

Staff Report 09

APPLICANT:

Wayne Demmel

PROPOSED ACTION:

Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Tomales Bay, adjacent to 12836 Sir Francis Drake Boulevard, near Inverness, Marin County.

AUTHORIZED USE:

Use and maintenance of a pier and boat dock.

TERM:

10 years, beginning September 1, 2021.

CONSIDERATION:

\$601 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, and 6503; 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 Wayne Demmel ([Staff Report C26, September 1, 2011](#)). The lease expires on August 31, 2021. The Applicant is now applying for a General Lease – Recreational Use, for the continued use and maintenance of the existing pier and boat dock.

The subject improvements are privately owned and maintained and are 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 and boat dock 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

Year	Projection (feet)
2030	0.8
2050	2.8
2100	7

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

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

The combination of these projected conditions increases the likelihood of damage to structures within the lease area, which include a pier, gangway, and eight pilings (based on the photos provided by the applicant).

Rising sea levels can lead to increased flooding, and larger tidal events, and can affect erosion and sedimentation rates. For example, in tidally influenced waters such as Tomales Bay, increased storms and flooding will likely increase scour, leading to decreased bank stability and structure. 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 to be fortified or the pier may need to be heightened 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 acknowledgement that the lease premises may be subject to the effects of sea-level rise and may require additional maintenance or protection.

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. 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 has no right to a new lease or to renewal of any previous lease.

2. This action is consistent with the “Leading Climate Activism” and “Meeting Evolving Public Trust Needs” Strategic Focus Areas of the Commission’s 2021-2025 Strategic Plan.
3. 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 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 September 1, 2021, for a term of 10 years, for the use and maintenance

of an existing pier and boat dock, 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 \$601, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 8941

LAND DESCRIPTION

A parcel of submerged land situated in the bed of Tomales Bay lying adjacent to that parcel of land described in Document Number 1995-058708, recorded December 6, 1995 in Official Records of Marin County, State of California and more particularly described as follows:

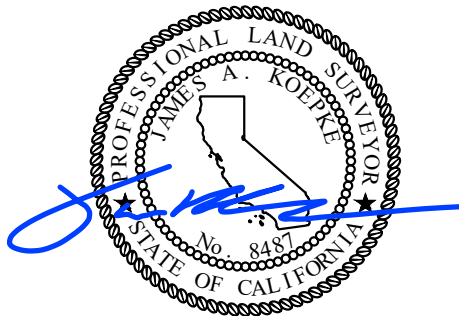
COMMENCING at an iron pipe in County monument casing, as shown on that Record of Survey of the Lands of Demmel, filed March 2, 2010 in Book 2010 of Maps at Page 32 in Recorders Office of Marin County; thence North $35^{\circ} 59' 21''$ East 590.55 feet to a point in the bed of said Tomales Bay, said point also being the POINT OF BEGINNING; thence South $38^{\circ} 59' 00''$ West 99.16 feet more or less to the low water mark of said Tomales Bay; thence along said low water mark South $35^{\circ} 00' 00''$ East 44.85 feet; thence leaving said low water mark North $38^{\circ} 59' 00''$ East 110.59 feet; thence North $49^{\circ} 45' 40''$ West 43.12 feet to the POINT OF BEGINNING.

BASIS OF BEARINGS for this description is that of said Record of Survey.

END OF DESCRIPTION

The above description is based on that original description prepared by California State Lands Commission Boundary Unit on May 23, 2011 as found in Work 26393 file.

Revised 06/10/2021 by the California State Lands Commission Boundary Unit.



