

**STAFF REPORT  
C65**

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04/19/18  
PRC 5470.1  
D. Tutov

**GENERAL LEASE – RECREATIONAL USE**

**APPLICANT:**

The John and Jean Vilicich Revocable Inter Vivos Trust Dated December 1, 2004; Francis A. Vilicich; and Edward A. Vilicich and Bernadette C. Vilicich, Trustees of the E&B Vilicich Family Trust

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

Sovereign land in Tomales Bay, adjacent to 19145 State Route 1, near Marshall, Marin County.

*AUTHORIZED USE:*

Continued use and maintenance of an existing walkway, pier, and three pilings, previously authorized by the Commission, and the use and maintenance of a pier and platform, not previously authorized by the Commission.

*LEASE TERM:*

10 years, beginning April 1, 2018.

*CONSIDERATION:*

\$1,071 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, 6503, 6503.5, and 6505.5; California Code of Regulations, title 2, sections 2000 and 2003.

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

On August 11, 2009, the Commission authorized a General Lease - Recreational Use for an existing walkway, three pilings, and a pier to Jean Vilicich, in trust, as Trustee of the John Vilicich and Jean Vilicich Revocable Inter Vivos Trust dated December 1, 2004; Francis A. Vilicich and Gwendolyn M. Vilicich; and Edward A. Vilicich and Bernadette C. Vilicich, Trustees of the E & B Vilicich Family Trust ([Item C22, August 11, 2009](#)). That lease expired on March 31, 2018. Both John and Jean Vilicich are deceased and Jackie Mathews was designated to act as Trustee in the John and Jean Vilicich Revocable Inter Vivos Trust Dated December 1, 2004.

The subject improvements are privately owned and maintained. The piers, walkway, and platform are for the docking and mooring of boats. Recreational boating is a water-dependent activity and is generally consistent with the common law Public Trust Doctrine. The California Legislature identifies private recreational boating facilities as an authorized use of Public Trust lands (Pub. Resources Code, § 6503.5).

The subject 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, more frequent and intense storm events, and increased flooding and erosion, affect both open coastal areas and inland waterways in California. The lease area is located in Tomales Bay, which is a tidally influenced site vulnerable to flooding at current sea levels; therefore, this area will likely be at a higher risk of flood exposure given future projection scenarios of sea-level rise. By 2030, the region could see up to 1 foot of sea-level rise (from year

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2000 levels), 2 feet by 2050, and possibly over 5 feet by 2100 (National Research Council 2012). Rising sea levels can lead to increased flooding, and 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 two existing fixed piers, in addition to a walkway and floating platform. 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 piers, walkway, and floating platform may require more frequent maintenance to ensure continued function during and after storm seasons and to avoid dislodgement of structures. In the future, these structures may need additional fortification, or the piers may need to be heightened to withstand higher levels of flood exposure and sea-level rise. Regular maintenance, as required by the terms of the lease, will reduce the likelihood of severe structural degradation or dislodgement. The lease includes an acknowledgment 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; 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.
2. Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under

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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 issuance of the lease 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, and 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.

**AUTHORIZATION:**

Authorize issuance of a General Lease – Recreational Use to The John and Jean Vilicich Revocable Inter Vivos Trust Dated December 1, 2004; Francis A. Vilicich; and Edward A. Vilicich and Bernadette C. Vilicich, Trustees of the E&B Vilicich Family Trust beginning April 1, 2018, for a term of 10 years, for the use and maintenance of an existing walkway, pier and three pilings, previously authorized by the Commission and the use and maintenance of a pier and platform, 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; annual rent in the amount of \$1,071 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 5470.1

### LAND DESCRIPTION

Two parcels of submerged lands situate in the bed of Tomales Bay, County of Marin, State of California, and lying adjacent to that parcel of land as described in that Grant Deed recorded August 5, 1954, in Book 880, Page 500 Official Records of Marin County, and more particularly described as follows:

