

**STAFF REPORT  
C54**

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08/23/18  
W 27166  
D. Tutov

**GENERAL LEASE – COMMERCIAL USE**

**APPLICANT:**

John Granatir, DBA Blue Waters Kayaking Company

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

Sovereign land in Tomales Bay, adjacent to 19225 State Route 1, near Marshall, Marin County.

*AUTHORIZED USE:*

Use and maintenance of an existing mooring buoy not previously authorized by the Commission.

*LEASE TERM:*

10 years, beginning June 1, 2018.

*CONSIDERATION:*

\$600 per year, with an annual Consumer Price Index adjustment.

*SPECIFIC LEASE PROVISIONS:*

Lessee shall provide Lessor with proof of current and valid Protection and Indemnity or Watercraft Liability Insurance in an amount no less than \$500,000 per occurrence.

Lessee agrees to comply with the Tomales Bay Mooring Program (TBMP) requirements, available online at [www.slc.ca.gov/Leases-Permits/TomalesBay.html](http://www.slc.ca.gov/Leases-Permits/TomalesBay.html), and as it may be modified from time to time. Lessee agrees to abide by any reasonable modifications to the program.

**BACKGROUND:**

Tomales Bay is a significant biological resource that supports a diversity of habitats, including eelgrass beds, intertidal sand, mud flats, and salt and freshwater marshes. Thousands of species of birds, other vertebrates, invertebrates, and plants, including numerous threatened and endangered

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species, inhabit the bay. While Tomales Bay has long been considered a pristine body of water, human activity within the watershed has resulted in some degradation of the bay's habitat, water quality, and special status species.

Vessel use, both recreational and commercial, has played an important role throughout the modern history of Tomales Bay, and boating continues to be a popular activity for residents and visitors to the bay. Boats were identified as one of several pollution sources causing Tomales Bay to be listed as an impaired water body under the federal Clean Water Act. Consequently a proactive plan to prevent adverse impacts from boating on the bay was developed.

The Tomales Bay Vessel Management Plan (TBVMP) is the result of a long-term multiagency effort to streamline and coordinate vessel management activities for the benefit of the public. Implementation of the TBVMP is expected to improve water quality and protect wildlife, habitat, and public health, as well as facilitate recreational opportunities in Tomales Bay. The TBVMP was developed over the past decade by the Gulf of the Farallones National Marine Sanctuary (which was expanded north and west in 2015 and renamed the Greater Farallones National Marine Sanctuary (GFNMS)) and Commission staff, in collaboration with nine local, state, and federal agencies with jurisdiction in Tomales Bay. This group is collectively known as the Tomales Bay Interagency Committee (TBIC).

Over time, the concerns of the public and participating agencies evolved from focusing on vessel sewage discharge and impacts from moorings and derelict or abandoned vessels to include the introduction of invasive species, disturbance to wildlife, and discharge of oil, fuel, and vessel maintenance products. The participating agencies determined that they should act in a coordinated manner to address all of these vessel-related management issues including the consideration of vessel storage needs in Tomales Bay. The GFNMS facilitated this collaborative process through the TBIC.

Upon consultation with the TBIC, GFNMS and the Commission established criteria for the siting of moorings on Tomales Bay to achieve the three goals of the plan: (1) protect public health and improve water quality; (2) protect habitat and decrease threats to and disturbance of wildlife; and (3) ensure safe and enjoyable water-related recreation. All moorings within Tomales Bay, except those used for aquaculture operations within State water-bottom lease areas, will be required to meet specific criteria protecting seagrass beds, pinniped haul-out areas, state parks, swimming beaches, boat launches, aquaculture lease areas, and navigational channels.

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In 2015, the Commission was issued a permit by the National Oceanic and Atmospheric Administration, Office of National Marine Sanctuaries Program, to implement the elements of the TBMP that involve the installation, maintenance, and removal of individual moorings in Tomales Bay. The permit was for a term of 11 years, with an expiration date of May 31, 2026. On April 28, 2016, the expiration date of the permit was extended by 2 years to May 31, 2028.

The TBMP caps the total number of moorings allowed in Tomales Bay at 165, including littoral landowner moorings, and the 35 authorized moorings associated with Lawson's Landing. This cap does not include moorings permitted for use by aquaculture operations solely within State water-bottom lease areas. The TBMP is not intended to be a static plan, but rather a living document based on an adaptive management approach, allowing flexibility for the plan to adapt to changing circumstances. To ensure that it is still meeting its goals and objectives, the TBMP will continue to be informally reviewed and evaluated as needed by the members of the TBIC and adapted as necessary.

### **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.

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

Blue Waters Kayaking Company is a privately-owned business that offers rentals, guided tours and classes. The existing buoy is for mooring of boats, associated with their business, and is used to ferry gear and equipment from Miller Boat Launch in Marshall to campsites along the Point Reyes National Seashore. Commercial boating is a water-dependent activity and is generally consistent with the common law Public Trust Doctrine. The buoy is privately owned and maintained.

The buoy has existed in Tomales Bay for many years and does not significantly alter the land. The proposed lease is consistent with the TBMP and includes provisions protecting the public use of the proposed lease area, including a limited lease term of 10 years and a non-exclusive use provision. The proposed lease also requires the lessee to indemnify the State for any liability incurred as a result of the lessee's activities thereon. The lease requires the payment of annual rent to compensate the people of the State for the occupation of the sovereign land involved. The lease does not alienate the State's fee simple interest or permanently

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impair public rights. Upon termination of the lease, the lessee may be required to remove any improvements and restore the lease premises to their original condition.