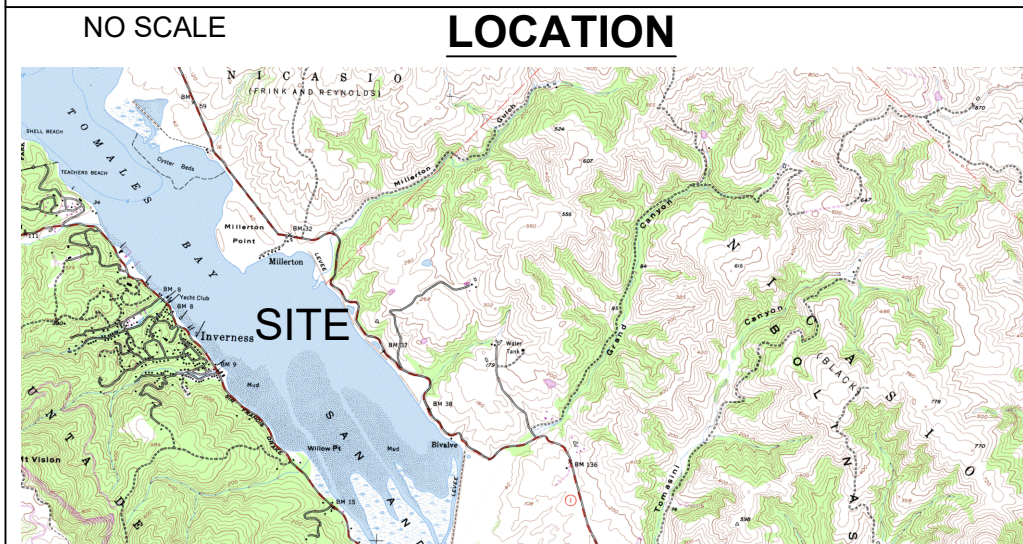
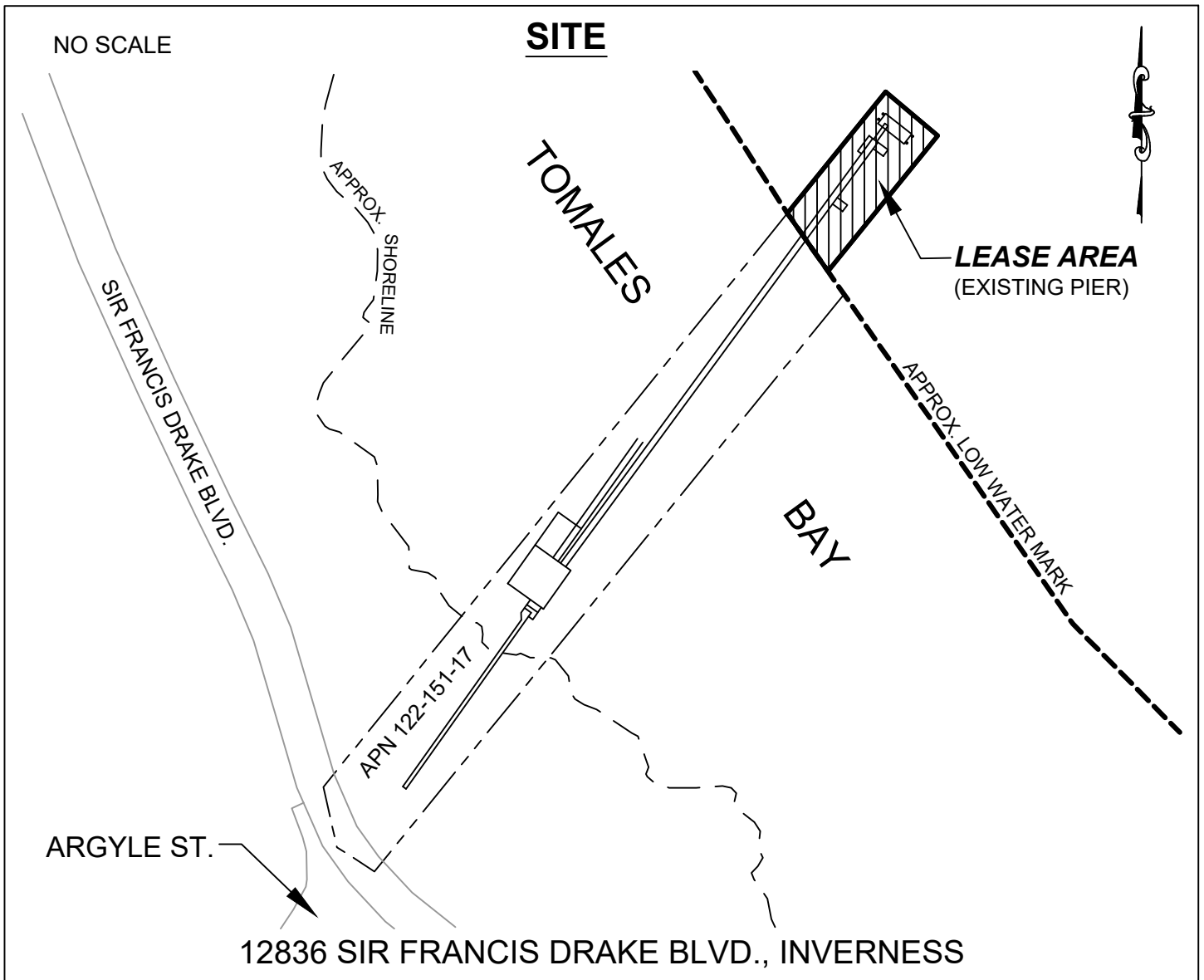


Exhibit B
 LEASE 8941
 DEMMEL
 APN 112-151-17
 GENERAL LEASE-
 RECREATION USE
 MARIN COUNTY

TS 06/10/2021

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.