

# Staff Report 33

## **APPLICANT:**

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Nicholas E. Whitney, Trustee of the Seahaven Trust dated September 22, 2017

## **PROPOSED ACTION:**

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Issuance of a General Lease – Recreational Use

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

Sovereign land in Tomales Bay, adjacent to 98 Camino Del Mar, near Inverness, Marin County.

## **AUTHORIZED USE:**

Use and maintenance of an existing pier, boat dock, ladder, and two pilings.

## **TERM:**

10 years, beginning January 26, 2021.

## **CONSIDERATION:**

\$140 per year, with an annual Consumer Price Index adjustment.

## **SPECIFIC LEASE PROVISIONS:**

- Liability insurance in an amount no less than \$1,000,000 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:**

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### **AUTHORITY:**

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

### **PUBLIC TRUST AND STATE'S BEST INTERESTS:**

On September 11, 2011, the Commission authorized a General Lease – Recreational Use to Nicholas Edward Whitney, Trustee under The Deborah Tolman Whitney Grantor Retained Income Trust and Trust to Preserve Inverness Property for Benefit of Whitney Family, dated July 3, 1991, and accepted August 23, 1991 ([Staff Report C25, September 11, 2011](#)). The lease expired on January 25, 2021.

On December 19, 2017, interest in the upland parcel and lease improvements were deeded to Nicholas E. Whitney, Trustee of the Seahaven Trust dated September 22, 2017. The Applicant is now applying for a General Lease – Recreational Use, for the continued use and maintenance of the existing pier, boat dock, ladder, and two pilings.

The subject improvements are privately owned and maintained for the docking and mooring of recreational 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 existing pier, boat dock, and appurtenant facilities have existed at this location for many years and are located directly adjacent to the Applicant's upland property.

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. The facilities do not significantly alter the land, and the lease does not alienate the State's fee simple interest, nor 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.

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 lease area is located 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 Reyes**

<b>Year</b>	<b>Projection (feet)</b>
2030	0.8
2050	2.8
2100	7

Source: Table 13, State of California Sea-Level Rise Guidance: 2018 Update

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

The structures within the lease area may become vulnerable to more frequent overtopping or inundation during high tides, king tides, and storms, as well as from storm runoff. As a result, these structures may require more frequent maintenance to ensure continued function during and after storm seasons and to avoid dislodgement. In the future, these structures may need additional fortification, or the pier may need to be raised to withstand higher levels of flood exposure and sea-level rise. Regular maintenance, as required by the terms of the lease, 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 will not substantially interfere with Public Trust needs 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.

## **OTHER PERTINENT INFORMATION:**

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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 pier, boat dock, ladder and pilings and restore the premises to their original condition. Upon expiration or prior termination of the lease, the lessee has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Meeting Evolving Public Trust Needs" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
3. Staff recommends that the Commission find that issuance of the lease 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:**

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

## **RECOMMENDED ACTION:**

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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 Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the Public Trust Doctrine; and is in the best interests of the State.

**AUTHORIZATION:**

Authorize issuance of a General Lease – Recreational Use to the Applicant beginning January 26, 2021, for a term of 10 years, for the use and maintenance of an existing pier, boat dock, ladder, and two pilings, 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 \$140, with an annual Consumer Price Index adjustment; and liability insurance in the amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**LEASE 5095**

**LAND DESCRIPTION**

A parcel of tide and submerged land situated in the bed of Tomales Bay, near Inverness, lying adjacent to Rancho Punta de Los Reyes, patented June 4, 1860, Marin County, State of California and more particularly described as follows:

All those lands underlying an existing pier, boat dock, two pilings and ladder lying adjacent to that parcel as described in Grant Deed recorded December 19, 2017 in Document No. 2017-0050292 in Official Records of said County.

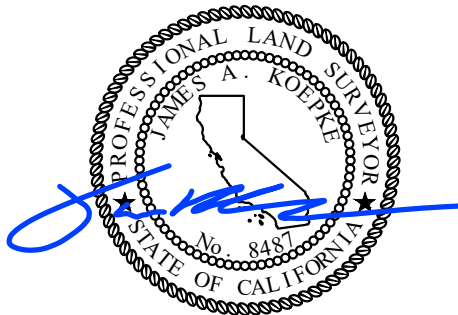
TOGETHER WITH any applicable Impact Area(s).

