

**CALENDAR ITEM  
C51**

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02/09/16

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PRC 5962.1

V. Caldwell

**TERMINATION OF GENERAL LEASE – RECREATIONAL AND RESIDENTIAL USE,  
RESCISSION OF APPROVAL OF AN AGREEMENT AND CONSENT TO  
ENCUMBRANCING OF LEASE, AND APPROVAL OF A  
GENERAL LEASE – RECREATIONAL AND RESIDENTIAL USE**

**LESSEE:**

Nigel Brandstater

**APPLICANT:**

Nigel S. Brandstater and Tamara Gopp Brandstater, as Co-Trustees of the Nigel and Tamara Brandstater Family Trust

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

Sovereign land in Mare Island Strait, adjacent to 4 Sandy Beach Road, near the city of Vallejo, Solano County.

*AUTHORIZED USE:*

Continued use and maintenance of a portion of an existing residence, deck, and appurtenant facilities.

*LEASE TERM:*

30 years, beginning February 9, 2016.

*CONSIDERATION:*

\$2,361 per year; with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

*SPECIFIC LEASE PROVISIONS:*

Liability insurance in an amount of no less than \$1,000,000 per occurrence.

**BACKGROUND:**

In 1861, the State approved applications for purchase of certain lands in Solano County on tidally influenced lands located where the Napa River meets the Carquinez Strait and San Pablo Bay. On April 1, 1868, the State issued patents

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for Tide Land Survey numbers 10 and 11. In ensuing years, the patented area was subdivided into numerous small lots, which were developed with homes built upon pilings in an area known as Sandy Beach. Over time, homes and associated structures were constructed and extended waterward of the patented tidelands.

The private landowners litigated the boundaries of the Tide Land Surveys and subsequent subdivisions in November 1945 with other adjacent property owners; however, the Commission was not a party to the suit. The quiet title action purported to confirm the sale to the private owners. The waterward boundary of the Tide Land Surveys was not litigated. The mean low tide line continues to be a natural, ambulatory boundary and has not been adjudicated.

State Lands Commission staff first surveyed the mean low water line in 1955 and found that many of the porches, decks, and portions of some residences encroached onto sovereign lands. In the late 1950s encroachments beyond the low water line were brought under lease. Over the subsequent years, a number of the residences have applied for and received leases from the Commission to maintain their existing improvements beyond the low water mark.

In April 2009, staff performed a survey to determine the extent of the State's claim in relation to the current existing structures for the Sandy Beach area. The 2009 mean low water line survey did not establish or fix the boundary, which remains ambulatory at this location, but is the most current and best evidence of the ambulatory boundary and serves as the basis for the lease area.

**STAFF ANALYSIS AND RECOMMENDATION:**

**Statutory Authority:**

Public Resources Code sections 6005, 6216, 6301, and 6505.5; California Code of Regulations, Title 2, section 2000, subdivision (b).

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

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes that include, but are not limited to, waterborne commerce, navigation, fisheries, water-related recreation, visitor-serving amenities, habitat preservation, and open space. The Commission is the trustee of the State's sovereign land (both fee title in

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the unpatented area and public trust easement over the patented tidelands) at Sandy Beach.

The Sandy Beach community, consisting of approximately 35 similarly situated properties, is located at the base of a bluff on the south end of the eastern shoreline of the Mare Island Strait. There is little, if any, public access from the landward side because the area is secluded and difficult to access. There is only one road leading down to the community and a parking lot at the end of this road where community residents park. The upland frontage along this section of the Mare Island Strait is all privately owned and improved with residences with no public access from the landward side. On the waterward side, it is bordered on the south by a long jetty and bulkhead that separate the strait from the bay and help form the entrance to the strait. The vast majority of boat traffic is commercial in the Mare Island Strait to the north and Carquinez Strait to the south. The small amount of recreational boating in this region does not frequent the Sandy Beach shoreline due to its distance from publicly available access points. Additionally, the natural features do not make it convenient for recreational uses.

Based on the 2009 survey work at this location, staff has concluded that there is a portion of an existing residence, deck, and appurtenant facilities encroaching below the mean low tide line onto State-owned sovereign land. These improvements are not associated with traditional public trust uses. The Commission has issued leases on a limited basis for portions of existing residential structures that encroach onto sovereign lands where such encroachments do not significantly interfere with the public trust needs and values.

