

# Staff Report 35

**APPLICANT:**

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Liz Graham and Greg Graham

**PROPOSED ACTION:**

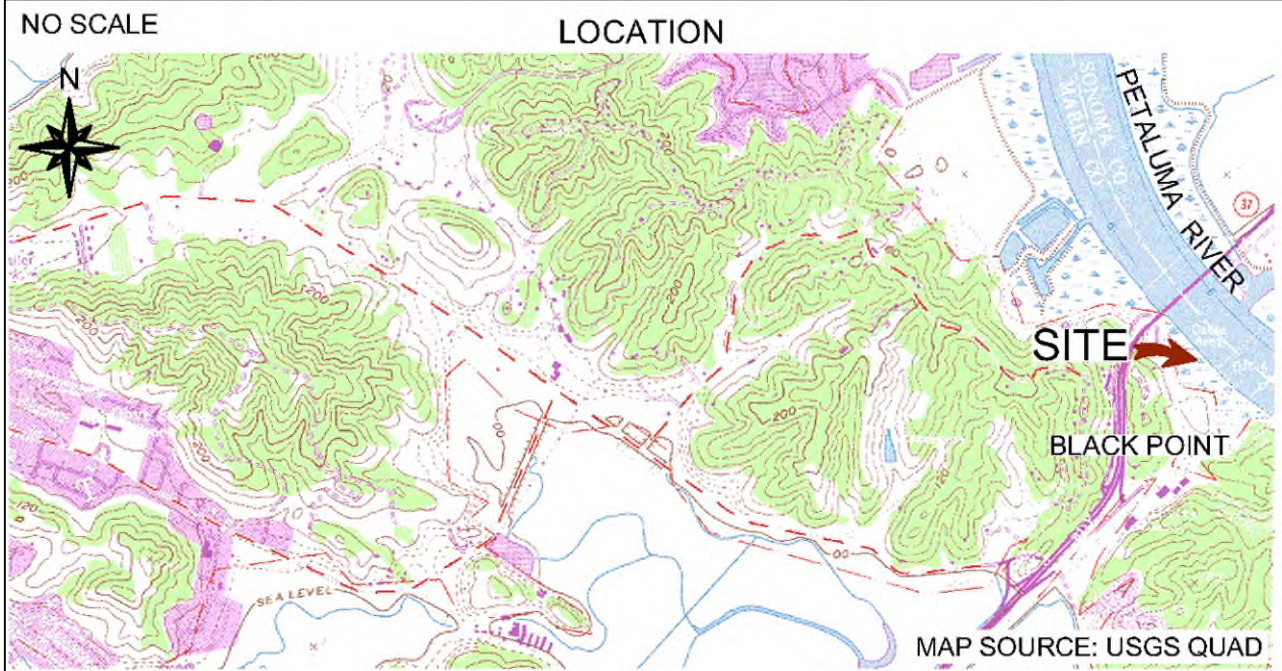
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Issuance of a General Lease - Recreational Use.

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

Sovereign Land in Petaluma River, adjacent to 104 Harbor Drive, Novato, Marin County (as shown in Figure 1).

