

Staff Report 52

APPLICANT:

Novato Sanitary District

PROPOSED ACTION:

Issuance of a General Lease – Public Agency Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Novato Creek and San Pablo Bay, near Novato, Marin County.

AUTHORIZED USE:

Use and maintenance of a 54-inch diameter concrete cylinder sewer pipeline, and a 54-inch diameter reinforced concrete sewer outfall pipeline.

TERM:

25 years, beginning August 1, 2021.

CONSIDERATION:

Public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests.

SPECIFIC LEASE PROVISIONS:

- Lessee agrees and acknowledges hazards associated with sea level rise may require additional maintenance or protection strategies regarding the improvements on the Lease Premises.
- Lessee shall perform both internal and external inspections of the outfall pipeline and provide Commission staff with reports regarding its integrity and repair in accordance with the schedule detailed in the lease.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6321.2, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On May 12, 1997, the Commission authorized a 25-year Public Agency Lease to the Applicant for the use and maintenance of an existing 54-inch-diameter concrete cylinder sanitary sewer pipeline at Novato Creek and an existing 54-inch-diameter reinforced concrete sanitary sewer outfall at San Pablo Bay ([Item C27, May 12, 1997](#)). The lease expired on July 31, 2021. The Novato Sanitary District (District) is applying for a new General Lease – Public Agency Use for the same facilities.

The District was formed in 1925 and provides wastewater collection and treatment services to approximately 60,000 people from the City of Novato and adjacent unincorporated areas. The sewer pipeline transports secondary treated wastewater and discharges it in the San Pablo Bay under a National Pollutant Discharge Elimination System permit issued by the California State Water Resources Control Board. The District meets or exceeds the water quality requirements of the permit.

The proposed lease includes certain provisions protecting the public use of the proposed lease area, including a limited lease term of 25 years and a non-exclusive use provision. The facilities do not significantly alter the land, and the lease does not alienate the State's fee simple interest, nor permanently 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. Additionally, the proposed lease requires the lessee to indemnify the State for any liability incurred as a result of the lessee's activities thereon.

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 leased facilities are located on Novato Creek, in a tidally influenced site 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. This Sea Level Rise Analysis is for a 25-year lease, and further Sea Level Rise Analysis for future longer-term leases will be evaluated at a later date.

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 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 areas will be exposed to increased wave force and run up, potentially resulting in greater bank erosion than previously experienced. Finally, in 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 during the term of the lease. The facilities in the leased area are either submerged or have already withstood flooding events but will likely need continued maintenance in the near future to ensure the leased structures continue to withstand higher levels of flood exposure and storm activity. In addition, the adjacent upland may experience periodic or continuous inundation with rising water levels and more frequent flooding, creating a public safety hazard.

Regular maintenance, as required by the lease, will reduce the likelihood of severe structural degradation to the upland structures. 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 impair the public rights to navigation, fishing, and commerce; or substantially interfere with the 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:

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. Denial of the application may result in a determination that the proposed activity on or use of State land is unauthorized and may result in legal action. Upon expiration or prior termination of the lease, the lessee 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 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 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; and is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of General Lease – Public Agency Use to the Applicant beginning August 1, 2021, for a term of 25 years, for a 54-inch diameter concrete cylinder sewer pipeline, and a 54-inch diameter reinforced concrete sewer outfall pipeline, as described in Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof; consideration being the public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests.

EXHIBIT A

LEASE 4602

LAND DESCRIPTION

PARCEL 1

A 20 foot wide parcel of tide and submerged land in the bed of Novato Creek, Marin County, California, lying 10.00 feet on each side of the following described centerline:

BEGINNING at a point from which the most northerly corner of Book 473 Official Records Page 243 bears N 06°20' W, 163.24 feet; thence from said point of beginning N 57°22' E, 400 feet more or less across Novato Creek to the end of the herein described centerline.

The sidelines of said strip shall be prolonged or shortened so as to commence and terminate at the Ordinary High Water Marks of the right and left banks of said Novato Creek.

EXCEPTING THEREFROM any portion lying landward of the Ordinary High Water Marks of right and left banks of Novato Creek.