**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 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.

The lease area includes one mooring buoy. While the mooring buoy is designed to float on the water's surface and move with the ebb and flow of current tides, a longer chain connecting the buoy to the anchors on the bay bottom may be necessary in the future to accommodate rising sea levels. Regular maintenance will reduce the likelihood of severe structural degradation or dislodgement.

**Conclusion:**

For all the reasons above, Commission 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. Applicant has the right to access the lease premises.
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.

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3. Pursuant to the Commission's delegation of authority and the State California Environmental Quality Act (CEQA) Guidelines (Cal. Code Regs., tit.14, § 15025), Commission staff prepared a Negative Declaration (ND) identified as CSLC ND No. 749, State Clearinghouse No. 2012082074, for the Tomales Bay Vessel Management Plan. The ND was prepared and circulated for public review pursuant to the provisions of CEQA, and adopted by the Commission ([Item 113, April 26, 2013](#)).
4. On April 26, 2013, the Commission found that, based upon the entire record before the Commission, including the Initial Study, the ND, and the comments received in response thereto, there is no substantial evidence that the project may have a significant effect on the environment; California Code of Regulations, title 14, section 15074, subdivision (b).
5. 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
- C. Tomales Bay Mooring Program Requirements

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

Find that the ND, CSLC No. 749, State Clearinghouse No. 2012082074, was prepared by Commission staff and adopted by the Commission on April 26, 2013.

Find that the Commission reviewed and considered the information contained in the previously adopted ND, and that in the Commission's independent judgment, the scope of activities to be carried out under the lease to be issued under this authorization have been adequately analyzed, that none of the events specified in Public Resources Code section 21166 or State CEQA Guidelines section 15162 resulting in any

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new or substantially more severe significant impacts has occurred, and therefore, no additional CEQA analysis is required.

**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 proposed lease, is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

**AUTHORIZATION:**

Authorize a General Lease – Commercial Use to John Granatir, DBA Blue Waters Kayaking Company, beginning June 1, 2018, for a term of 10 years, for the use and maintenance of an existing mooring buoy 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 \$600, with an annual Consumer Price Index adjustment; and Protection and Indemnity or Watercraft Liability Insurance in the amount of no less than \$500,000 per occurrence.

**EXHIBIT A**

**W 27166**

**LAND DESCRIPTION**

A parcel of submerged land situated in the bed of Tomales Bay in the Greater Farallones National Marine Sanctuary, lying adjacent to Tide Lands Location 241, patented February 19, 1947, County of Marin, State of California, more particularly described as follows:

A circular parcel of land, being 50 feet in diameter, underlying an existing buoy lying adjacent to that parcel described in Trust Transfer Deed recorded November 24, 2014 as Document Number 2014-0048896 in Official Records of said County.

Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

Prepared 06/12/2018 by the California State Lands Commission Boundary Unit.





TOMALES BAY

APPROX SHORELINE

HWY 1

APN 106-050-11



EXISTING BUOY  
38.152066, -122.889074

# EXHIBIT A

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LAND DESCRIPTION PLAT  
W27166, BLUE WATERS KAYAKING  
MARIN COUNTY

CALIFORNIA STATE  
LANDS COMMISSION





NO SCALE

**SITE**



EXISTING BUOY  
38.152066, -122.889074

TOMALES BAY

APPROX.  
SHORELINE

APN 106-050-11

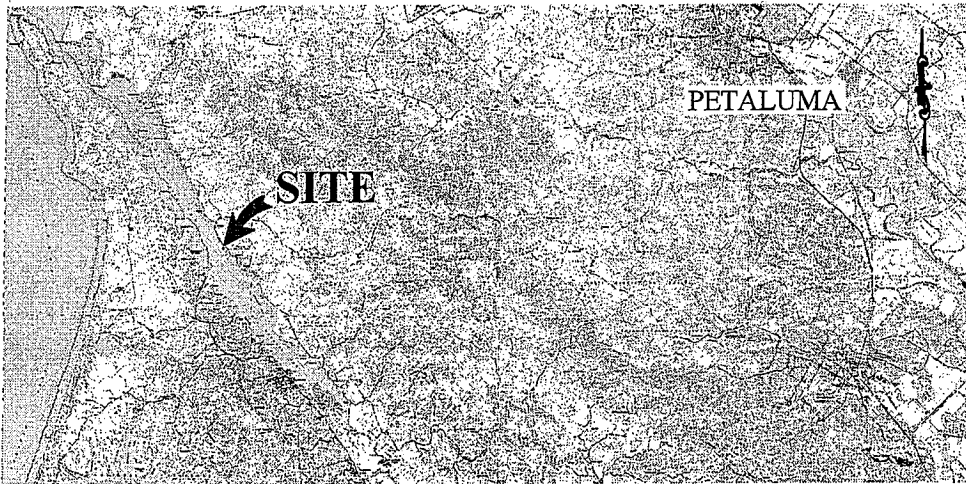
HWY 1



19225 STATE HIGHWAY 1, NEAR MARSHALL

NO SCALE

**LOCATION**



PETALUMA

**SITE**

MAP SOURCE: USGS QUAD

**Exhibit B**

W 27166  
BLUE WATERS  
KAYAKING  
GENERAL LEASE -  
COMMERCIAL USE  
MARIN COUNTY



**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.

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