

Staff Report 32

APPLICANT:

Craig C. Wagner and Pamela A. Kvalheim, as Trustees under the Craig Wagner and Pamela A. Kvalheim Trust agreement dated April 15, 2015

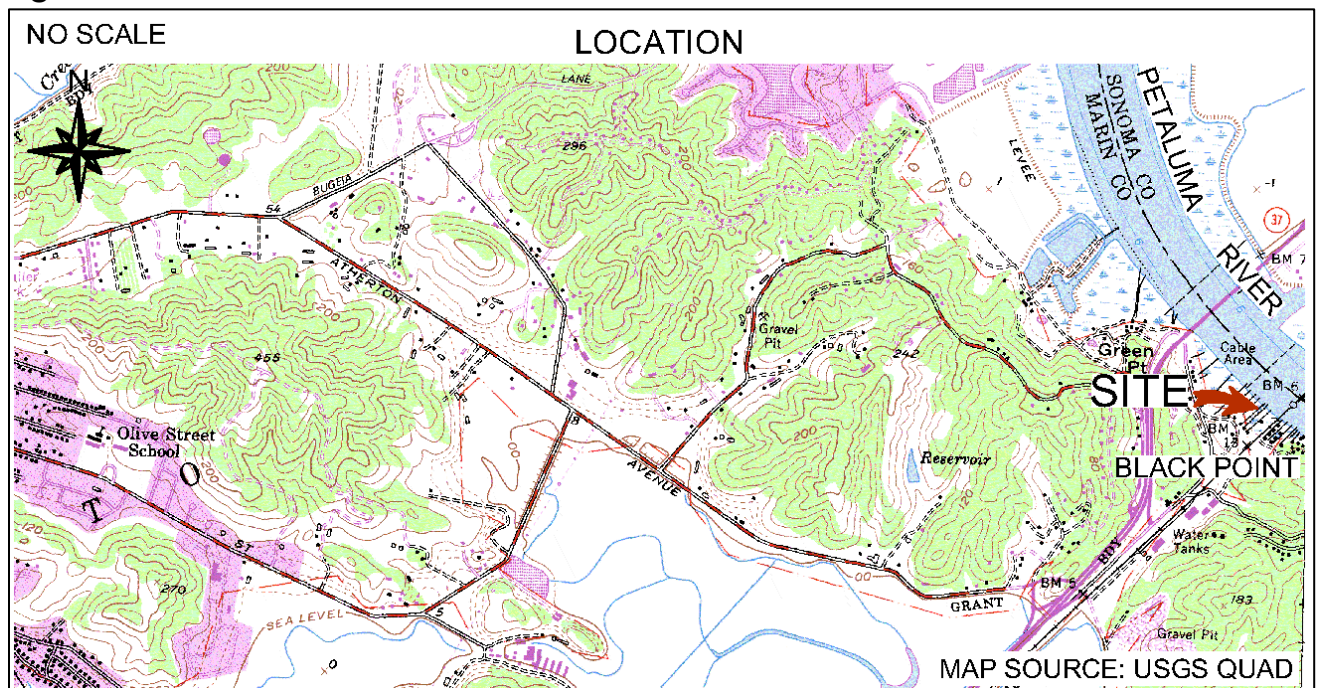
PROPOSED ACTION:

Issuance of a General Lease – Recreational Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Petaluma River, adjacent to 45 Havenwood Road, Novato, Marin County (as shown in Figure 1).