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of said Tomales Bay.

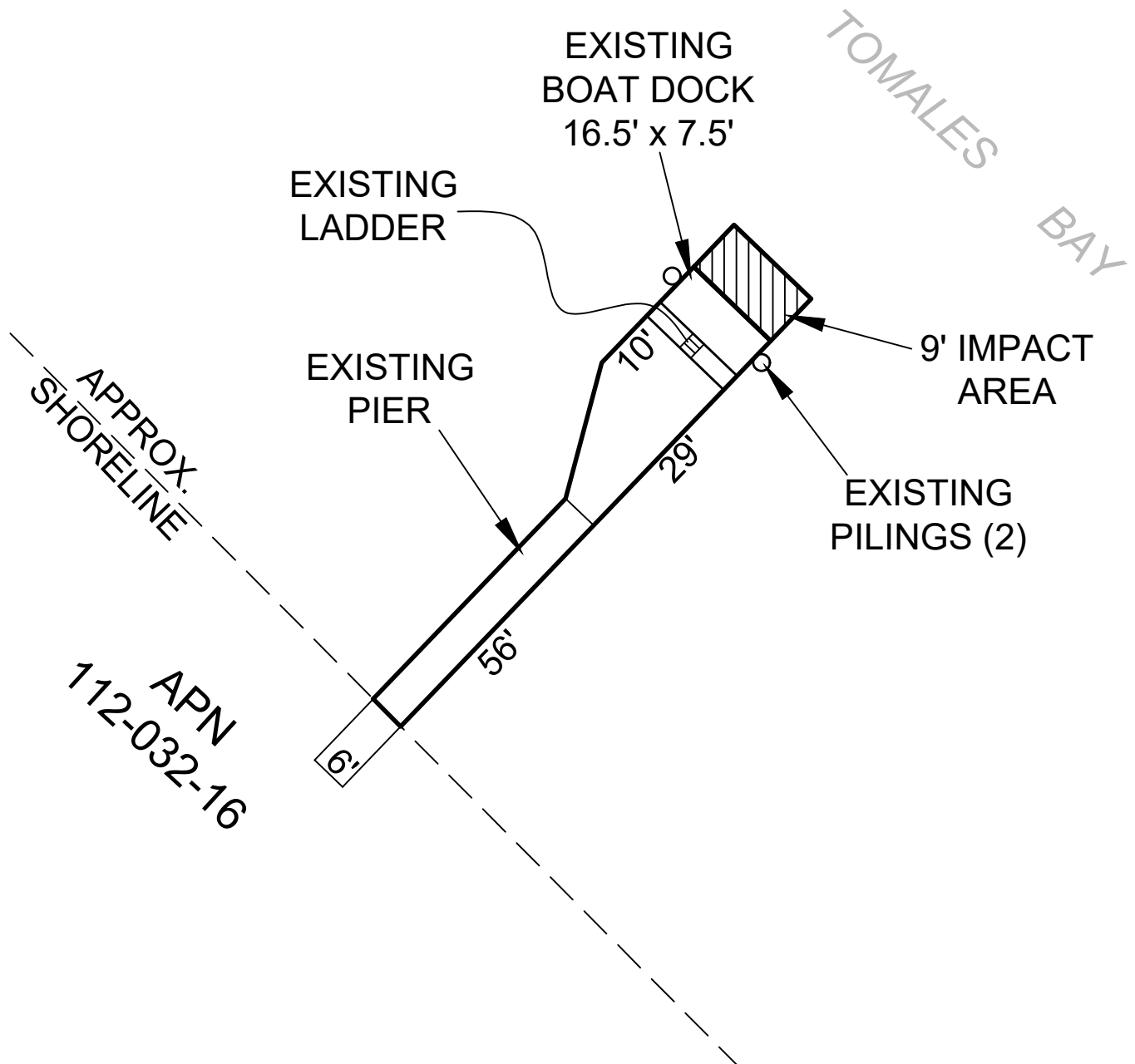
Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

