

Staff Report 22

APPLICANT:

Happy Druids LLC, a California limited liability company

PROPOSED ACTION:

Issuance of a General Lease – Recreational Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Tomales Bay, adjacent to 12856 Sir Francis Drake Boulevard, near Inverness, Marin County (as shown in Figure 1).

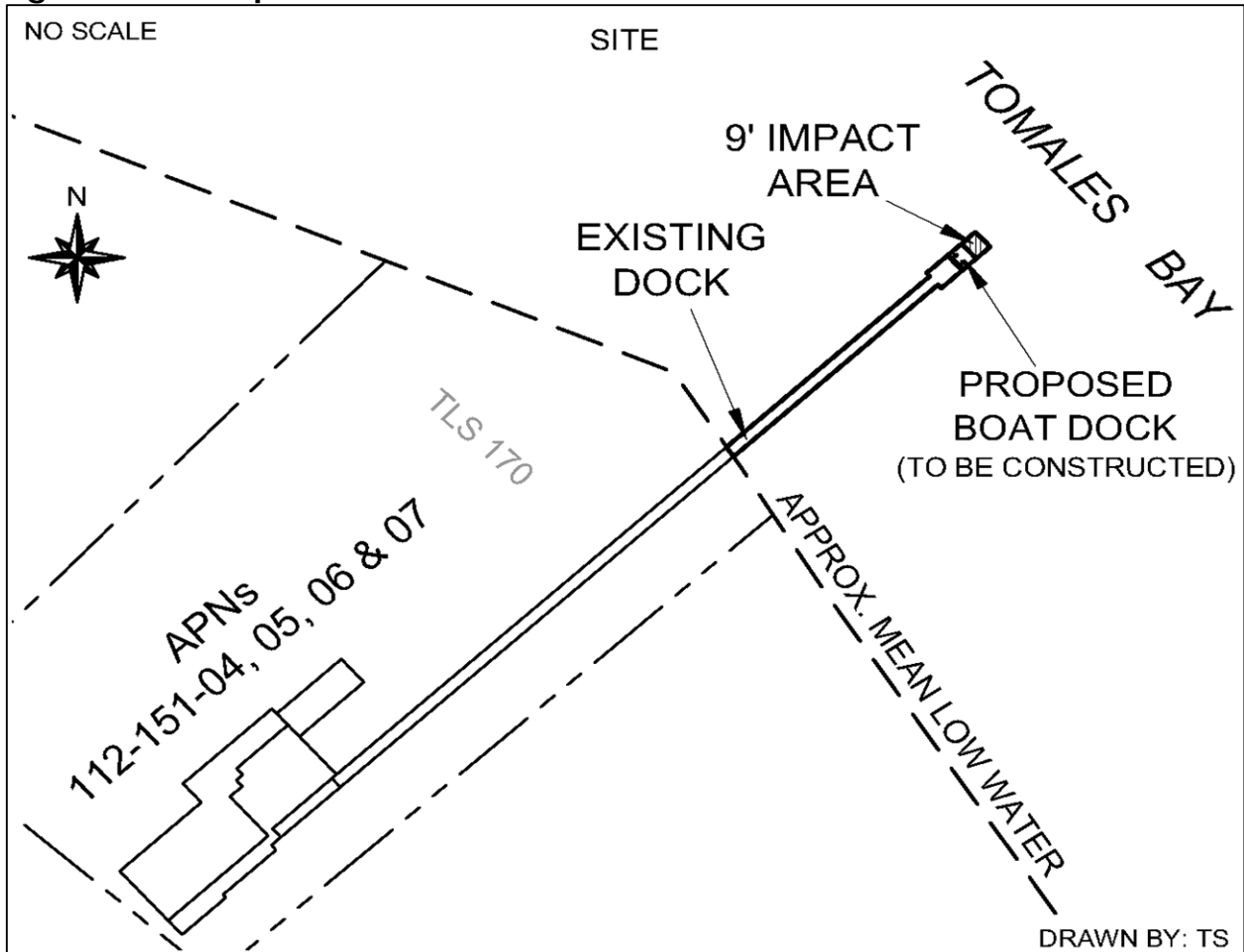
Figure 1. Location



AUTHORIZED USE:

Use of an existing fixed dock not previously authorized by the Commission; and construction and use of a floating dock at the end of the fixed dock (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 April 2, 2025.

CONSIDERATION:

\$167 per year, with an annual Consumer Price Index adjustment; and \$721 for the unauthorized occupation of State Lands prior to April 2, 2025.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Within 60 days of completing the modification of the 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.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, and 6505.5; California Code of Regulations, title 2, section 2000 and 2003.

PUBLIC TRUST AND STATE’S BEST INTERESTS:

The Applicant is applying for a General Lease – Recreational Use for the existing fixed dock not previously authorized by the Commission; and construction and use of a floating dock to be built at the end of the fixed dock in Tomales Bay, adjacent to 12856 Sir Francis Drake Boulevard, Inverness, Marin County.

The fixed dock has existed for many years at this location. The Applicant owns the adjoining lease premises. Staff recommend the Commission accept \$721 for the period of unauthorized occupation of state land prior to April 2, 2025. The lease will also require the lessee to indemnify the state for the period of occupation prior to April 2, 2025.

The existing and proposed improvements are privately owned and maintained and 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 land. (Pub. Resources Code, § 6503.5.)

The Applicant has submitted a project description, project plans, and a biological assessment of predicted impacts to the surrounding environment and wildlife resulting from the proposed project. The Applicant has also applied for appropriate permits to authorize the construction of the floating dock at the end of the fixed dock. The project is estimated to take no more than 5 weeks to complete.

Construction activities will not require a floating barge. All equipment and work will be portable and staged from land. All eel grass will be avoided. Pilings will be installed to allow the floating portion of the dock to rise and fall with the tides. A handrail and ladder will be installed on the fixed dock for access to the floating portion of the dock.

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.

CLIMATE CHANGE:

Climate change impacts, including sea level rise, increased wave activity, storm events, and flooding may impact the proposed lease area, located in Tomales Bay. The existing facility is a boat dock, fixed to the shoreline and bottom of Tomales Bay. A proposed floating boat dock would also be constructed and attached at the waterward end of the existing dock. The lease area is submerged offshore. The fixed dock terminates onshore just upland of the intertidal zone, and that upland area is projected to be permanently inundated with 0.8 feet of sea level rise, according to the [Our Coast Our Future](#) hazard map viewer.

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 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 existing, fixed dock has been raised three feet to increase the dock’s adaptive capacity to withstand higher water levels and reduce its exposure to flooding, storm events, and wave action. The proposed floating dock at the end of the existing dock would rise and fall with tides and waves, increasing its resiliency to sea level rise. However, the floating dock may be susceptible to degradation and dislodgement from increased wave action and more frequent and intense storms. Any future construction or activities on State land would require a separate authorization from the Commission.

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 improvements, restore the lease premises to their original condition and may not install the proposed floating dock. 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. **Fixed Dock:** Staff recommend 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).

Construction of floating dock: 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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1).

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

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, through the combination of the following exemptions: Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2) and Class 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1).

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 acceptance of compensation from the Applicant in the amount of \$721 for the unauthorized occupation of State lands for the period prior to April 2, 2025.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning April 2, 2025; for a term of 10 years, for the existing fixed dock and construction and use of a floating dock at the end of the fixed dock; annual rent in the amount of \$167, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000.
3. Authorize the Executive Officer, or their designee, to replace Exhibits to the lease upon submission, review, and approval of plans detailing the final location of the improvements following installation.