

Staff Report 29

LESSEE:

Tiberio P. Lizza

APPLICANT:

Christian I. Lizza, Karl P. Lizza, and Constance E. Moyer

PROPOSED ACTION:

Termination and Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Raccoon Strait, adjacent to 2032 Paradise Drive, Tiburon, Marin County.

AUTHORIZED USE:

Use and maintenance of an existing pier.

TERM:

10 years, beginning June 29, 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:

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 1, 2011, the Commission authorized a General Lease – Recreational Use to Tiberio P. Lizza for the use and maintenance of an existing pier ([Item C27, September 01, 2011](#)). On June 28, 2016, the Commission authorized a revision of rent ([Item C53, June 28, 2016](#)). On October 29, 2020, ownership of the upland parcel transferred to the Applicant because Tiberio Lizza died. Since the deed transfer occurred within the Lizza family, the Applicant did not notify the Commission of changes in ownership or seek an assignment of the lease. Although, this was an unauthorized assignment under the terms of the lease, the prior lessee's family trust continued to fulfill the obligations of the lease. The lease expires on August 31, 2021. The Applicant is applying for a General Lease – Recreational Use for the use and maintenance of an existing pier.

Staff recommends that the existing lease be terminated due to the circumstances, effective June 28, 2021. Staff further recommends a provision in the lease applying the indemnity provision to the entire period of unauthorized occupation, beginning October 29, 2020, when the ownership was transferred to the Applicant, through June 28, 2021, the day before the proposed lease begins. The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The existing pier will facilitate recreational boating. Recreational boating is a water-dependent use that is 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 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.

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 Raccoon Strait within the San Francisco 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 San Francisco tide gauge was used for the projected sea-level rise scenario for the lease area as listed in Table 1.

Table 1. Projected Sea-Level Rise for San Francisco

Year	Projection (feet)
2030	0.8
2050	1.9
2100	6.9

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 structure 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, the structure may require more frequent maintenance to ensure continued function during and after storm seasons and to avoid dislodgement or destruction. In the future, the structure 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:

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. An Applicant has no right to a new lease or to renewal of any previous lease. Denial of the application may result in a determination that the proposed activity on or use of state land is unauthorized and may result in legal action.
2. This action is consistent with the "Meeting Evolving Public Trust Needs" and "Leading Climate Activism" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. Termination of the lease is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

4. Staff recommends that the Commission find that issuance of the lease 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).

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 issuance of the lease 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 Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Terminate, effective June 28, 2021, Lease Number PRC 8942, a General Lease – Recreational Use, issued to Tiberio P. Lizza.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning June 29, 2021, for a term of 10 years, for the use and maintenance of an existing pier, 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 an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 8942

LAND DESCRIPTION

A parcel of submerged land situate in the bed of the Raccoon Strait, lying adjacent to BTLC Lot 16, Section 6, Township 1 South, Range 5 West, Mount Diablo Meridian, as shown on that certain map dated 1870 and titled "Map No. 1 of Salt Marsh and Tide Lands situate in the County of Marin" on file at the California State Lands Commission Sacramento Office, located in Marin County, State of California, and being more particularly described as follows:

All those lands underlying an existing pier lying adjacent to that parcel described in that certain Grant Deed recorded October 29, 2020 in Document No. 2020-0053237, Official Records of said County.

EXCEPTING THEREFROM any portion lying landward of the Line of 9 Foot Depth at the Lowest Tide as shown on said map dated 1870.

