

# Staff Report 24

## APPLICANT:

Katherine G. Dana Osterloh

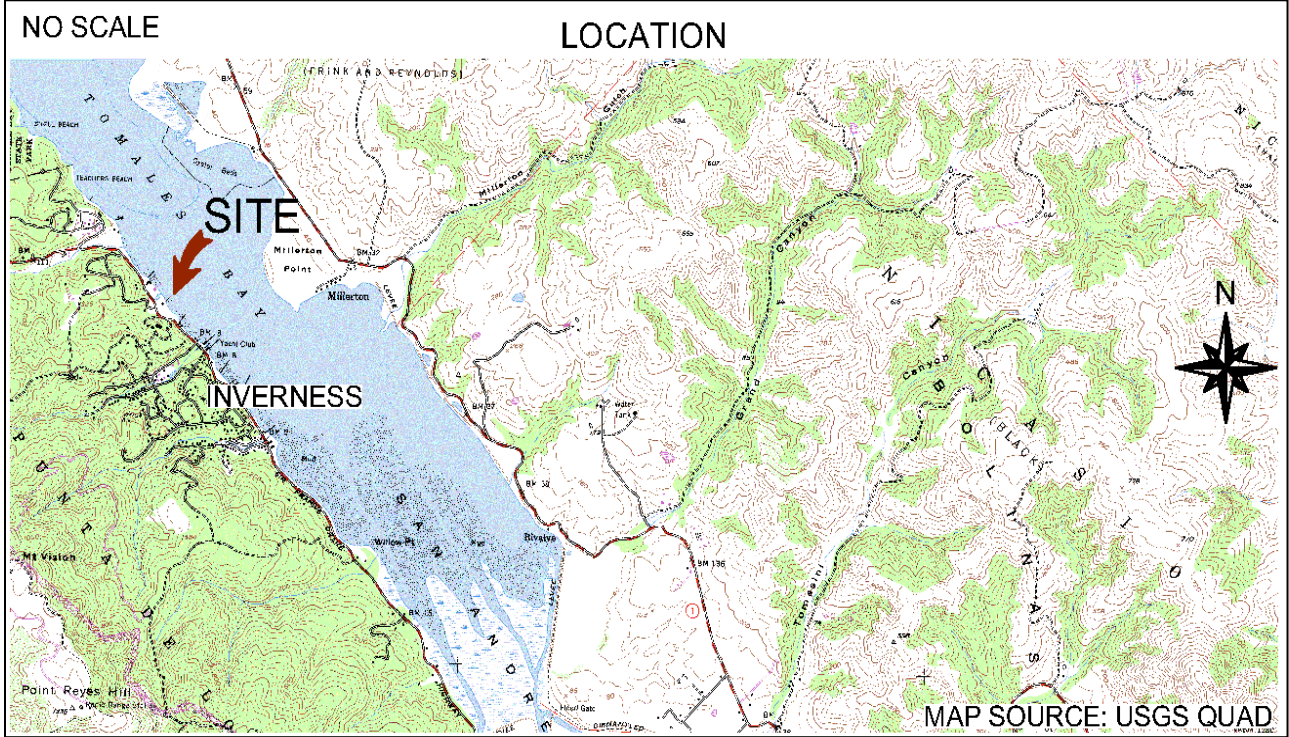
## PROPOSED ACTION:

Issuance of a General Lease – Recreational Use.

## AREA, LAND TYPE, AND LOCATION:

Sovereign land in Tomales Bay, adjacent to 12916 Sir Francis Drake Boulevard, near Inverness, Marin County (as shown in Figure 1).

