

Meeting Date: 12/8/21
Lease Number: 2995
Staff: L. Anderson

Staff Report 46

APPLICANT:

James Bradley Curtis and Anna C. Curtis

PROPOSED ACTION:

Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Petaluma River, adjacent to 15 Havenwood Road, in Black Point, near Novato, Marin County.

AUTHORIZED USE:

Use and maintenance of existing boat dock, ramp, platform with shed, and two pilings.

TERM:

10 years, beginning December 8, 2021.

CONSIDERATION:

\$284 per year, with an annual Consumer Price Index adjustment and \$1,424 to compensate for the unauthorized occupation of state sovereign land for the period beginning June 1, 2011 through December 7, 2021.

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:

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:

On October 01, 2002, the Commission authorized a Recreational Pier Lease to John C. Fox for use and maintenance of an existing walkway and floating boat dock. That lease expired on May 31, 2011 ([Item C36, June 1, 2001](#)). The lessee failed to notify staff of the sale of the upland parcel. The Applicant purchased the property on November 26, 2003. Staff made multiple attempts to bring the facilities under lease with no response until November 2020. The Applicant is now applying for a General Lease – Recreational Use for an existing boat dock, ramp, platform with shed, and two pilings. Staff recommends the Applicant's lease begin on December 8, 2021, the day of the Commission meeting.

The Applicant agreed to pay compensation for the unauthorized occupation of State land from June 1, 2011 through December 7, 2021. Staff recommends the Commission accept compensation from the Applicant in the amount of \$1,424 for the unauthorized occupation of state land.

There are numerous similar improvements in this area, known as Black Point. Some of the improvements in Black Point, including the ones owned by the Applicant, have not been brought under lease due to longstanding uncertainty about the location and extent of the Commission's leasing jurisdiction. Staff conducted a boundary analysis in this area in August 2012 to determine the extent of the Commission's leasing jurisdiction. Since that time, staff has reached out to the community to identify and contact owners and bring improvements within the Commission's jurisdiction under lease. 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 boat dock is for the docking and mooring of boats. Recreational boating is 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 boat dock and platform with shed have existed for many years at this location; the facilities do not significantly alter the land, 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.

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 facilities are located in a tidally influenced site on the Petaluma River that is vulnerable to shallow coastal flooding at current sea levels and will be at higher risk of flood exposure given projected scenarios 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

Year	Projection (feet)
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. In addition, 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 additional damage to the facilities within the lease premises during the term of the lease. The adjacent upland may also experience periodic or continuous inundation with rising water levels, more frequent flooding, and may be at risk of accelerated deterioration from higher and stronger currents and floods.

The floating dock and ramp are adaptable to variable water levels, allowing them to rise and fall with storms and droughts and increasing their resiliency to some climate change impacts, but may require more frequent maintenance or replacement to ensure continued function during and after storm seasons and to avoid dislodgement of dock facilities.

The combination of these projected conditions could increase the likelihood of damage and affect the fixed features like the pier and pilings within the lease premises may need reinforcement and possibly replacement to withstand higher levels of flood exposure and more frequent storm events.

The vegetated bank (not under lease) and vegetated marsh area under the ramp provide some stability and reduces the amount of erosion and scour pressure experienced during future events because of the vegetation's underground root system; but remains at risk of accelerated deterioration from currents and floods.

Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the Lease Premises and adjacent upland 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 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. 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 the boat dock, ramp, platform with shed, and two pilings 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 the "Meeting Evolving Public Trust Needs" and "Leading Climate Activism" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of 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 proposed lease will not substantially impair the public rights to navigation and fishing or 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 Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of compensation from the Applicant in the amount of \$1,424 for unauthorized occupation of State land for the period beginning June 1, 2011 to December 7, 2021.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning December 8, 2021, for a term of 10 years, for use and maintenance of one existing boat dock, ramp, platform with shed, and two pilings, 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 \$284, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 2995

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 floating boat dock, walkway, ramp, platform with shed and two pilings lying adjacent to those parcels as described in Grant Deed recorded April 6, 2006 in Document Number 2006-0021738 in Official Records of said County.

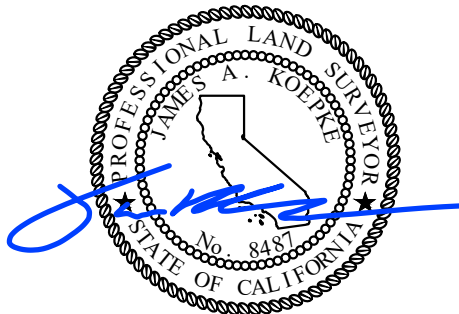
TOGETHER WITH any applicable Impact Area(s).