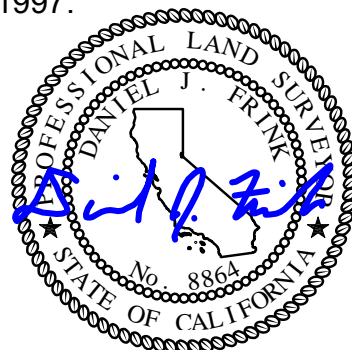
PARCEL 2

A strip of tide and submerged land 80 feet wide, in San Pablo Bay, Marin County, California, lying 40 feet on each side of the following described centerline:

COMMECING at a point on the northeasterly line of that certain real property conveyed to the United States of America by deed dated April 8, 1943, in Book 445 Official Records Page 21, where said northeasterly line is intersected by the southeasterly line of that certain real property conveyed to Jack Hunt West, et ux, by deed recorded April 20, 1961, in Book 1454 Official Records Page 359; thence from said point of commencement N 15°09' E, 10.00 feet; thence S 73°43' E, 3088.21 feet to the TRUE POINT OF BEGINNING; thence S 73°43' E, 3000 feet to the end of the herein described line.

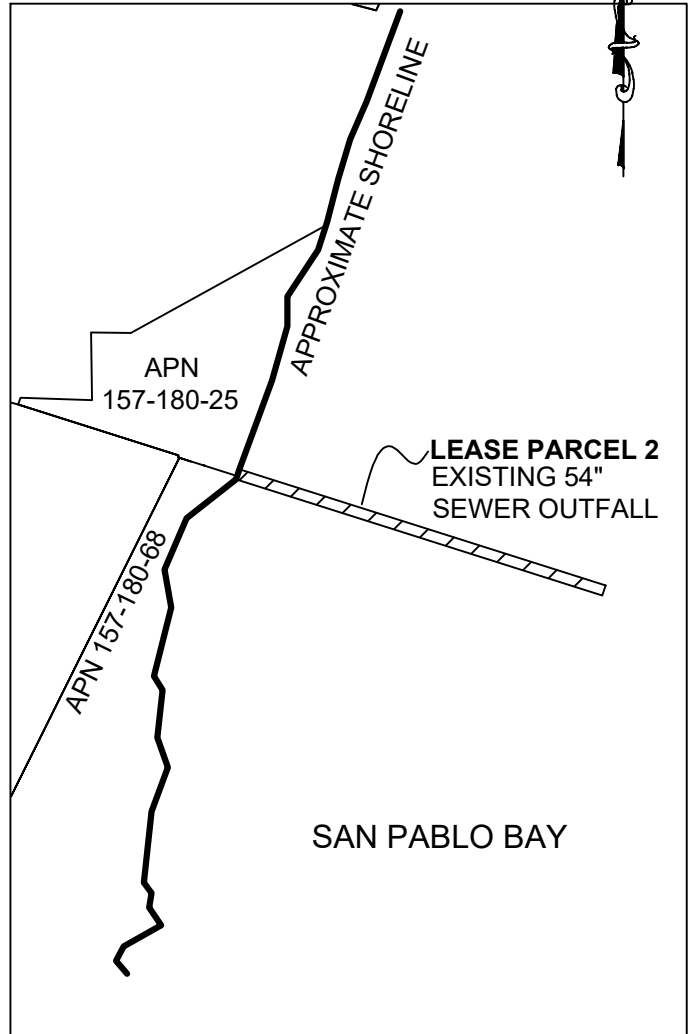
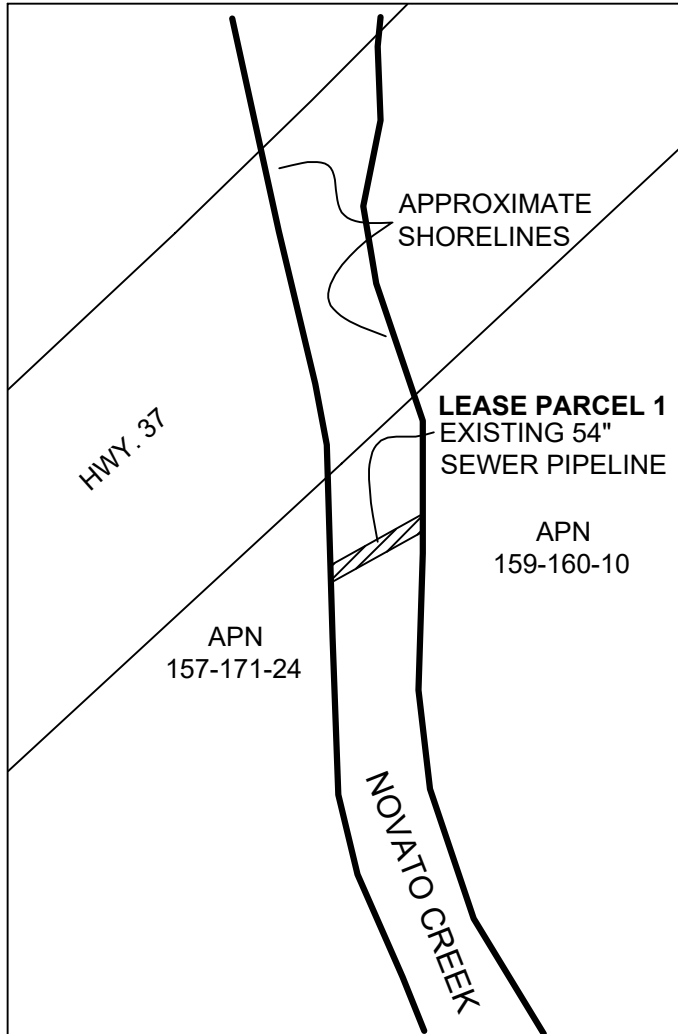
END OF DESCRIPTION