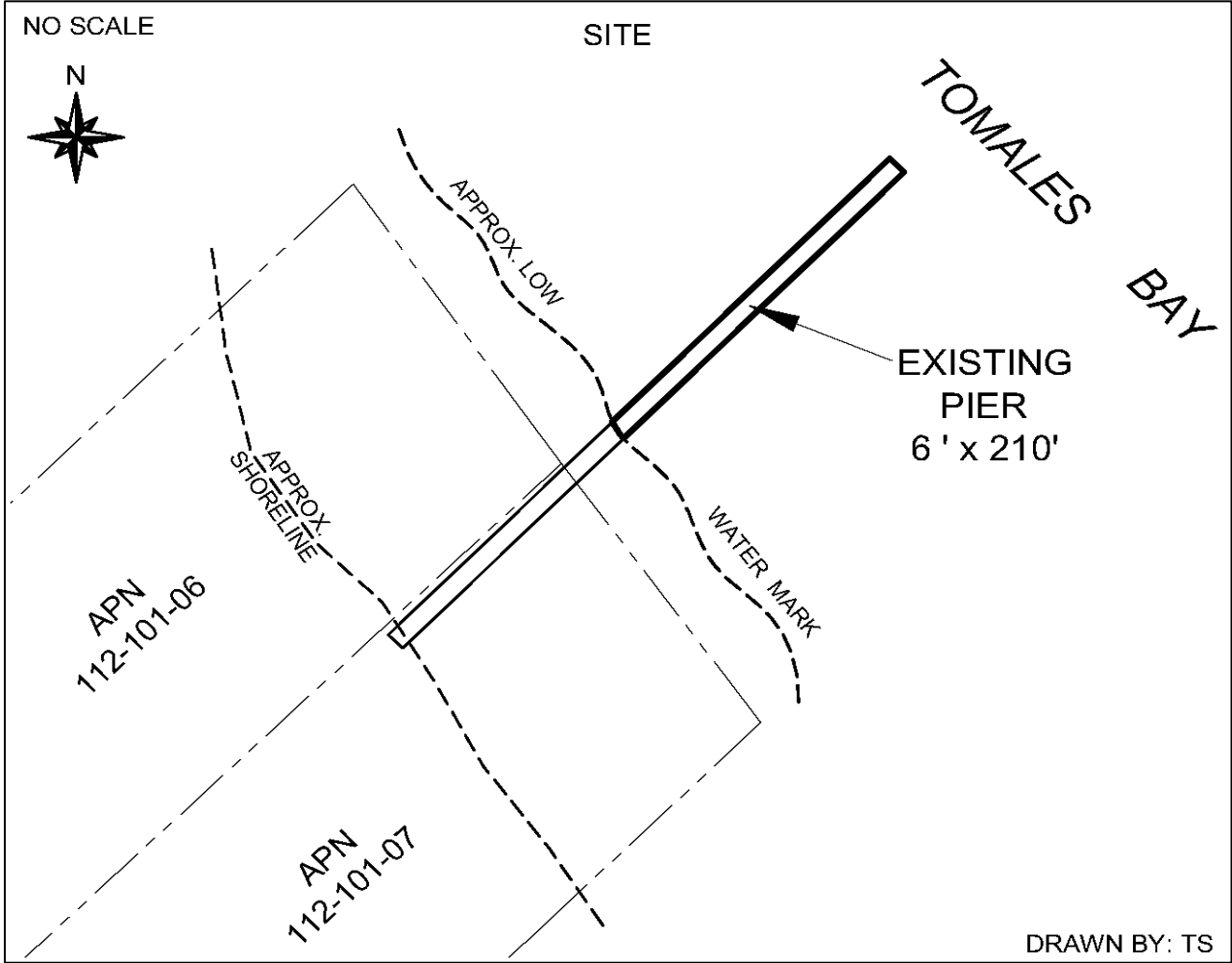
Figure 1. Location



**AUTHORIZED USE:**

Use of an existing pier (as shown in Figure 2, below).

**Figure 2. Site Map**



NOTE: This depiction of the lease premises is based on unverified information provided by the Applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

**TERM:**

10 years, beginning April 1, 2024.

**CONSIDERATION:**

\$140 per year, with an annual Consumer Price Index adjustment, and \$78 to compensate for the unauthorized occupation of state sovereign land prior to April 1, 2024.

**SPECIFIC LEASE PROVISIONS:**

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee shall not store any personal items or construct any improvements in the Public Trust Easement that may impair the public's right of access for navigation, fishing, and public trust consistent recreational uses.
- Lessee agrees and acknowledges that the hazards associated with climate change 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, 6503.5, and 6505.5; California Code of Regulations, title 2, section 2000 and 2003.

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

On April 23, 2014, the Commission authorized the issuance of a General Lease – Recreational Use to Katherine G. Dana Osterloh, for the continued use and maintenance of an existing pier ([Item 65, April 23, 2014](#)). The lease expired on September 8, 2023.

The Applicant is now applying for a General Lease – Recreational Use for use of the existing pier. The pier has existed at this location for many years and is located directly adjacent to the Applicant's upland property. The pier facilitates the docking and mooring of boats. Recreational boating is water-dependent and 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).

Staff recommends that the Commission accept compensation from the Applicant for unauthorized occupation of State land in the amount of \$78, to compensate for the period of unauthorized occupancy prior to April 1, 2024.

The lease provisions regarding indemnity will be extended to apply from September 9, 2023, when the applicant's previous lease expired, through March 31, 2024, the day before the beginning of the new lease.

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 all improvements from state land 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, increased wave activity, more frequent and intense storm events, and increased flooding may impact the existing pier subject to the proposed lease in Tomales Bay.

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 lease area as listed in Table 1.

**Table 1. Projected Sea Level Rise for Point Reyes**

Year	Projection (feet)
2030	0.8
2040	1.3
2050	2.0
2100	7.0

Source: Table 10, [State of California Sea-Level Rise Guidance: 2018 Update](#)

Note: Projections are with respect to a 1991 to 2009 baseline.

As stated in the [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, drought, and storms (especially when coupled with sea level rise). The combination of these conditions will likely result in increased wave run up, storm surge, and flooding in coastal and near coastal areas. In tidally influenced waterways, more frequent and powerful storms

can result in increased flooding conditions and damage from storm created debris. Climate change and sea level rise will further influence coastal areas by changing erosion and sedimentation rates. Beaches, and coastal landscapes will be exposed to increased wave force and run up, potentially resulting in greater beach erosion than previously experienced.

The fixed pier 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 pier may require more frequent maintenance to ensure continued function during and after storm seasons and to avoid dislodgement. In the future, the pier may need additional fortification against more frequent storm events and may need to be raised to withstand higher levels of flood exposure and sea level rise.

Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland (not within the lease area) are located in an area that may be subject to the effects of climate change, including sea level rise.

### **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 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 as prior lessee may be required to remove the pier. 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.

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

### **AUTHORIZATION:**

1. Accept compensation from the Applicant in the amount of \$78, for the unauthorized occupation of State land for the period prior to April 1, 2024.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning April 1, 2024, for a term of 10 years, for the use of an existing pier; 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.