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 08/23/2021 by the California State Lands Commission Boundary Unit



NO SCALE

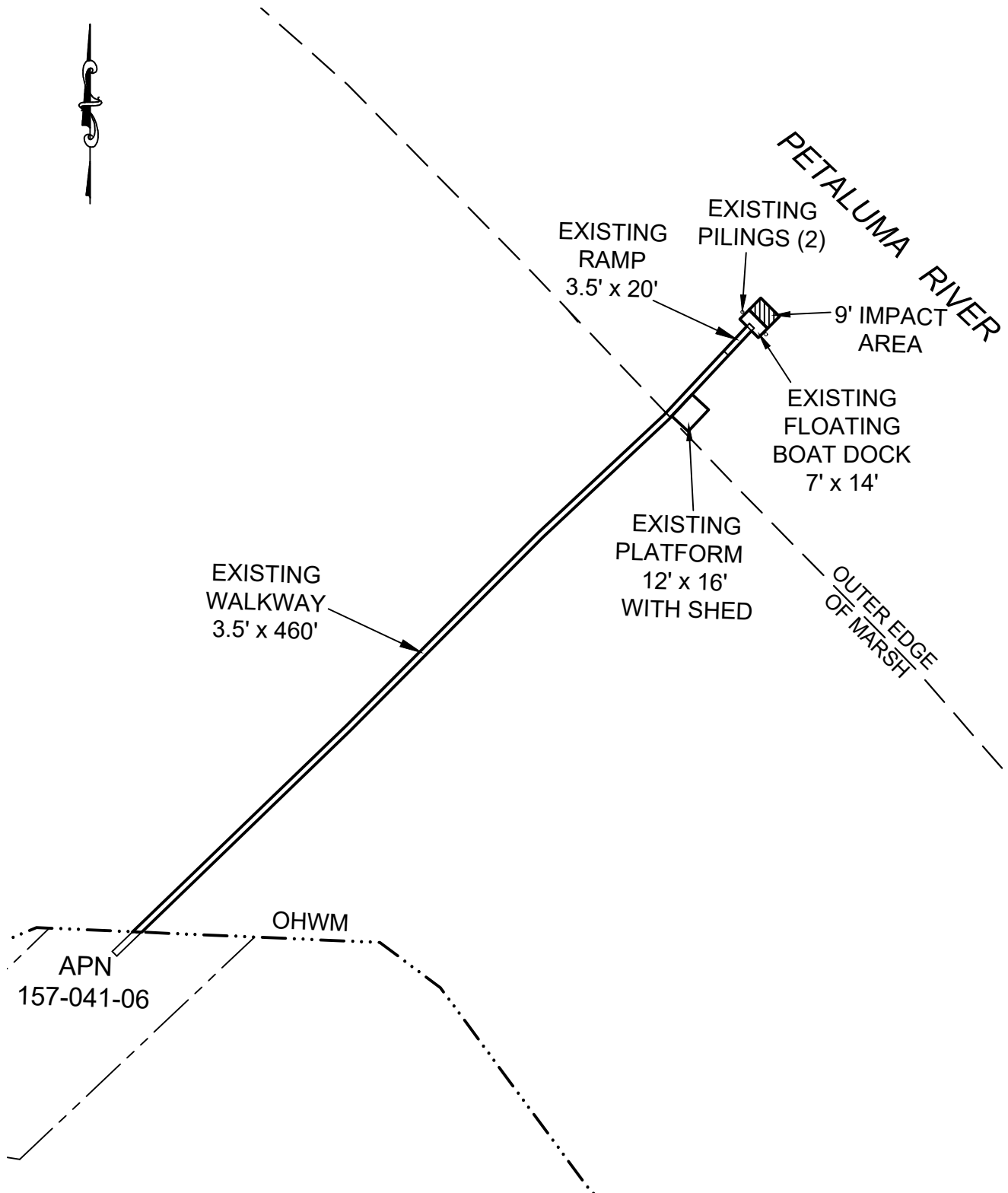


EXHIBIT A

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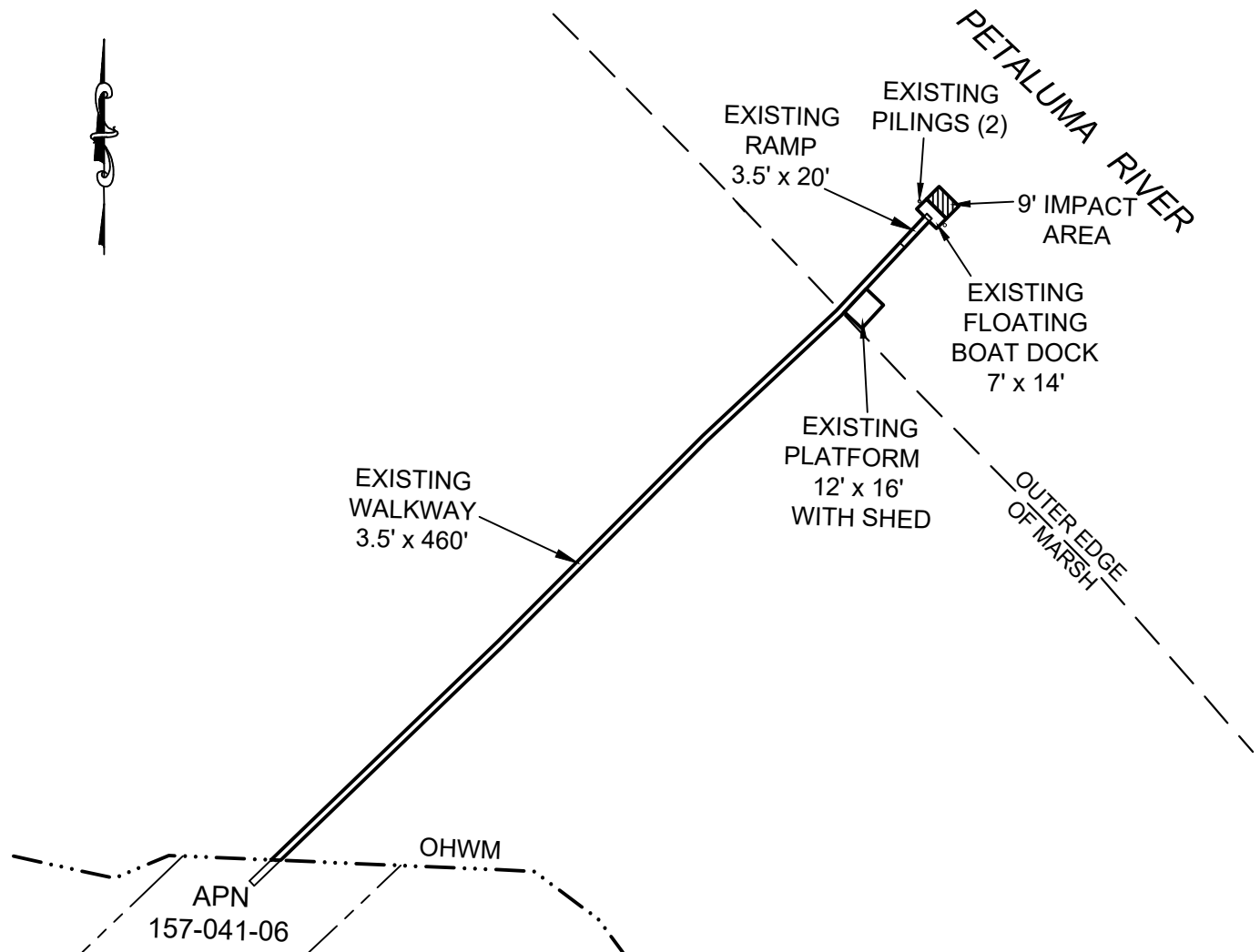
LAND DESCRIPTION PLAT
LEASE 2995, CURTIS