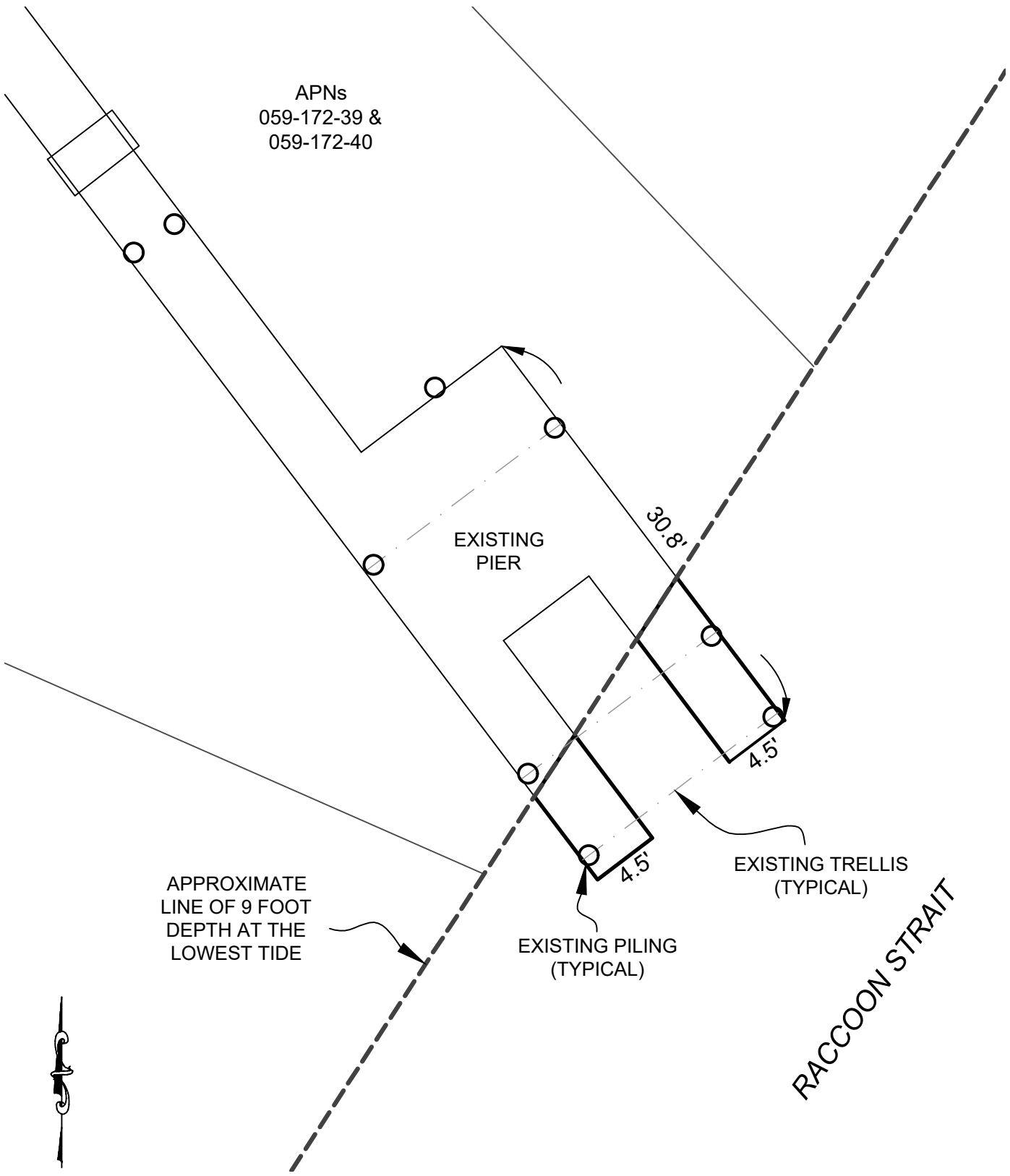
Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 04/15/2021 by the California State Lands Commission Boundary Unit.