#### PARCEL 1 (North Pier)

BEGINNING at a point on the northwest line of that parcel described as a portion of Tideland Survey 233 in that Correction Grant Deed recorded in Document Number 2005-0043858 recorded on June 14, 2005 in the Official Records of Marin County (said Tideland Survey 233 was redesignated as Tideland Location 241 and is on file at the Sacramento Offices of the California State Lands Commission), said point bears  $N24^{\circ}35'06''W$  1309 feet more or less from a California Division of Highways Station Disk Stamped Boatworks 1972 (NGS PID-JT2653); thence  $S39^{\circ}45'16''W$  54.55 feet along the southwesterly prolongation of the northwest line of said parcel; thence leaving said southwesterly prolongation  $S28^{\circ}52'36''E$  45.10 feet; thence  $S33^{\circ}10'23''E$  61.16 feet; thence  $N59^{\circ}36'21''E$  90.97 feet; thence  $N48^{\circ}46'33''W$  131.40 feet to the POINT OF BEGINNING.

#### PARCEL 2 (South Pier)

COMMENCING at a point on the northwest line of that parcel described as a portion of Tideland Survey 233 in that Correction Grant Deed recorded in Document Number 2005-0043858 recorded on June 14, 2005 in the Official Records of Marin County (said Tideland Survey 233 was redesignated as Tideland Location 241 and is on file at the Sacramento Offices of the California State Lands Commission), said point bears  $N24^{\circ}35'06''W$  1309 feet more or less from a California Division of Highways Station Disk Stamped Boatworks 1972 (NGS PID-JT2653); thence  $S44^{\circ}30'12''E$  605.92 feet to the POINT OF BEGINNING; thence  $S21^{\circ}44'35''E$  25.00 feet; thence  $S68^{\circ}15'25''W$  206.96 feet; thence  $S21^{\circ}44'47''E$  57.00 feet; thence  $S68^{\circ}15'13''W$  25.00 feet; thence  $N21^{\circ}44'47''W$  82.00 feet; thence  $N68^{\circ}15'25''W$  231.96 feet to the POINT OF BEGINNING.

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

BASIS OF BEARING for this description is CCS83, Zone 3 (1991.35). All distances are grid distances.

