

**STAFF REPORT  
C32**

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04/05/19  
PRC 3756.1  
J. Holt

**TERMINATION OF A GENERAL LEASE – RECREATIONAL USE, AND ISSUANCE  
OF A GENERAL LEASE – RECREATIONAL AND RESIDENTIAL USE**

**LESSEE:**

Julie Fountain, Trustee of the William Walter Duffin Living Trust dated 8/28/98

**APPLICANT:**

Catherine Ann Armstrong, Trustee and Melissa Jean Armstrong, Trustee of The Beattie Trust dated July 29, 2015

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

Sovereign land in the Petaluma River, adjacent to 172 Beattie Avenue, near Novato, Marin County.

*AUTHORIZED USE:*

Use and maintenance of an existing portion of residence, side deck, walkway, pier, and storage platform.

*LEASE TERM:*

10 years, beginning April 5, 2019.

*CONSIDERATION:*

\$363 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 hazards associated with sea-level rise may require additional maintenance or protection strategies regarding the improvements on the Lease Premises.
- Lessee agrees to indemnify the Commission for any liabilities arising from the period of unauthorized occupation of the State lands (prior to the issuance of the lease).

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**STAFF ANALYSIS AND RECOMMENDATION:**

**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 Analysis:**

On August 21, 1996, the Commission authorized a 15-year General Lease – Recreational and Residential Use to William W. Duffin ([Item C25, August 21, 1996](#)). That lease expired on November 17, 2010. On October 27, 2011, the Commission authorized a 10-year General Lease – Recreational Use to Julie Fountain, Trustee of the William Walter Duffin Living Trust dated 8/28/98 ([Item C01, October 27, 2011](#)). That lease will expire on November 17, 2020. On July 31, 2015, the upland was deeded to Catherine Ann Armstrong, Trustee and Melissa Jean Armstrong, Trustee of The Beattie Trust dated July 29, 2015. The Applicant is now applying for a General Lease – Recreational and Residential Use, for the use and maintenance of an existing portion of residence, side deck, walkway, pier, and storage platform.

Staff recommends termination of the existing lease, Lease No. PRC 3756.1, due to the Lessee's abandonment of the lease area, effective April 4, 2019, the day preceding issuance of the proposed lease. The title transfer occurred without a lease quitclaim deed and notification to staff. Staff also recommends that the Commission issue a new lease to the Applicant, effective April 5, 2019, the date of the Commission meeting. The Commission's accounting records indicate the annual rent is current.

The proposed lease area contains the same facilities as the prior lease. These facilities have existed at this location for many years. The existing walkway, pier, and storage platform are designed for recreational fishing and boating purposes. The storage platform 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. The California Legislature has identified private recreational boating facilities as an authorized use of Public Trust lands (Pub. Resources Code, § 6503.5).

A portion of the residence and deck 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 residence minimally encroaches onto sovereign land with

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calculations at approximately 479.10 square feet. The side deck also presents a minor encroachment onto sovereign land with calculations at approximately 237.25 square feet. Staff is unaware of any public access opportunities at this location. These 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 subject facilities do not significantly alter the land; the lease does not alienate the State's fee simple interest, and neither permanently impair 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.

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<sup>1</sup>.

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

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<sup>1</sup> See Heberger, Matthew, and Herrera, Pablo, 2009, Needed Protection Structures: The Impacts of Sea-Level Rise on the California Coast, Pacific Institute, Oakland CA. Authors estimated the required protection structures as "necessary" based on flooding extents, generated by the Pacific Institute and Noah Knowles (USGS/SCRIPPS), overlaid on high resolution aerial imagery (NAIP 2005). <https://pacinst.org/publication/the-impacts-of-sea-level-rise-on-the-california-coast/>

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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<sup>1</sup>**

| <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: <sup>1</sup> 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 to withstand higher levels of flood exposure. In addition, the walkway and adjacent home 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

