

# Staff Report 31

## **APPLICANT:**

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Randi K. Martin and James A. Bakken

## **PROPOSED ACTION:**

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Issuance of a General Lease – Recreational and Residential Use

## **AREA, LAND TYPE, AND LOCATION:**

Sovereign land in the Petaluma River, adjacent to 116 Harbor Drive, near Novato, Marin County.

## **AUTHORIZED USE:**

Use and maintenance of a portion of an existing cabin and upper deck; shed, walkway, lower deck, access ramp, and dock.

## **TERM:**

10 years, beginning April 25, 2021.

## **CONSIDERATION:**

\$863 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.
- Lessee agrees and acknowledges that the hazards associated with sea-level rise may require additional maintenance or protection strategies regarding the improvements on the lease premises.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **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:**

On September 1, 2011, the Commission authorized a General Lease – Recreational Use to Randi K. Martin and James A. Bakken, for an existing cabin, shed, walkway, decks, access ramp, and floating dock ([Item C28, September 1, 2011](#)). That lease expired on April 24, 2021. The Applicant is now applying for a General Lease – Recreational and Residential Use, for the use and maintenance of a portion of an existing cabin and deck; shed, walkway, lower deck, access ramp, and dock in the Petaluma River.

The Applicant owns the upland adjoining the lease premises. The subject facilities have existed at this location for many years. The proposed lease area contains the same facilities as the prior lease. The waterway facilities are used 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 has identified private recreational boating facilities as an authorized use of Public Trust lands (Pub. Resources Code, § 6503.5). The existing shed, walkway, access ramp, and dock are designed for recreational fishing and boating purposes which align with Public Trust-consistent uses. The storage shed is used for fishing supplies, associated with recreational watersports. Recreational fishing and boating are water-dependent and generally consistent with the common law Public Trust Doctrine.

A portion of the cabin and decks serve a private residential use and are not associated with traditional Public Trust uses. The Commission has issued leases on a limited basis for portions of existing residential structures and decks that encroach onto sovereign land, where such encroachments do not significantly interfere with the Public Trust needs and values. The cabin and decks minimally encroach onto sovereign land. However, the encroachments protrude over marshy land, incapable of being navigated by boat. Therefore, the proposed lease will not interfere with navigation, and does not substantially interfere with any Public Trust needs at this time or the foreseeable future.

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, more frequent and intense storm events, and increased flooding and erosion, affect both open coastal areas and inland waterways in California. The subject facilities are located on the Petaluma River, in a tidally influenced site consisting of low-elevation reclaimed floodplains. This area is vulnerable to flooding at current sea levels, will be at higher risk of flood exposure given projected scenarios of sea-level rise, and may require a new levee in the future to protect development from a 100-year flood event with approximately 4.6 feet of sea-level rise.

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 San Francisco 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 San Francisco**

<b>Year</b>	<b>Projection (feet)</b>
2030	0.8
2040	1.3
2050	1.9
2100	6.9

Source: Table 13, State of California Sea-Level Rise Guidance: 2018 Update

Note: Projections are with respect to a 1991 to 2009 baseline.

Rising sea levels can lead to more frequent flood inundation in low-lying areas and larger tidal events. In addition, 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, fire, drought, extreme heat, and storms (especially when coupled with sea-level rise). In

rivers and 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 and riverine areas by changing erosion and sedimentation rates. Near-coastal riverine areas will be exposed to increased wave force and run-up, potentially resulting in greater bank erosion than previously experienced. Finally, in rivers and tidally influenced waterways, flooding and storm flow will likely increase scour, decreasing bank stability and structure.

The combination of these projected conditions could increase the likelihood of damage to structures within the lease premises from rising seas and flooding events during the term of the lease. All of the facilities are fixed and, due to the low elevation, will likely need reinforcement or replacement in the future to withstand higher levels of flood exposure. In addition, the walkway, shed, and cabin may experience periodic or continuous inundation with rising water levels and more frequent flooding, creating a public safety hazard. Finally, the salt marsh habitat that currently provides some bank protection is at risk of accelerated deterioration from higher and stronger currents and floods.