Prepared on 11/16/2020 by the California State Lands Commission Boundary Unit



NO SCALE



## EXHIBIT A

Page 2 of 2

TS 11/16/2020

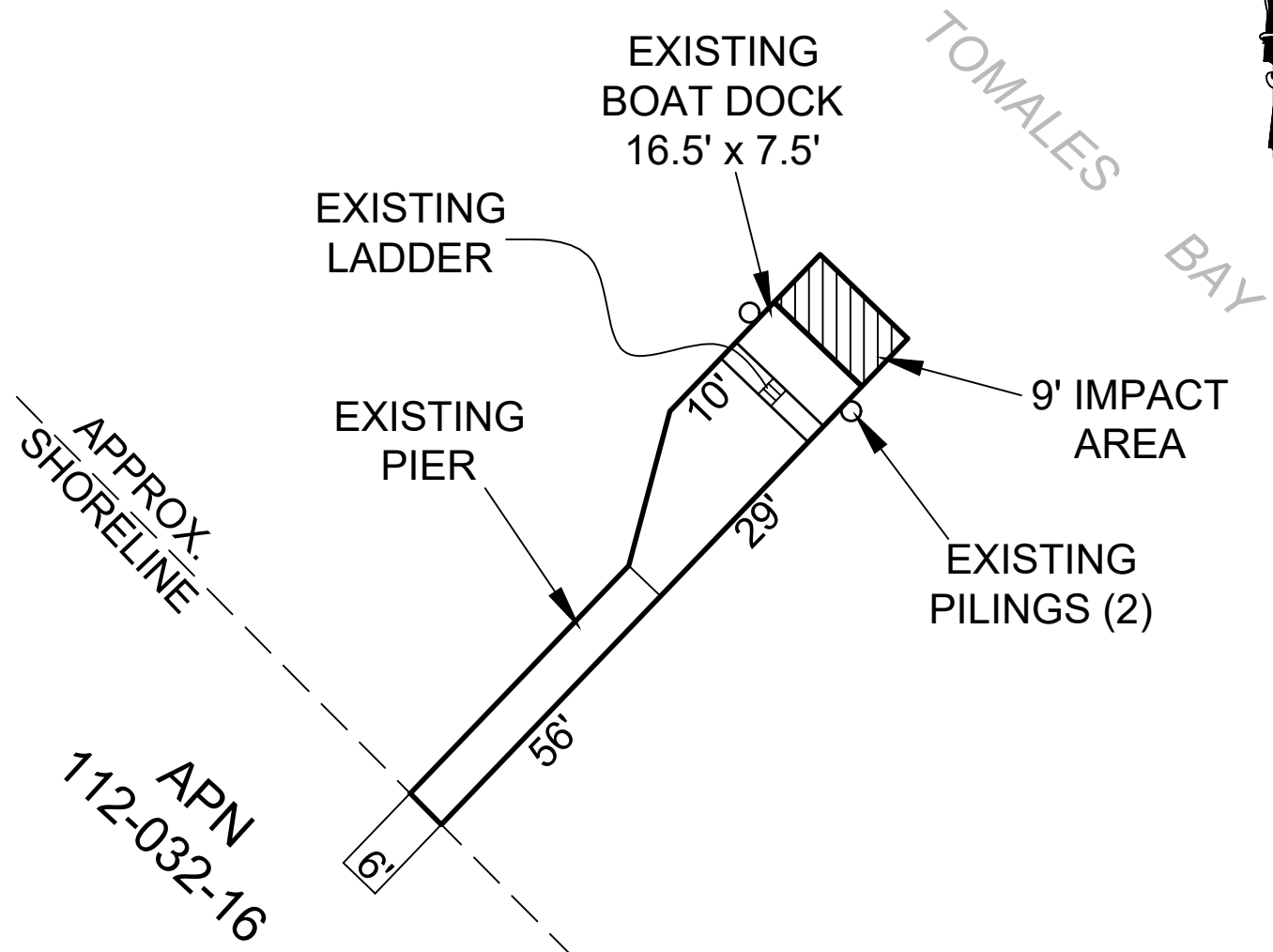
LAND DESCRIPTION PLAT  
LEASE 5095, WHITNEY, TRUSTEE  
MARIN COUNTY

CALIFORNIA STATE  
LANDS COMMISSION



NO SCALE

## SITE



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

LEASE 5095  
WHITNEY, TRUSTEE  
APN 112-032-16  
GENERAL LEASE-  
RECREATIONAL USE  
MARIN COUNTY



TS 11/16/2020