

# Staff Report 24

**APPLICANT:**

---

23240 Highway 1, LLC, A Delaware Limited Liability Company

**PROPOSED ACTION:**

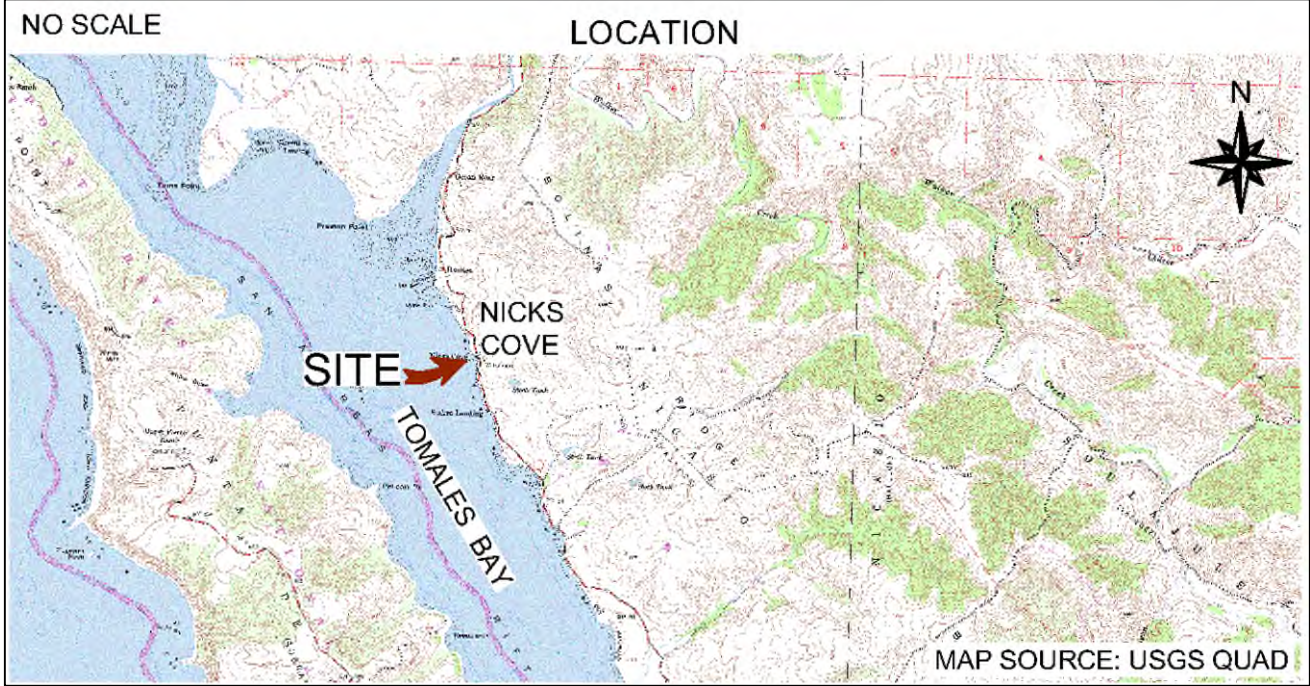
---

Issuance of a General Lease – Other.

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

Sovereign land in Tomales Bay, adjacent to 23240 Highway 1, near Marshall, Marin County (as shown in Figure 1).

