

**CALENDAR ITEM
C35**

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02/07/17
PRC 5138.1
D. Tutov

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Robert M. Nave, Trustee of the Robert M Nave Trust, Created by Trust Declaration Dated February 2, 2006 and Robert M. Nave, Jr., Trustee of the Trust under the Will of Doris Marie Nave, Deceased

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Tomales Bay, adjacent to 22055 State Route 1, near the town of Marshall, Marin County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier and ramp.

LEASE TERM:

10 years, beginning August 29, 2016.

CONSIDERATION:

\$125 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.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503.5; California Code of Regulations, title 2, section 2000, subdivision (b).

Public Trust and State's Best Interests Analysis:

On June 28, 2007, the Commission authorized a 10-year Recreational Pier Lease to Robert M. Nave, Trustee of the Robert M Nave Trust, Created by Trust Declaration Dated February 2, 2006 ([Calendar Item C1, June 28, 2007](#)). On January 29, 2009 the Commission rescinded the June 28, 2007 authorization and authorized a 10-year Recreational Pier Lease

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to Robert M. Nave, Trustee of the Robert M Nave Trust, Created by Trust Declaration Dated February 2, 2006 and Robert M. Nave, Jr., Trustee of the Trust under the Will of Doris Marie Nave, Deceased ([Calendar Item C6, January 29 2009](#)). That lease expired on August 28, 2016. The Applicant is now applying for a General Lease – Recreational Use for the existing improvements. The subject improvements are privately owned and maintained. The adjacent upland parcel is privately owned and developed with a residence.

The subject pier and ramp are for the docking and mooring of boats. Recreational boating and fishing are 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 pier and ramp facilities have existed for many years at this location, the lease does not alienate the State's fee simple interest, and neither permanently impairs public rights. 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. 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, are not limited to the open coast and may involve increased wave activity, storm events, and flooding. The existing structures subject to the proposed lease are located in Tomales Bay, which is a tidally-influenced site vulnerable to flooding at current sea levels. The structures within this area may be at a higher risk of flood exposure given future projection scenarios of sea-level rise. Compared to year 2000 levels, the region could see up to one foot of sea-level rise by 2030, two feet by 2050, and possibly over five feet by 2100 (NRC 2012). In addition, as stated in *Safeguarding California* (California Natural Resources Agency 2014), climate change is projected to increase the frequency and severity of natural disasters related to flooding, fire, drought, extreme heat, and storms (especially when coupled with sea-level rise).

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Climate change could have a number of impacts for the region. More frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris. Rising sea levels can also lead to 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.

Improvements to the lease area include an existing fixed pier and ramp. These structures may become vulnerable to more frequent overtopping or inundation during high tides, king tides, and storms, as well as from storm runoff. The combined impacts of these projected conditions raise the likelihood of damage to structures within the lease area. The fixed pier and ramp may require more frequent maintenance to ensure continued function during and after storm seasons and to avoid dislodgement of structures. While the pier is currently in good condition, this fixed structure may need additional fortification or may need to be heightened in the future to withstand higher levels of flood exposure and sea-level rise. In addition, the ramp and adjacent upland may experience periodic or continuous inundation with rising water levels and more frequent flooding, creating a public access safety hazard.

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 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 is consistent with the common law Public Trust Doctrine and 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. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.

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2. 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.

3. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon staff's consultation with the persons nominating such lands and through the CEQA review process, it is staff's opinion that the project, as proposed, is consistent with its use classification.

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

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

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AUTHORIZATION:

Authorize issuance of a General Lease – Recreational Use to Robert M. Nave, Trustee of the Robert M Nave Trust, Created by Trust Declaration Dated February 2, 2006 and Robert M. Nave, Jr., Trustee of the Trust under the Will of Doris Marie Nave, Deceased; beginning August 29, 2016, for a term of 10 years, for the continued use and maintenance of an existing pier and ramp, 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 \$125 per year, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 5138.1

LAND DESCRIPTION

A parcel of submerged land situated in the bed of Tomales Bay in the Greater Farallones National Marine Sanctuary, lying adjacent to Tideland Survey 107, patented July 12, 1875, County of Marin, State of California, more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier lying adjacent to that parcel described in Grant Deed recorded February 6, 2006 as Document Number 2006-0008007 in Official Records of said County.

TOGETHER WITH any applicable Impact Area(s).

EXCEPTING THEREFROM any portion lying landward of the ordinary low water mark on the shoreline of said Tomales Bay.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 11/22/2016 by the California State Lands Commission Boundary Unit.