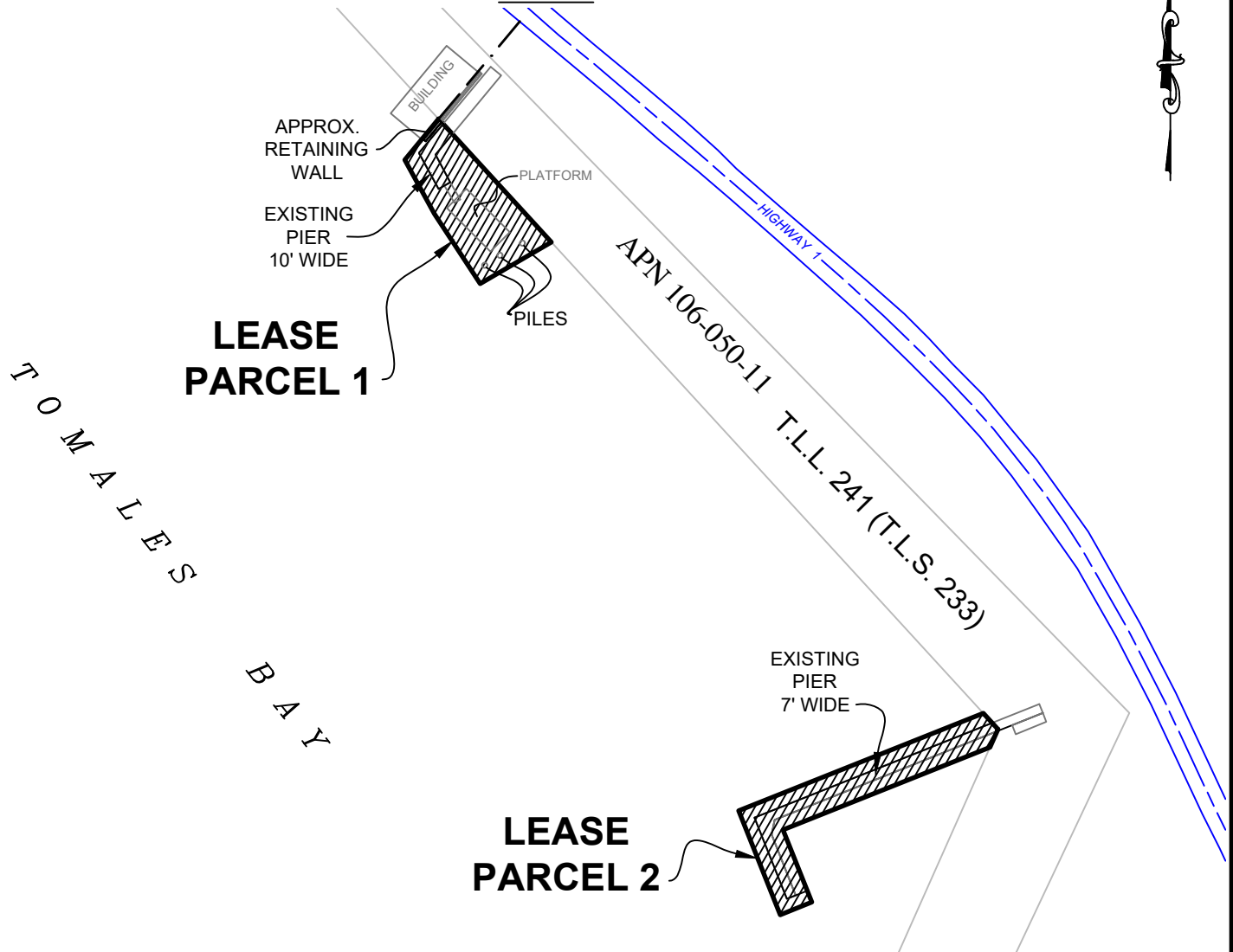
**END OF DESCRIPTION**

Prepared by the California State Lands Commission Boundary Unit on 10/02/2017.



NO SCALE

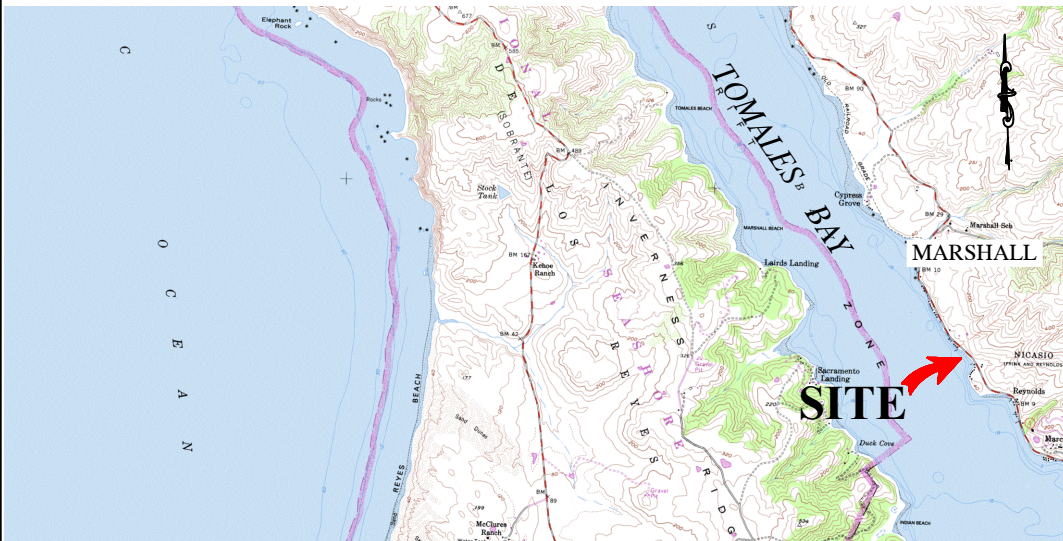
# SITE



NEAR 19145 STATE ROUTE 1, TOWN OF MARSHALL, TOMALES BAY

NO SCALE

## LOCATION



MAP SOURCE: USGS QUAD

## Exhibit B

PRC 5470.1  
 VILICICH TRUST  
 APN 106-050-11  
 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.