MARIN COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

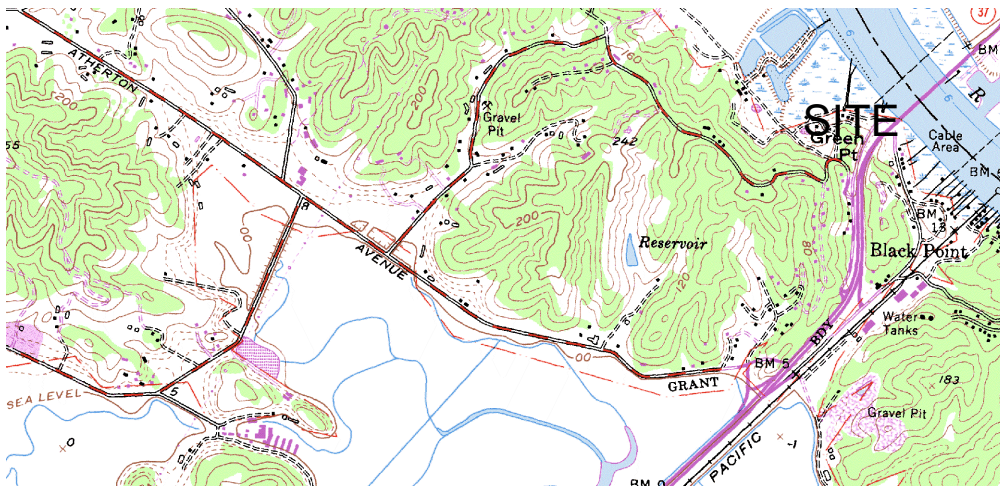
SITE



15 HAVENWOOD ROAD, NEAR THE CITY OF NOVATO

NO SCALE

LOCATION



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 2995

CURTIS

APN 157-041-06

GENERAL LEASE -
RECREATIONAL USE
MARIN COUNTY



TS 08/23/2021