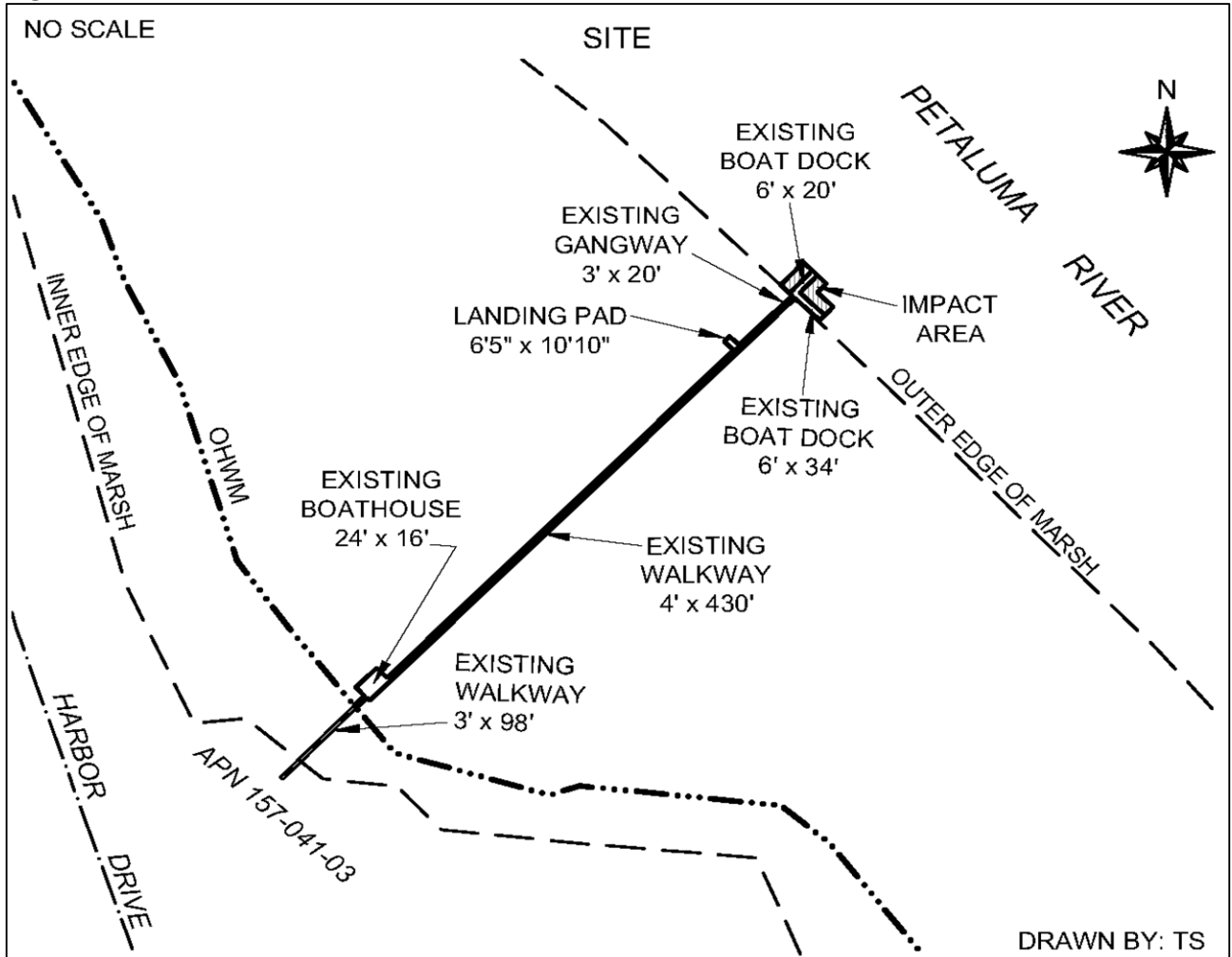
**Figure 1. Location**



**AUTHORIZED USE:**

Use of an existing boathouse, two boat docks, and appurtenant facilities (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 August 15, 2024.

**CONSIDERATION:**

\$751 per year, with an annual Consumer Price Index adjustment; and \$218 for the unauthorized occupation of State land prior to August 15, 2024.

**SPECIFIC LEASE PROVISIONS:**

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee agrees that the provisions of Section 3, Paragraph 11 (Indemnity) shall also extend to the period of Lessee's unauthorized occupation of state-owned land from December 2, 2023 through August 14, 2024.

**STAFF ANALYSIS AND RECOMMENDATION:**

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**AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, 6503.5, and 6505.5; California Code of Regulations, title 2, section 2000 and 2003.

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

On December 2, 2013, the Commission authorized issuance of a General Lease – Recreational Use to Liz Graham and Greg Graham, for the use of an existing boathouse, appurtenant facilities, and two boat docks ([Item 22, December 2, 2013](#)). The lease expired on December 1, 2023.

The Applicant is now applying for a General Lease – Recreational Use for the use of an existing boathouse, appurtenant facilities, and two boat docks. Despite being in holdover, the lessee paid rent through May 1, 2024. Staff recommends issuance of a General Lease – Recreational Use to the Applicant beginning August 15, 2024.

The proposed lease will require the Applicant to pay compensation for the unauthorized occupation of State land in the amount of \$218 for the period prior to August 15, 2024. The lease provisions regarding indemnity will apply from December 2, 2024, the day after the previous lease expired, through August 14, 2024.

The Applicant owns the uplands adjoining the lease premises. The subject facilities are located in the Petaluma River's marshland, directly waterward of the upland property, and occupy a relatively small area of the river. The facilities are privately owned and maintained and facilitate recreational boating. Recreational boating is a water-dependent use that 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 land. (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 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 and will be at higher risk of flood exposure given projected scenarios of sea level rise. The [Bay Shoreline Flood Explorer](#), an interactive flood map visualization tool developed by the San Francisco Bay Conservation and Development Commission, shows the lease premise inundated at just 1 foot of water level higher than present-day levels, which could occur from 1 foot of sea level rise or an extreme tide event, such as a King Tide.

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, below.

**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 the [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 as well as decreased bank stability and structure. Conversely, climate change induced droughts could decrease river levels and flow for extended periods of time. Climate change and sea level rise will further influence 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, flooding and storm flow, as well as runoff, will likely increase scour and decrease bank stability at a faster rate.

The combination of these projected conditions could increase the likelihood of damage and affect access to structures within the lease premises during the term of the lease. The boat docks, which only float during high tides, are adaptable to higher water levels allowing them to rise and fall with storms and droughts and increasing their resiliency to some climate change impacts, but they may require more frequent maintenance during and after storm seasons and to avoid dislodgement of the facilities. During extended droughts, the boat docks may not be functional due to low water levels. The raised walkway, boathouse, landing pad, and access ramp 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, boathouse, landing pad, and access ramps may experience periodic or continuous inundation with rising water levels and more frequent flooding. Use of these facilities while they are inundated may create a safety hazard for the user(s). Finally, the salt marsh habitat that currently provides some bank protection is at risk of accelerated deterioration from higher and stronger currents and floods, which may put the structures under lease at an even higher risk of damage.

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 the 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 term of the proposed lease; is consistent with the common law Public Trust Doctrine; 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 the improvements, and restore the 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 15061 and California Code of Regulations, title 2, section 2905.

**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:**

Find that the proposed 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 term of the lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

**AUTHORIZATION:**

1. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning August 15, 2024, for a term of 10 years, for the use of an existing boathouse, appurtenant facilities, and two boat docks; annual rent in the amount of \$751, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.
2. Authorize acceptance of compensation from the Applicant in the amount of \$218 for unauthorized occupation of State lands for the period prior to August 14, 2024.