APNs
059-172-39 &
059-172-40



NO SCALE

EXHIBIT A

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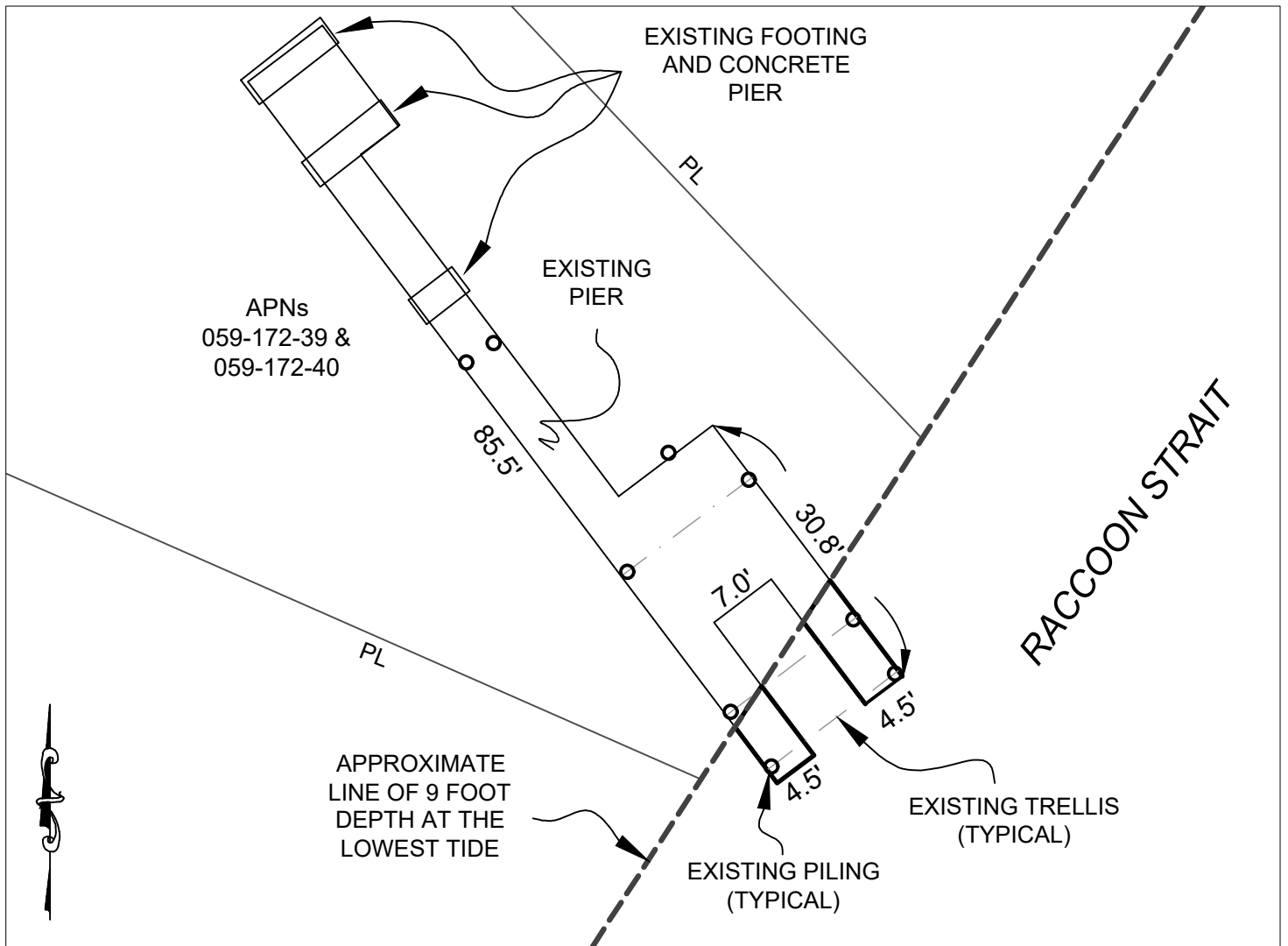
LAND DESCRIPTION PLAT
LEASE 8942, LIZZA & MOYER
MARIN COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE



2032 PARADISE DRIVE, TIBURON

NO SCALE

LOCATION

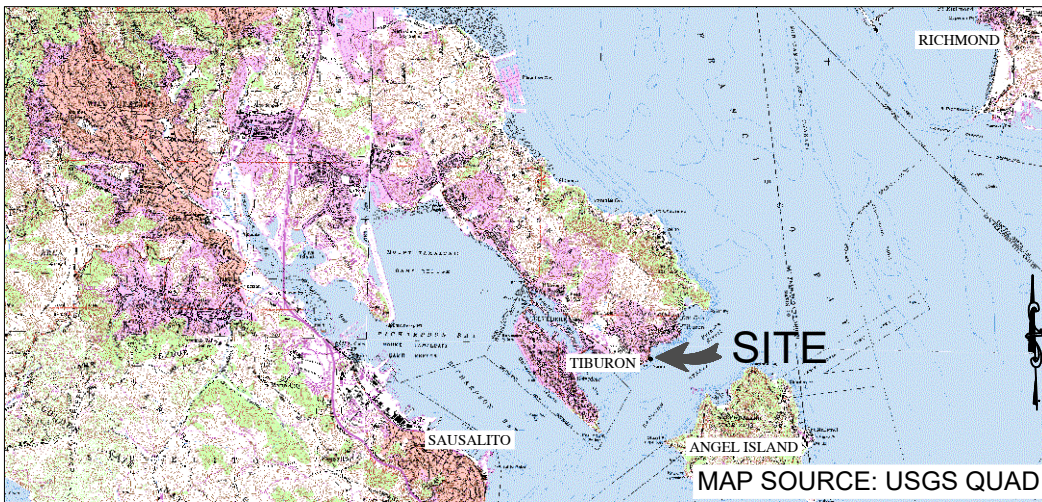


EXHIBIT B

LEASE 8942
 LIZZA & MOYER
 APNs 059-172-39 & 059-172-40
 GENERAL LEASE -
 RECREATIONAL 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.

JWP 4/15/2021