Regular maintenance, as required by the lease, will reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises are located in an area that may be subject to effects of climate change, including sea-level rise.

### **CONCLUSION:**

For all the reasons above, staff believes the issuance of this 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 foreseeable term of the proposed lease; and is in the best interests of the State.

### **OTHER PERTINENT INFORMATION:**

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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 a portion of the cabin, shed, walkway, decks, access ramp, and dock, and restore the premises to their original condition. Upon expiration or prior termination of a lease, the lessee also has no right to a new lease or to renewal of any previous lease.

2. This action is consistent with the "Meeting Evolving Public Trust Needs" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
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:**

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- A. Land Description
- B. Site and Location Map

## **RECOMMENDED ACTION:**

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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:**

1. Find that the existing and, for a limited period, continuing use and maintenance of the shed, walkway, access ramp, and dock will not substantially interfere with Public Trust needs and values at this location and are consistent with the common law Public Trust Doctrine; and
2. Find that the existing and, for a limited period, continuing use and maintenance of a portion of the cabin and decks are not generally consistent with the Public Trust Doctrine, but the current use does not substantially interfere with the Trust; and
3. Find that issuing the proposed lease is in the best interests of the State.

**AUTHORIZATION:**

Authorize issuance of a General Lease – Recreational and Residential Use to the Applicant beginning April 25, 2021, for a term of 10 years, for the use and maintenance of an existing cabin and deck, shed, walkway, lower deck, access ramp, and dock, 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 \$863, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**LEASE 2651**

**LAND DESCRIPTION**

A parcel of tide and submerged land situate in the bed of the Petaluma River, lying adjacent to Rancho De Novato, patented April 10, 1866, Marin County, State of California and more particularly described as follows:

All those lands underlying an existing dock, ramp, walkway, shed, decks and cabin lying adjacent to that parcel as described in Grant Deed, recorded August 12, 2008 in Document Number 2008-0038069 in Official Records of said County.

TOGETHER WITH any applicable Impact Area(s).

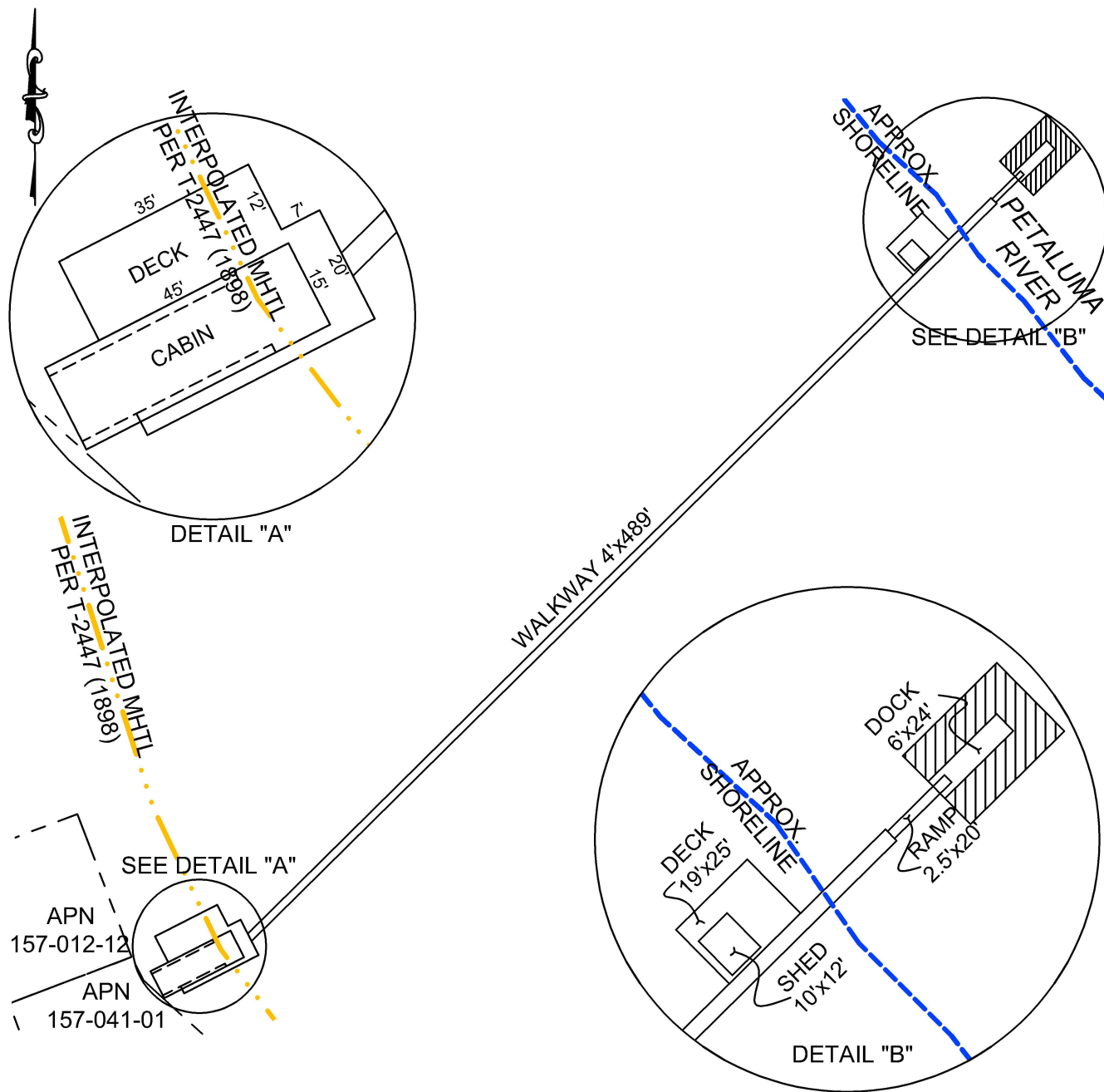
EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the right bank of said river.

Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

Prepared 11/24/2020 by the California State Lands Commission Boundary Unit





\*ALL STRUCTURES  
SHOWN ARE EXISTING

NO SCALE

## EXHIBIT A

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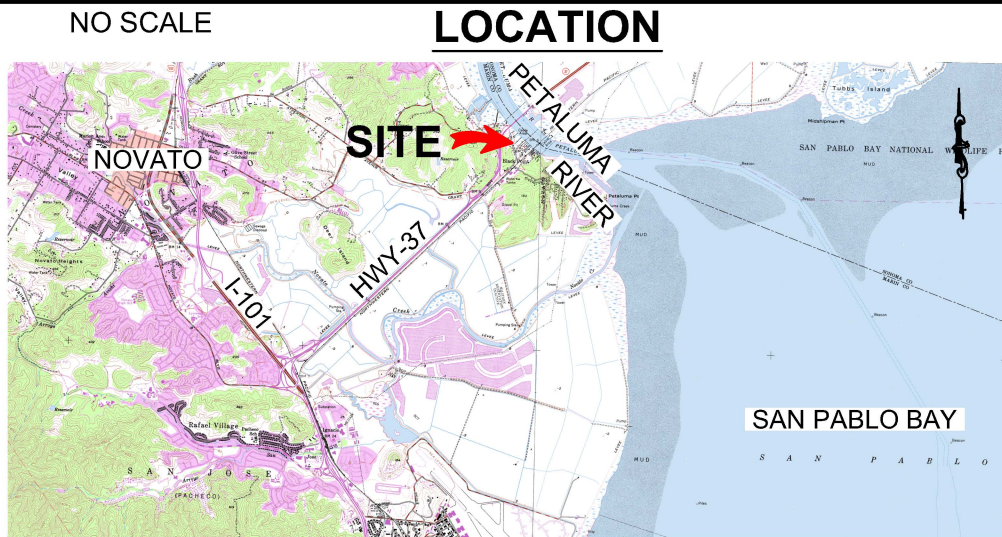
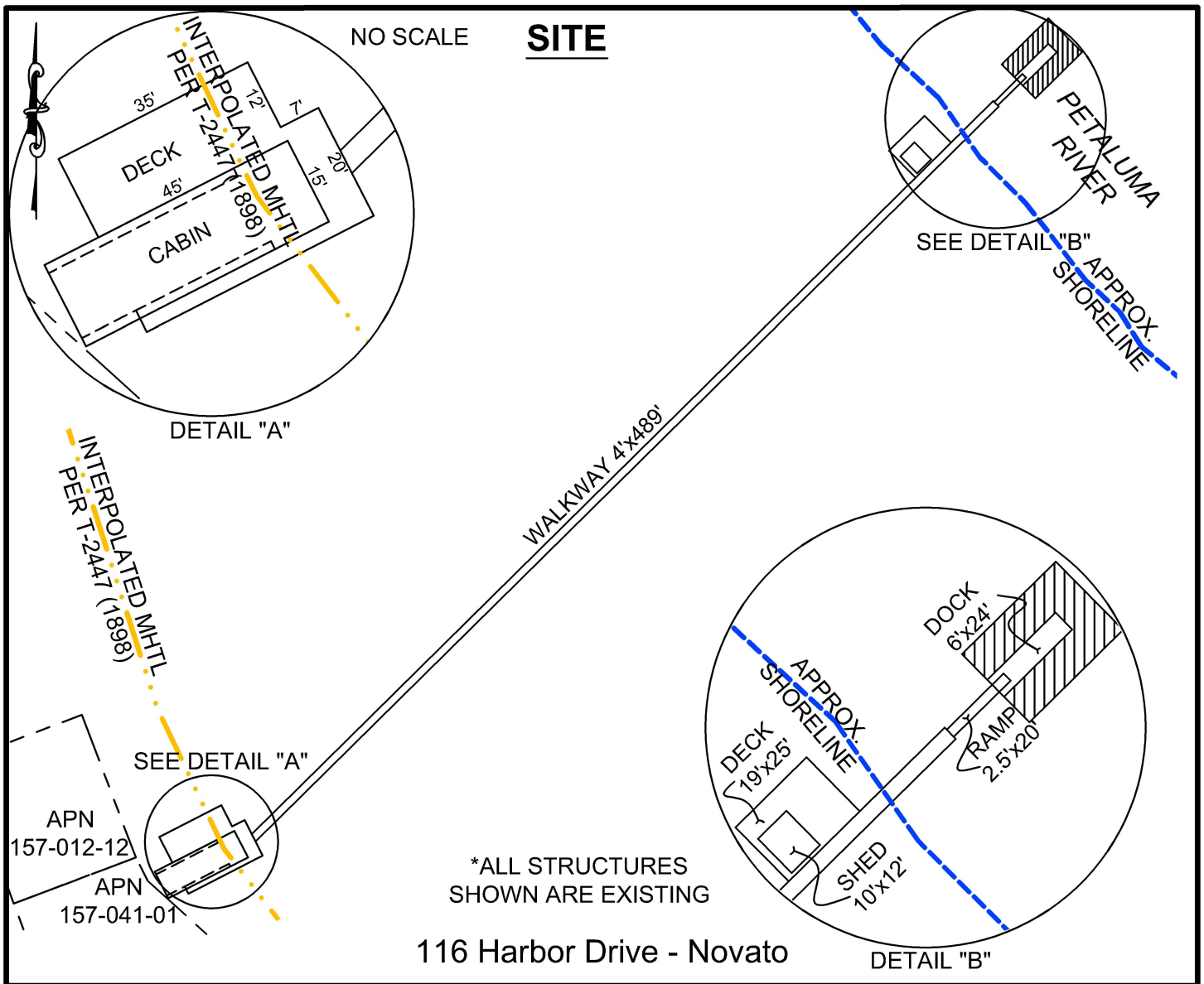
MJF 11/25/2020

LAND DESCRIPTION PLAT  
LEASE 2651, MARTIN & BAKKEN  
MARIN COUNTY

CALIFORNIA STATE  
LANDS COMMISSION







MAP SOURCE: USGS QUAD

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.

**Exhibit B**

LEASE 2651

MARTIN & BAKKEN

APN 157-041-01, -012-12

GENERAL LEASE -

RESIDENTIAL &

RECREATIONAL USE

MARIN COUNTY



MJF 11/24/2020