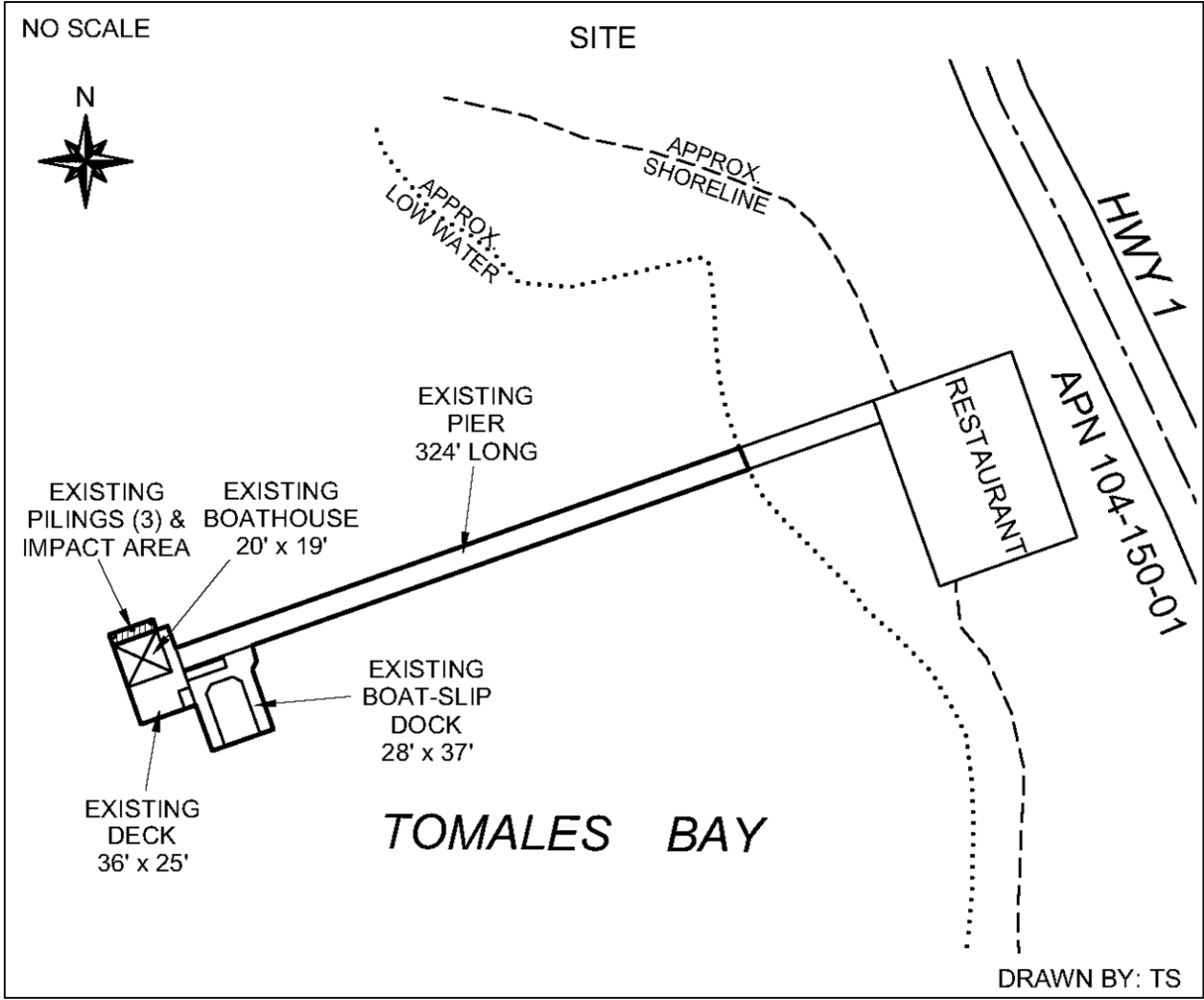
**Figure 1. Location**



**AUTHORIZED USE:**

Use of an existing pier, boat slip, boathouse, deck, and three unattached pilings; installation and use of a propane gas line (as shown in Figure 2).

**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 August 15, 2024.

**CONSIDERATION:**

\$618 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.
- Within 60 days of completing the reconstruction of authorized improvements, Lessee will provide Lessor with photographs and a set of “as-built” plans that will show where the improvements have been placed. Lessor shall then replace Exhibit A, Land Description, and Exhibit B, Site and Location Map, to the Lease as necessary to accurately reflect the final location of the authorized improvements. Once approved by the Lessor's Executive Officer or designee and Lessee, the revised Exhibits shall replace the Exhibits incorporated in the Lease at the time of Lease execution. The updated Exhibits shall be incorporated in the Lease as though fully set forth therein.
- Construction activities will be performed pursuant to the specific terms identified in the Lease, including that the Applicant obtain all necessary permits and authorizations prior to commencing work, including requirements pertaining to construction equipment, debris, and the provision to Lessor of specified documents related to the construction activities.
- Lessee shall keep the Lease Premises open to the public during daylight hours and whenever the restaurant or bar on the upland property is open for business. Lessee shall not erect structures or improvements or place personal property so as to obstruct or prevent public access. Such improvements include, but are not limited to, gates, fences, walls, railings, or landscaping. Lessee shall not place signs or advocate in any other manner to prevent or discourage public use of the Lease Premises.
- Lessee may use the interior of the fishing shelter on the Lease Premises for commercial uses.
- Lessee shall use the Lease Premises according to the terms of an Irrevocable Offer to Dedicate recorded as Instrument Number 2005-0086435 on November 10, 2005, in the Official Records of the County of Marin.

**STAFF ANALYSIS AND RECOMMENDATION:**

---

**AUTHORITY:**

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

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

The Applicant owns and operates a restaurant on the upland property known as Nick's Cove. The Applicant converted several residences to overnight guest accommodations in the early 2000s. On December 2, 2013, the Commission authorized issuance of a General Lease – Recreational Use to 23240 Highway 1, LLC, A Delaware Limited Liability Company, for the use of an existing pier, boat slip, boathouse, and deck ([Item 12, December 02, 2013](#)). The lease expired on December 1, 2023.

