

**STAFF REPORT  
C38**

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08/23/18  
PRC 4548.1  
D. Tutov

**GENERAL LEASE – RECREATIONAL USE**

**APPLICANT:**

William Barkes and Wendy Barkes, Trustees of the Barkes Family Trust

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

Sovereign land in the Petaluma River, adjacent to 110 Beattie Avenue, in Black Point, near Novato, Marin County.

*AUTHORIZED USE:*

Continued use and maintenance of an existing pier and boathouse.

*LEASE TERM:*

10 years, beginning August 23, 2018.

*CONSIDERATION:*

\$303 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.

**STAFF ANALYSIS AND RECOMMENDATION:**

**Authority:**

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503 and 6503.5; California Code of Regulations, title 2, section 2000, subdivision (b).

**Public Trust and State's Best Interests Analysis:**

On April 20, 2000, the Commission authorized a 10-year Recreational Pier Lease to William E. Barkes and Wendy G. Barkes ([Item C41, April 20, 2000](#)). That lease expired on January 16, 2010. The Applicant is now applying for a General Lease – Recreational Use, for the use and maintenance of an existing pier and boathouse. These improvements are in a marshy, isolated area that is secluded and difficult to access. There is

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no public access from the landward side. The marsh where the improvements are located is not susceptible to navigation and there is minimal boat traffic in this area.

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 pier and boathouse are 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 pier and boathouse 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.

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

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to flooding at current sea levels and will be at higher risk of flood exposure given projected scenarios of sea-level rise, and may require a new levee to protect development from a 100-year flood event with a 1.4-meter sea-level rise.

The lease premises consist of a pier and a boathouse. The existing facilities are not in good condition, but are in the process of being repaired with no change to the existing footprint. All components of the lease facilities are fixed and could be susceptible to damage from rising seas and flooding events.

The risk of flood exposure for the lease premises is likely to increase with time. The region could see up to 1 foot of sea-level rise (from year 2000 levels) by 2030, 2 feet by 2050, and possibly more than 5 feet by 2100 (National Research Council 2012). 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* (California Natural Resources Agency 2014), 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 during the term of the lease. The fixed pier, boathouse, and pilings may need reinforcement to withstand higher levels of flood exposure. In addition, the pier and adjacent upland 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 and

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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 is consistent with the common law Public Trust Doctrine and 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. 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

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foreseeable term of the lease, is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

**AUTHORIZATION:**

Authorize issuance of a General Lease – Recreational Use to William Barkes and Wendy Barkes, Trustees of the Barkes Family Trust; beginning August 23, 2018, for a term of 10 years, for the continued use and maintenance of an existing pier and boathouse, 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 \$303 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 4548.1**

**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 pier and boathouse lying adjacent to those parcels as described in Grant Deed, recorded June 17, 2016 in Document Number 2016-0027100 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 Hunter Club Tract pursuant to provisions of Chapter 1834, Statutes of 1953.

Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

Prepared 03/16/18 by the California State Lands Commission Boundary Unit





PETALUMA RIVER

OUTER EDGE OF MARSH

EXISTING BOATHOUSE

EXISTING PIER

APN  
157-061-48

OHWM per CHAPTER 1834  
STATUTE 1953

### EXHIBIT A

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RGB 3/16/18

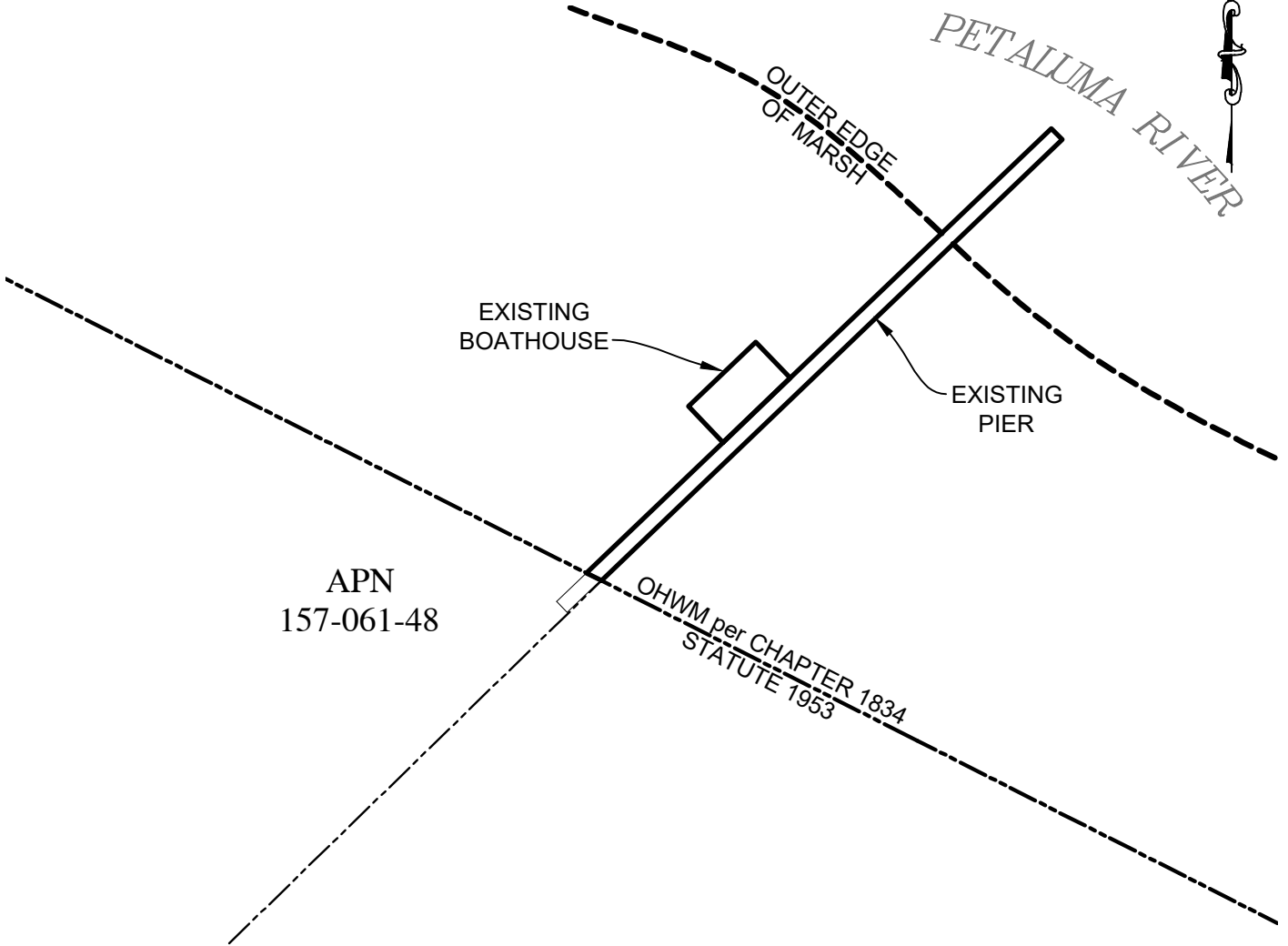
LAND DESCRIPTION PLAT  
PRC 4548.1, BARKES TRUSTEES  
MARIN COUNTY

CALIFORNIA STATE  
LANDS COMMISSION



NO SCALE

**SITE**



110 BEATTIE AVE., NOVATO

NO SCALE

**LOCATION**



MAP SOURCE: USGS QUAD

**Exhibit B**

PRC 4548.1  
 BARKES TRUSTEES  
 APN 157-061-48  
 GENERAL LEASE -  
 RECREATIONAL 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.