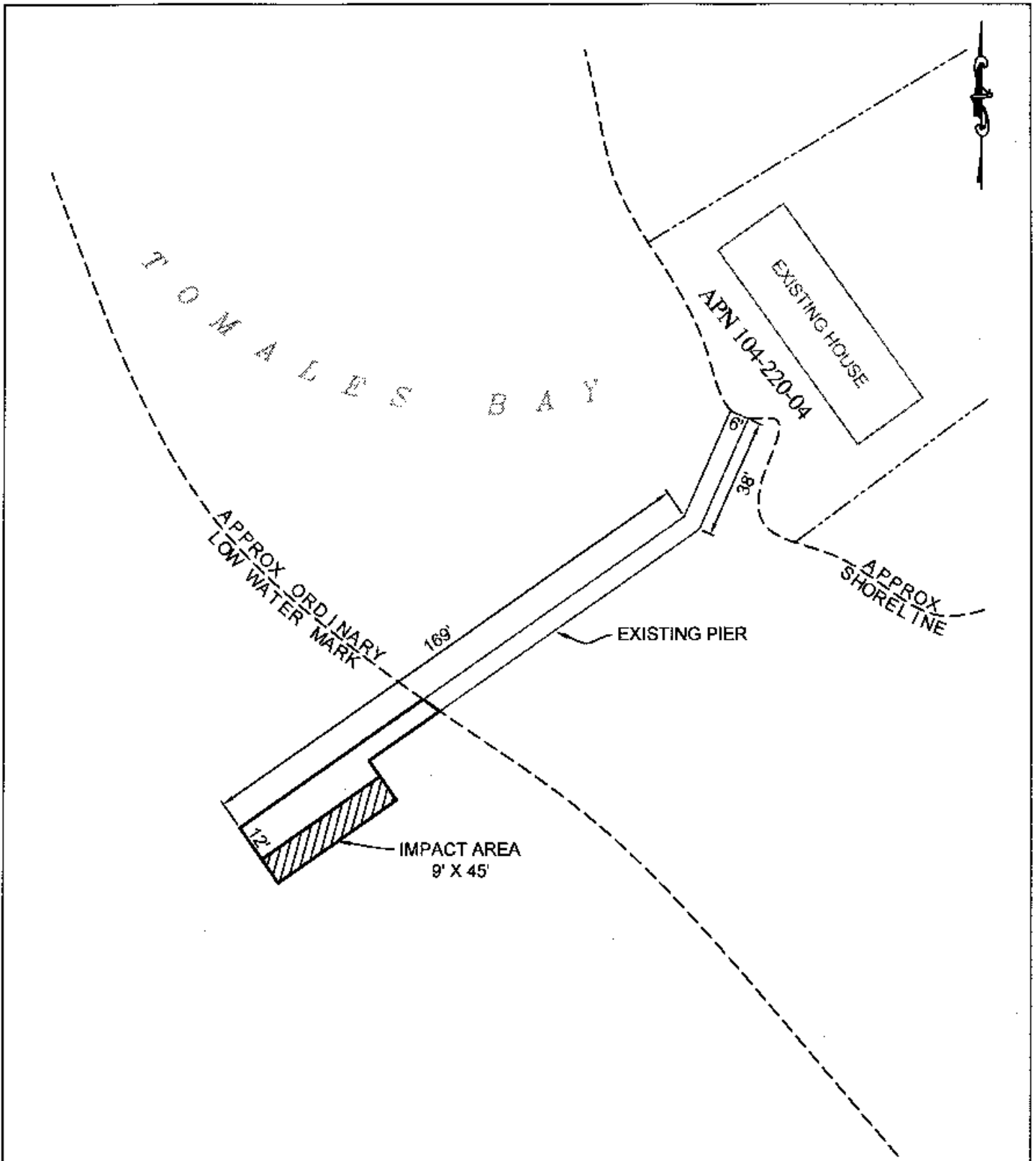


EXHIBIT A

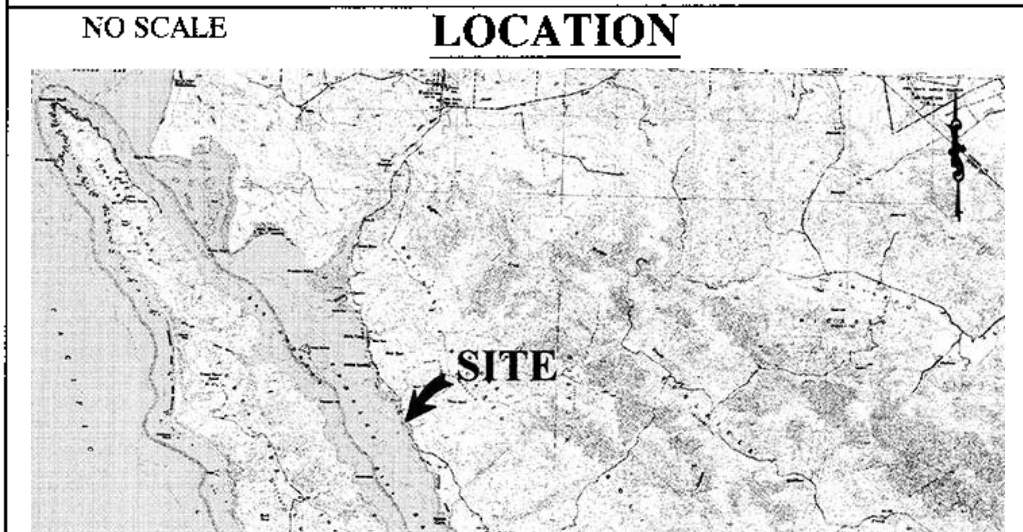
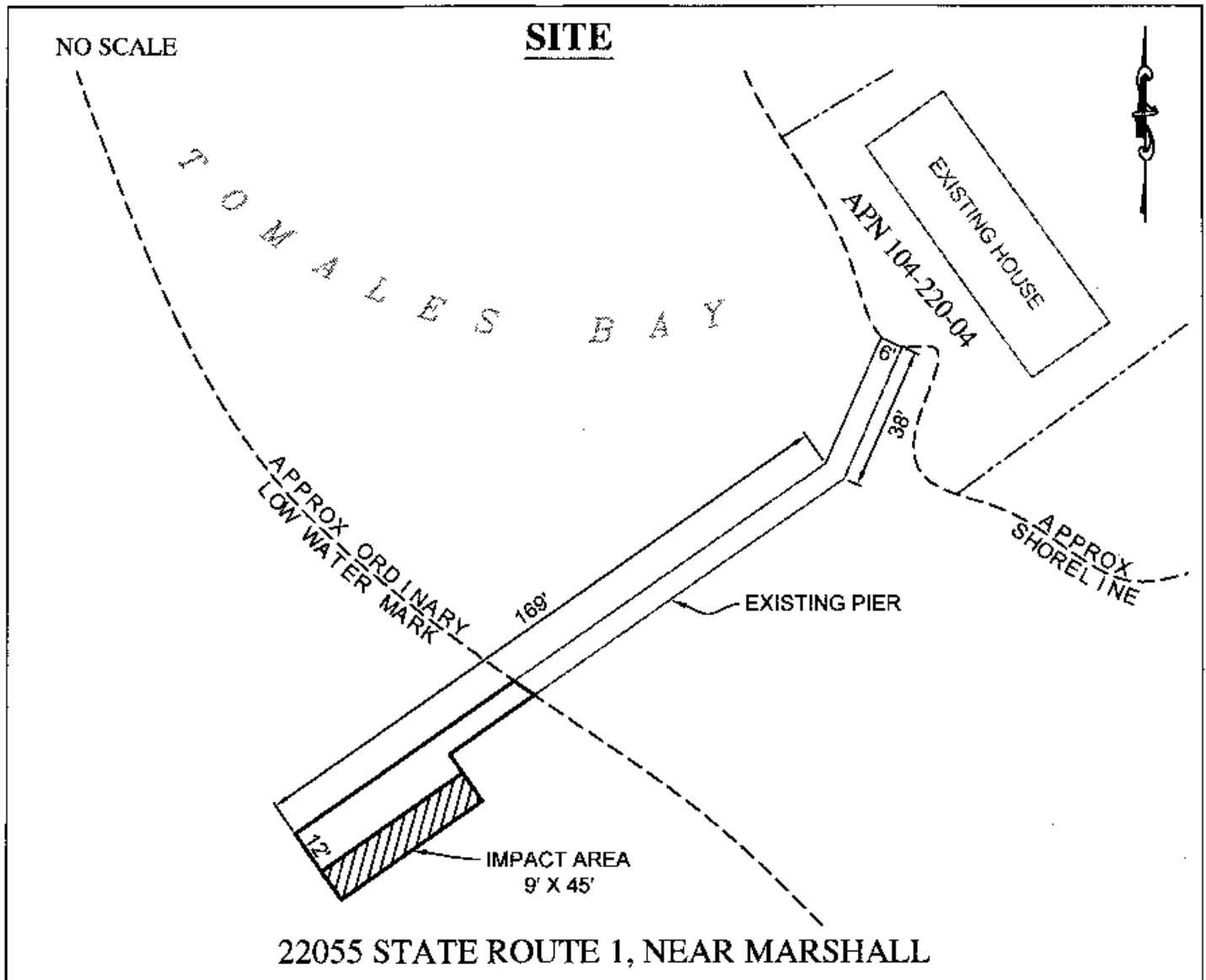
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RGB 11/22/16

LAND DESCRIPTION PLAT
PRC 5138.1, NAVE TRUST
MARIN COUNTY

CALIFORNIA STATE
LANDS COMMISSION





MAP SOURCE: USGS QUAD

Exhibit B
 PRC 5138.1
 NAVE TRUST
 APN 104-220-04
 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.