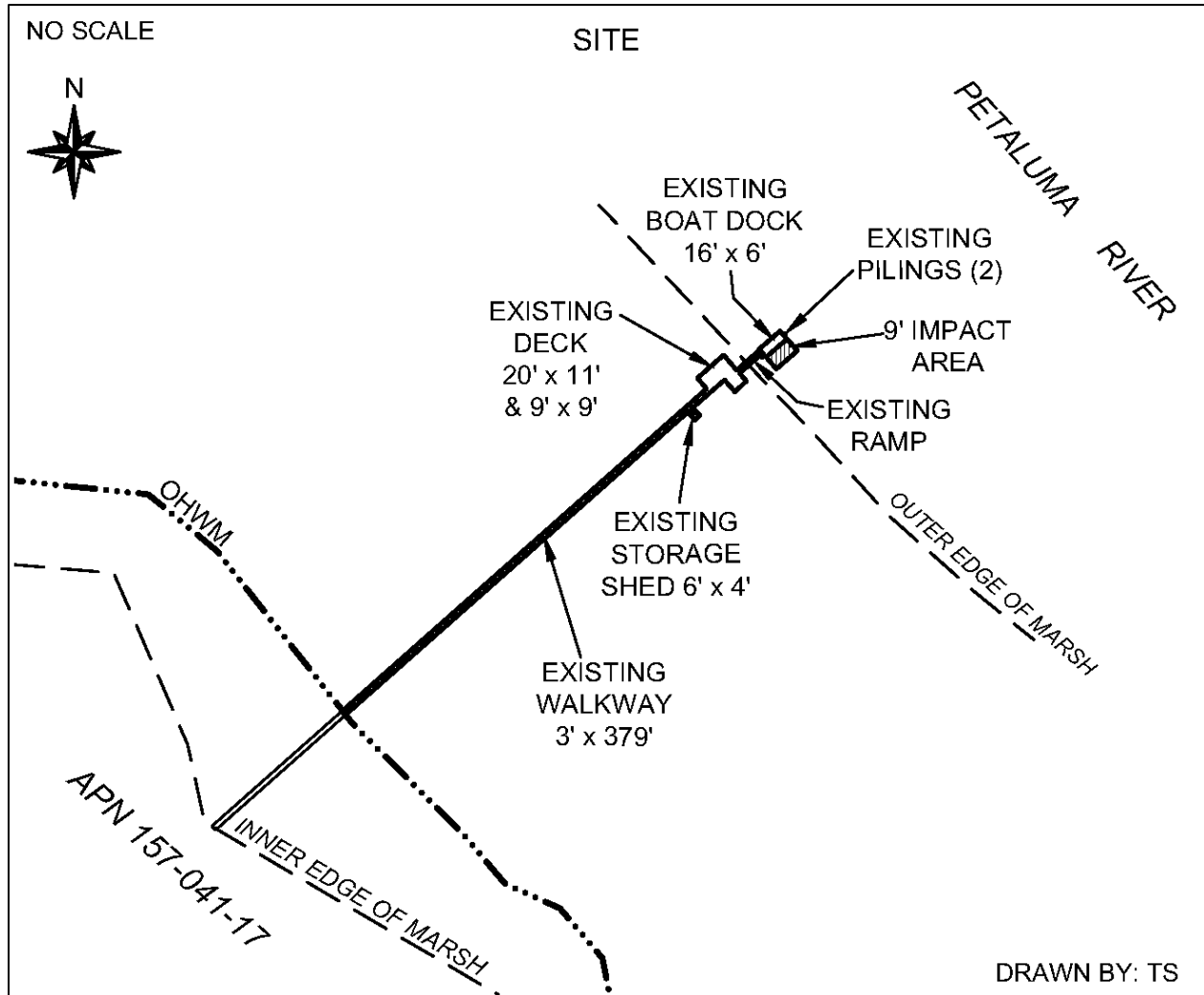
Figure 1. Location



AUTHORIZED USE:

Use of an existing walkway, shed, decks, access ramp, and dock previously authorized by the Commission; and two pilings not previously authorized by the Commission (as shown in Figure 2).

Figure 2. Site Map



NOTE: This depiction of the lease premises is based on unverified information provided by the Applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

TERM:

10 years, beginning July 24, 2023.

CONSIDERATION:

\$328 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 climate change 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 December 2, 2013, the Commission authorized a General Lease – Recreational Use to Pamela Kvalheim and Craig Wagner for the use and maintenance of an existing raised walkway, storage shed, decks, access ramp, and uncovered floating dock ([Item 21, December 2, 2013](#)). That lease expired on July 23, 2023.

On May 7, 2015, ownership interest in the upland parcel was transferred to a related entity, Craig C. Wagner and Pamela A. Kvalheim, as Trustees under the Craig Wagner and Pamela A. Kvalheim Trust agreement dated April 15, 2015. The proposed lease will backdate the indemnity provisions to include the period the upland was held in trust.

The Applicant is applying for a General Lease – Recreational Use for the use of an existing walkway, shed, decks, access ramp, and dock previously authorized by the Commission; and two pilings not previously authorized by the Commission. The pilings have always existed but were not called out in the previous lease.

The Applicant owns the upland adjoining the lease premises. The subject facilities have existed at this location for many years. 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 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 bed of the Petaluma River near San Francisco Bay, in a tidally influenced site consisting of low-elevation reclaimed floodplains.

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. 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, replacement, or elevation in the future to withstand higher levels of flood exposure. In addition, the walkway and storage shed 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.

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 issuance of this lease will not substantially interfere with Public Trust needs at this location, at this time, and for the 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 all the improvements and return the lease premises to their original condition. The lessee has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Leading Climate Activism" and "Meeting Evolving Public Trust Needs" 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.

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 term of the lease; is consistent with the Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Recreational Use to the Applicant beginning July 24, 2023, for a term of 10 years, for the use of an existing walkway, shed, decks, access ramp, and dock previously authorized by the Commission, and two pilings not previously authorized by the Commission; annual rent in the amount of \$328, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.