys used directly for aquaculture within a State water bottom lease area are exempted from the TBMP, the proposed mooring buoy would be located outside the aquaculture area and is therefore subject to the TBMP. The proposed buoy is for the mooring of boats associated with their business and will be used to moor vessels equipped with oyster sorting and processing equipment. Commercial boating is a water-dependent activity and is generally consistent with the common law Public Trust Doctrine.

The proposed lease for the installation, use, and maintenance of a mooring buoy is consistent with the TBMP and includes provisions protecting the public use of the proposed lease area, including a limited lease term of 8 years and a non-exclusive use provision. The proposed lease also requires the lessee to indemnify the State for any liability incurred as a result of the lessee's activities thereon. The lease requires the

payment of annual rent to compensate the people of the State for the occupation of the sovereign land involved. The lease does not alienate the State’s fee simple interest or permanently impair public rights. Upon termination of the lease, the lessee may be required to remove any improvements and restore the lease premises to their original condition.

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 proposed lease area is in Tomales Bay, 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 Point Reyes 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 Point Reyes¹

Year	Projection (feet)
2030	0.8
2050	2.8
2100	7

Source: Table 10, State of California Sea-Level Rise Guidance: 2018 Update

Note: ¹ Projections are with respect to a baseline of the year 2000.

The proposed lease area includes one mooring buoy. While the mooring buoy will be designed to float on the water’s surface and move with the ebb and flow of current tides, a longer chain connecting the buoy to the anchors on the bay bottom may be necessary in the future to accommodate rising sea levels. Regular maintenance will reduce the likelihood of severe structural degradation or 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.

CONCLUSION:

For all the reasons above, staff believes the issuance of this lease is consistent with the common law Public Trust Doctrine; 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. The Applicant has the right to access the lease premises.
2. Staff recommends authorization of the mooring buoy in the proposed location; however, the final placement of the mooring buoy 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 buoy's final location, on the condition that the location is consistent with the TBMP.
3. 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 will not be allowed to install and use the mooring buoy. If the proposed lease is issued, upon expiration or prior termination of the lease, the lessee has no right to a new lease or to renewal of any previous lease.
4. 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.
5. Pursuant to the Commission's delegation of authority and the State California Environmental Quality Act (CEQA) Guidelines (Cal. Code Regs., tit.14, § 15025), Commission staff prepared a Negative Declaration (ND) identified as CSLC ND No. 749, State Clearinghouse No. 2012082074, for the Tomales Bay Vessel Management Plan. The ND was prepared and circulated for public review pursuant to the provisions of CEQA, and adopted by the Commission on April 26, 2013 ([Item 113, April 26 2013](#)).

On April 26, 2013, the Commission found that, based upon the entire record before the Commission, including the Initial Study, the ND, and the comments received in response, there is no substantial evidence that the project may have a significant effect on the environment; California Code of Regulations, title 14, section 15074, subdivision (b).

6. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq. At the time the Commission

adopted the ND in 2013, staff concluded that such activity would not affect those significant lands and the Commission found the activity to be consistent with its use classification pursuant to Public Resources Code section 6370 et seq.

EXHIBITS:

- A. Land Description
- B. Site and Location Map
- C. Tomales Bay Mooring Program Requirements

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the ND, CSLC No. 749, State Clearinghouse No. 2012082074, was prepared by Commission staff and adopted by the Commission on April 26, 2013.

Find that the Commission reviewed and considered the information contained in the previously adopted ND, and that in the Commission's independent judgment, the scope of activities to be carried out under the lease to be issued under this authorization have been adequately analyzed, that none of the events specified in Public Resources Code section 21166 or State CEQA Guidelines section 15162 resulting in any new or substantially more severe significant impacts has occurred, and therefore, no additional CEQA analysis is required.

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 proposed lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize a General Lease – Commercial Use to the Applicant beginning June 1, 2020, for a term of 8 years, for the installation, use, and maintenance of a mooring buoy, as described in Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof; annual rent in the amount of \$671, with an annual Consumer Price Index adjustment; and Protection and Indemnity or Watercraft Liability Insurance in an amount no less than \$1,000,000 per occurrence.

2. Delegate to the Executive Officer or designee the authority to amend the lease and exhibits, if necessary, to accurately reflect the buoy's final location, on the condition that the location is consistent with the TBMP.

EXHIBIT A

A 2386

LAND DESCRIPTION

A parcel of submerged land situated in the bed of Tomales Bay in the Greater Farallones National Marine Sanctuary, lying adjacent to Tide Lands Location 241, patented February 19, 1947, County of Marin, State of California, more particularly described as follows:

A circular parcel of land, being 50 feet in diameter, underlying an proposed buoy lying adjacent to that parcel described in Deed of Realty in Trust recorded March 3, 2014 as Document Number 2014-0007684 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 05/10/2020 by the California State Lands Commission Boundary Unit.





PROPOSED BUOY
 38.141433, -122.876617

APPROX.
 SHORELINE

106-301-07
 APN

TOMALES BAY

EXHIBIT A

PAGE 2 OF 2

RGB 5/10/20

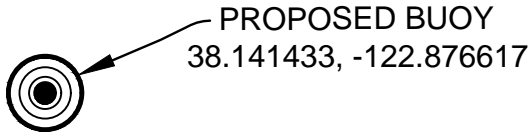
LAND DESCRIPTION PLAT
 A 2386, STARBIRD MARICULTURE, INC.
 MARIN COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

SITE



APPROX. SHORELINE

106-301-07 APN

TOMALES BAY

18255 STATE HIGHWAY 1, NEAR MARSHALL

NO SCALE

LOCATION



EXHIBIT B

A 2386
 STARBIRD MARICULTURE, INC.
 GENERAL LEASE -
 COMMERCIAL 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.

RGB 5/10/20