

**STAFF REPORT**

**71**

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**GENERAL LEASE – RECREATIONAL USE**

**APPLICANT:**

Teresa N. Rice, Trustee of the Teresa N. Rice Living Trust 1999

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

Sovereign land in Morro Bay, adjacent to 1135 5<sup>th</sup> Street, Los Osos, San Luis Obispo County.

*AUTHORIZED USE:*

Use and maintenance of an existing recreational pier.

*LEASE TERM:*

10 years, beginning June 28, 2019, and ending June 27, 2029.

*CONSIDERATION:*

\$621 per year, with an annual Consumer Price Index adjustment.

*SPECIFIC LEASE PROVISIONS:*

Insurance: liability coverage 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, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

**Public Trust and State's Best Interests Analysis:**

The Applicant owns the adjoining upland property, which is improved with a single-family residence. The Applicant is now applying for a General Lease – Recreational Use. The previously unauthorized recreational pier has existed at this location for many years and does not significantly alter the land. The existing pier is used for waterborne recreation in Morro Bay. However, because Moro Bay is tidally influenced the area surrounding the pier is only suitable for the docking and mooring of boats during high tide. Waterborne recreation is generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private

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recreational piers as an authorized use of Public Trust lands (Pub. Resources Code, § 6503.5).

The existing improvements on State land do not significantly alter the land; or permanently impair public rights. The proposed lease does not alienate the State's sovereign interest, is limited to a 10-year term, and does not grant the lessee exclusive rights to the lease premises. Upon termination of the lease, the lessee may be required to remove any improvements and restore the lease premises to their original condition. Additionally, 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 open coastal areas in California. The lease is located near the far southern end of Morro Bay in a shallow, low-gradient intertidal zone that is considerably buffered from the direct forces of the Pacific Ocean: from Morro Rock extending into Montaña de Oro State Park, large sand dunes protect the community of Los Osos from potential wave hazards. However, the lease is located in an area which is a tidally influenced site vulnerable to flooding at current sea levels and at a higher risk of flood exposure given projected scenarios of sea-level rise. The lease premises consist of a floating pier with pilings.

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 Port San Luis 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 Port San Luis<sup>1</sup>**

<b>Year</b>	<b>Projection (feet)</b>
2030	0.7
2040	1.2
2050	1.8
2100	6.7

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Source: Table 19, State of California Sea-Level Rise

Guidance: 2018 Update

Note: <sup>1</sup> Projections are with respect to a 1991 to 2009 baseline.

As stated in *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 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 combination of these projected conditions could increase the likelihood of damage to structures within the lease premises during the term of the lease. The entire pier is substantially surrounded by thick, tall rushes and other emergent vegetation that serve to buffer the pier from wind-driven rough chop and other extreme weather events within the bay. However, the fixed pilings may need to be further reinforced to withstand future conditions, as any degradation of these components could result in property damage and public safety concerns within the lease area. Regular maintenance, as required by the terms of the lease, will 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 and values, at this location, at this time, for the foreseeable term of the proposed lease; is consistent with the Public Trust Doctrine; and is in the State's best interests.

### **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

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law. If the Commission denies the application, the applicant may be required to remove the recreational pier and restore the premises to their original condition. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.

2. 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.
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 issuance of this will not substantially interfere with Public Trust needs and values, at this location, at this time, for the foreseeable term of the proposed 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 Applicant beginning June 28, 2019, for a term of 10 years, for an existing

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recreational pier not previously authorized by the Commission, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; rent in the amount of \$621 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**

**W 27239**

**LAND DESCRIPTION**

A parcel of tide and submerged land situate in the bed of Morro Bay lying adjacent to Rancho Canada de Los Osos y Pecho y Islay, approved December 26, 1867, County of San Luis Obispo, State of California and more particularly described as follows:

All those lands underlying an existing pier adjacent to and northerly of those lands as described in that Grant Deed, recorded May 7, 2003 in Document Number 2003049003 in Official Records of said County.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of Morro Bay.

**END OF DESCRIPTION**

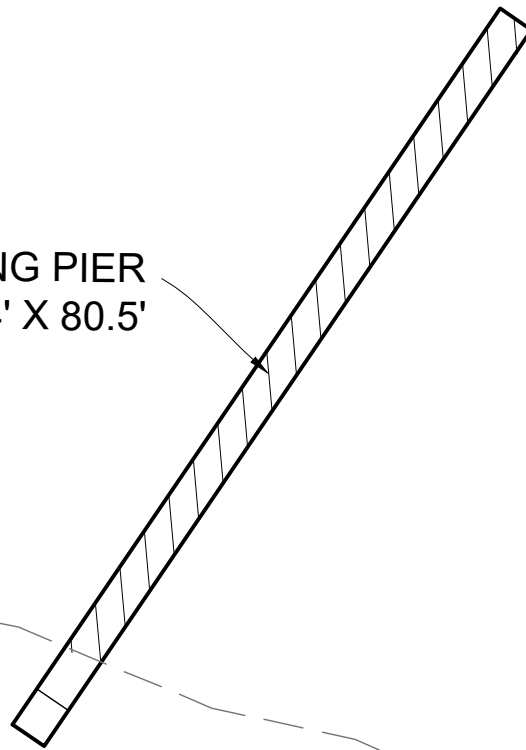
Prepared May 8, 2019 by the California State Lands Commission Boundary Unit.





M O R R O B A Y

EXISTING PIER  
4' X 80.5'



APN 038-031-029

EXHIBIT A

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LAND DESCRIPTION PLAT  
W 27239, RICE  
SAN LUIS OBISPO COUNTY

CALIFORNIA STATE  
LANDS COMMISSION



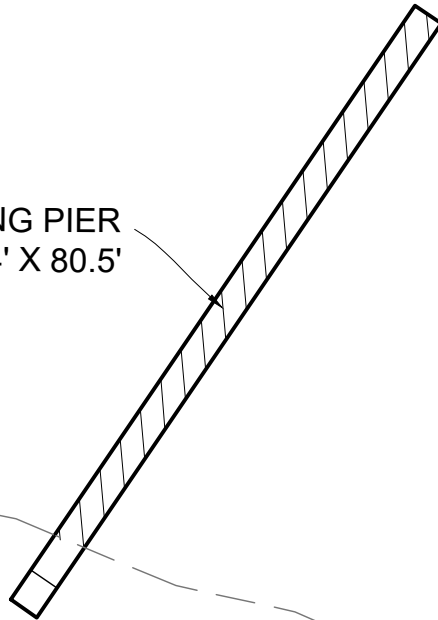
NO SCALE

# SITE

MORRO BAY



EXISTING PIER  
4' X 80.5'



APN 038-031-029

1135 5TH STREET, LOS OSOS

NO SCALE

# LOCATION



MAP SOURCE: USGS QUAD

# **Exhibit B**

W 27239

RICE

APN 038-031-029

GENERAL LEASE -  
RECREATIONAL USE  
SAN LUIS OBISPO CO.



**SITE**

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.

MJJ 5/17/19