Revised by the California State Lands Commission Boundary Unit 10/5/2021. Original description prepared by the California State Lands Commission Boundary Unit as found in PRC file 4602, Calendar Item C27 at the meeting of 5/12/1997.



NO SCALE

SITE



SEWER LINE CROSSING & OUTFALL, NEAR NOVATO

NO SCALE

LOCATION

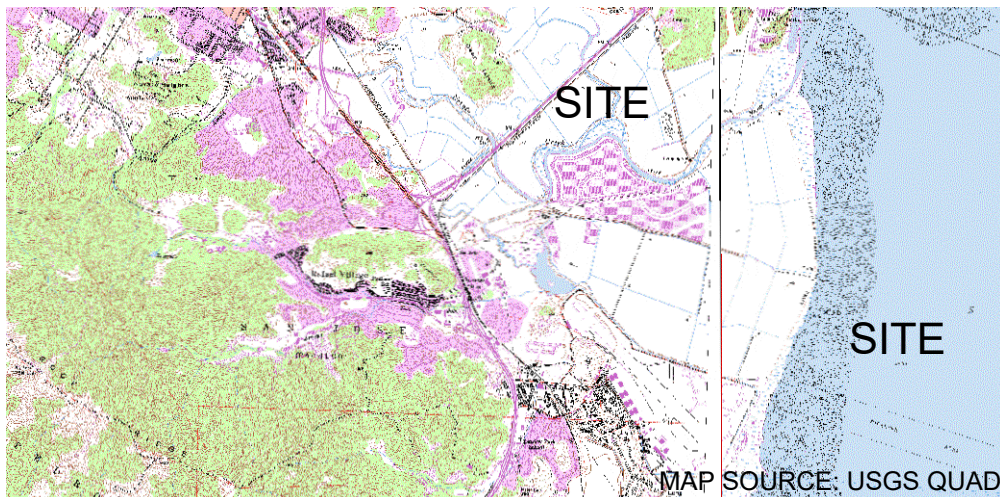


EXHIBIT B

LEASE 4602
 NOVATO SANITARY DISTRICT
 GENERAL LEASE -
 PUBLIC AGENCY USE
 MARIN COUNTY



DJF 10/13/2021

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.