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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. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
2. Termination of the lease is not a project as defined by the California Environmental Quality Act (CEQA), because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

3. Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of the California Environmental Quality Act 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 issuance of the lease is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a

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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 existing walkway, pier, and storage platform 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 the residence and side deck is 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:**

1. Authorize termination of Lease No. PRC 3756.1, a General Lease – Recreational Use, issued to Julie Fountain, Trustee of the William Walter Duffin Living Trust dated 8/28/98, effective April 4, 2019.
2. Authorize issuance of a General Lease – Recreational and Residential Use to the Applicant beginning April 5, 2019, for a term of 10 years, for the use and maintenance of an existing portion of residence, side deck, walkway, pier, and storage platform, 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 \$363 per year, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**PRC 3756.1**

**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 house, side deck, walkway, pier and storage lying adjacent to those parcels described in the Grant Deed Recorded July 31, 2015 in Document Number 2015-0037515 in Official Records of said county,

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the right bank of said river per the Hunters Club Tract pursuant to provisions of Chapter 1834, Statutes of 1953.

Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

Prepared 05/30/2018 by the California State Lands Commission Boundary Unit.



NO SCALE



PETAJUMA

RIVER

EXISTING  
PIER (6'X20')

OUTER EDGE OF MARSH

EXISTING  
WALKWAY  
(4'X169')

EXISTING STORAGE  
PLATFORM (4'X20')

EXISTING  
SIDE DECK  
(6.5'X36.5')