The Applicant is now applying for a General Lease – Other for the use of an existing pier, boat slip, boathouse, deck, and unattached pilings; and installation and use of a propane gas line. The Applicant is applying to rent the fishing shelter on the Lease Premises as an event space on special occasions, while still allowing the public to utilize the premises.

The improvements under lease are open to the public and also serve as a benefit to visitors of the upland hotel and restaurant. A California Coastal Commission permit for development of the pier, boat slip, boathouse, and deck was approved in 2003 ([W11b,12b-12-2003.pdf \(ca.gov\)](#)). The landowner at that time recorded an Irrevocable Offer to Dedicate easements for vertical and lateral public access as a permit condition. The Offer to Dedicate required public access on the pier.

On January 7, 2024, a fire damaged the boathouse. No one was harmed in this event, and the area was closed off to the public for safety. This fire did not damage the pier or its pilings. The boathouse is to be fully repaired by the applicant with no in-water construction and no expansion of the current footprint.

On April 11, the Coastal Commission approved the reconstruction necessary for full repair of the boathouse (see page 6, [Item 2-03-025-A3, April 11, 2024](#)). The previous woodburning stove will be replaced by a gas stove with a chimney. The proposed gas line will provide propane to the boathouse. The Applicant has submitted an application to the Community Development Agency, Building and Safety Division of Marin County for their approval of proposed site plans.

The Commission's accounting records show the applicant has paid rent through December 2, 2024. Invoice No. 59391 will be prorated to apply to payment of the annual rent.

Additionally, the proposed lease will require the Lessee to indemnify the State for the entire period of unauthorized occupation of the existing improvements, from December 2, 2023 through August 14, 2024, ensuring the State is protected.

The Applicant owns the uplands adjoining the lease premises. The subject facilities are located directly waterward of the upland property, and these facilities occupy a relatively small area of the bay. The existing unattached pilings are utilized for temporary moorage of boats. The pier and appurtenant facilities are used for public recreational boating. 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). The proposed lease will require Applicant to make the Lease Premises open to the public according to the terms of the Offer to Dedicate.

The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 10-year term, does not grant the lessee exclusive rights to the lease premises, and reserves an easement to the public for Public Trust-consistent uses. 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. The proposed lease will not significantly interfere with navigation and does not substantially interfere with any Public Trust needs at this time or in the foreseeable future.

### **CLIMATE CHANGE:**

Climate change impacts, including sea level rise, increased wave activity, storm events, and flooding may impact the facilities subject to the proposed lease, located on 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 and riverine areas by changing erosion and sedimentation rates. Beaches, coastal landscapes, and near-coastal riverine areas will be exposed to increased wave force and run up, potentially resulting in greater beach or bank erosion than previously experienced.

This increase in sea level combined with more frequent and stronger storm events will likely expose the lease area to higher flood risks, comprised of greater total water levels for longer periods of time. The floating deck and boat slip are adaptable to higher water levels allowing them to rise and fall with storms and droughts and increasing their resiliency to some climate change impacts, but they may require more frequent maintenance or replacement to ensure continued function during and after storm seasons and to avoid dislodgement of the facilities. The pier with attached gas line, boathouse, and additional pilings within the lease area are fixed structures that may need to be elevated to withstand higher levels of flood exposure and more frequent storm events.

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 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:

---

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 existing pier and appurtenant facilities and restore the premises to their original condition. 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. **Boathouse Reconstruction and Gas line:** 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 2, Replacement or Reconstruction; California Code of Regulations, title 2, section 2905, subdivision (b).
4. **Existing Pier, Boat Slip, Deck, and Pilings:** Staff recommends that the Commission find that this activity 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 14, section 15301.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15061 and California Code of Regulations, title 2, section 2905.

## APPROVAL OBTAINED:

---

- California Coastal Commission

## **APPROVAL REQUIRED:**

---

- Community Development Agency, Building and Safety Division of Marin County

## **RECOMMENDED ACTION:**

---

It is recommended that the Commission:

### **CEQA FINDING:**

Find that this activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project through the combination of the following exemptions: Class 2, Replacement or Reconstruction, California Code of Regulations, title 2, section 2905, subdivision (b); and Class 1, Existing Facilities, California Code of Regulations, title 14, section 15301.

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

### **AUTHORIZATION:**

1. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning August 15, 2024, for a term of 10 years, for the use of an existing pier, boat slip, boathouse, deck, and three unattached pilings; installation and use of a gas line; annual rent in the amount of \$618, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.
2. Authorize the Executive Officer or designee to replace Exhibits in the lease upon submission, review, and approval of as-builts plans detailing the final location of the improvements following construction.