EXISTING  
HOUSE

OHWM per Chapter 1834,  
Statute 1953

APN:157-061-01

# EXHIBIT A

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LAND DESCRIPTION PLAT  
PRC 3756.1, BEATTIE TRUST  
MARIN COUNTY

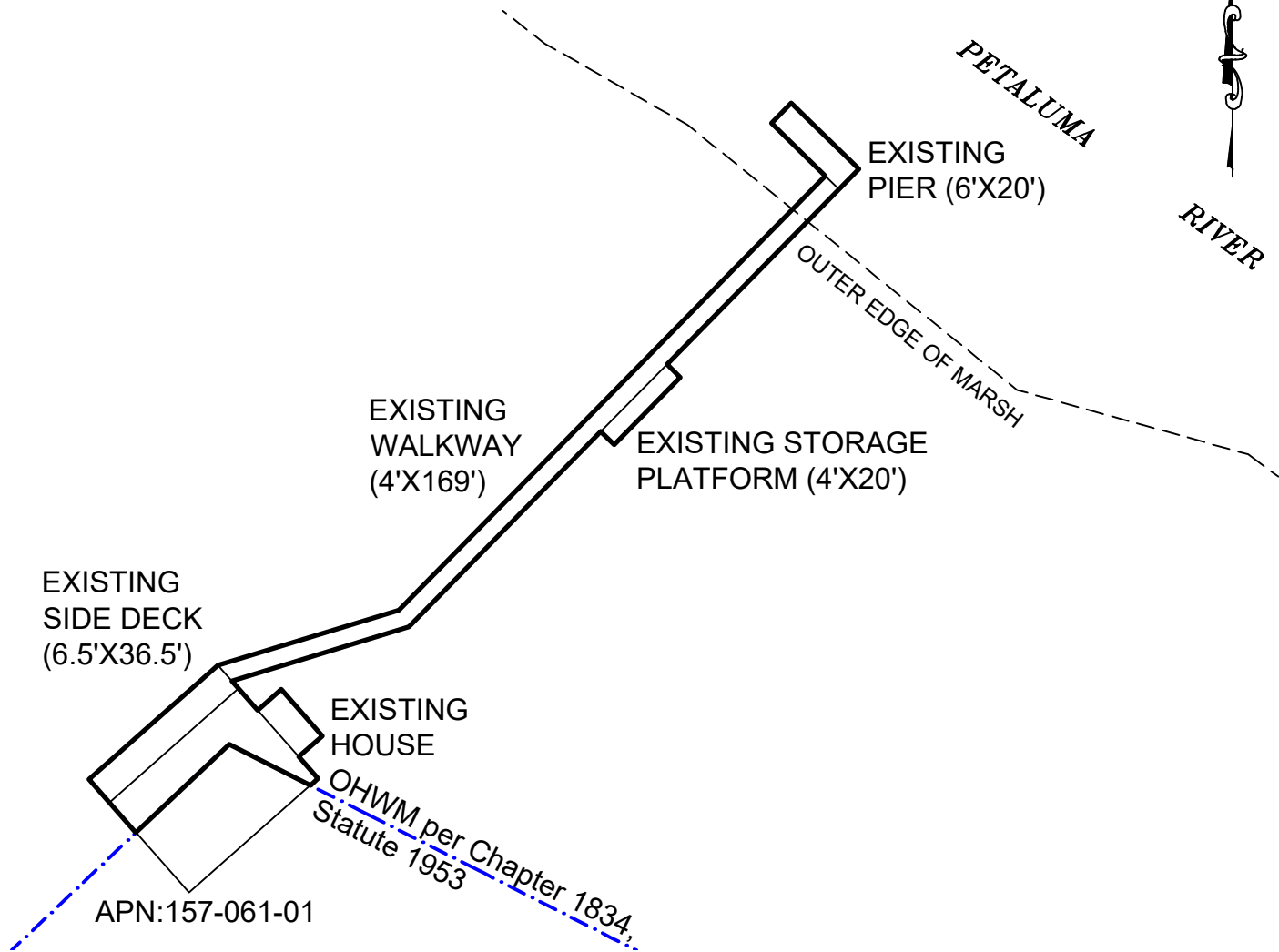
CALIFORNIA STATE  
LANDS COMMISSION





NO SCALE

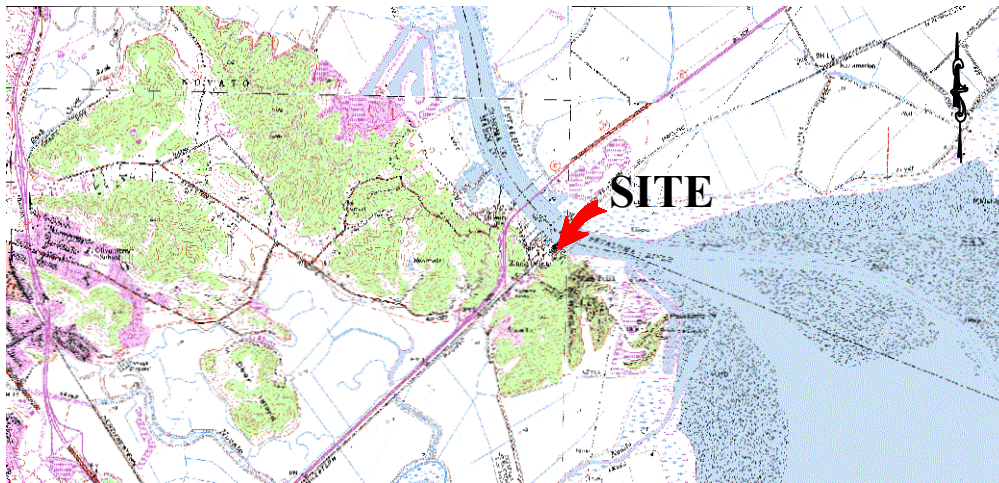
# SITE



172 BEATTIE AVE, NEAR NOVATO

NO SCALE

# LOCATION



MAP SOURCE: USGS QUAD

## Exhibit B

PRC 3756.1  
 BEATTIE TRUST  
 APN 157-061-01  
 GENERAL LEASE -  
 RECREATIONAL &  
 RESIDENTIAL USE  
 MARIN COUNTY



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.

DJF 6/22/2018