There is no public access from the upland to the water at the subject location. The privately owned uplands have been developed into private residences. The Sandy Beach community predates the Subdivision Map Act (Government Code section 66410 et seq.) and other laws intended to protect and promote public access. Accordingly, the houses are close together and do not provide any meaningful public access. As previously stated, there is a relatively low amount of recreational boating traffic. Although the subject facilities are a private use of public property, the limited water-related recreational value of this area and the relatively small portion of the existing private use encroaching onto State-owned lands indicate a renewed lease for the subject facilities would not substantially

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interfere with the public's trust needs and values at this time and for a limited term. Based upon the particular facts at this location, staff recommends the Commission find that the proposed lease would not result in a substantial interference with the public's Public Trust needs and values at this time and in this location. In addition, the proposed lease will provide for rent, insurance and indemnity, all in favor of protecting the State's interests. Conversely, the resources, costs, time and uncertainty associated with seeking removal of these relatively small encroachments are significant. For these reasons, staff recommends finding that issuing a lease is in the best interests of the State at this time.

**OTHER PERTINENT INFORMATION:**

1. Applicant owns the uplands adjoining the lease premises and the underlying fee title to the patented tidelands.
2. On September 17, 2001, the Commission authorized a General Lease - Recreational and Residential Use and an Agreement and Consent to Encumbrancing of Lease to Nigel Brandstater in favor of BWC Mortgage Services in the amount of \$350,000.00. The lease will expire on June 30, 2036.
3. On May 28, 2008, the property was transferred to Nigel S. Brandstater and Tamara Gopp Brandstater, as Co-Trustees of the Nigel and Tamara Brandstater Family Trust. The applicant is now applying for termination of a General Lease – Recreational and Residential Use and authorization of a new General Lease – Recreational and Residential Use. Since the encumbrancing agreement was never executed by the BWC Mortgage Services, staff is recommending rescission of that approval.
4. In the past, the Commission has had lease agreements with 25 of the 35 property owners with improvements extending onto State-owned sovereign lands. That number has slowly declined to five, leaving many of the property owners with unauthorized facilities on State lands. To remedy the situation, the Commission's compliance staff conducted a public outreach effort to educate the community on the Commission's jurisdiction, leasing practices and lease application process. In addition to the community residents, this outreach effort included state and local legislators for the area and other regulatory entities. On August 19, 2013, Commission staff held a public meeting in Vallejo for the Sandy Beach property owners and other interested parties. Since that time, through the

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development of a frequently asked questions document, meetings, and many phone conversations and email communications, staff has worked with property owners and their representatives to come to an agreement on lease terms and conditions acceptable to the parties involved.

5. Staff recommends the issuance of the proposed lease, as it promotes 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.
6. Termination of the lease and rescission of approval are not projects as defined by the California Environmental Quality Act (CEQA) because they are administrative actions 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, sections 15378 subdivision (b)(5).

7. The staff recommends that the Commission find that this activity is exempt from the requirements of 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.

8. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

**EXHIBITS:**

- A. Land Description
- B. Site and Location Map

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**RECOMMENDED ACTION:**

It is recommended that the Commission:

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

Find that the existing and, for a limited period, continuing use of the property for the proposed activity is not generally consistent with the public trust doctrine, but that the current use, on balance, does not substantially interfere with the trust and that issuing the proposed lease is in the best interests of the State.

**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).

**SIGNIFICANT LANDS INVENTORY FINDING:**

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

**AUTHORIZATION:**

1. Authorize termination, effective February 8, 2016, of Lease No. PRC 5962.1, a General Lease – Recreational and Residential Use, issued to Nigel Brandstater.
2. Authorize rescission of the Commission's approval of an Agreement and Consent to Encumbrancing of Lease No. PRC 5962.1, at the September 17, 2001 meeting, issued to Nigel Brandstater.
3. Authorize a General Lease – Recreational and Residential Use to Nigel S. Brandstater and Tamara Gopp Brandstater, as Co-Trustees of the Nigel and Tamara Brandstater Family Trust beginning February 9, 2016, for a term of 30 years, for the continued use and maintenance of a portion of an existing residence, deck, and appurtenant facilities 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 \$2,361, with the State reserving the right to fix a different rent

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periodically during the term of the lease as provided in the lease;  
liability insurance coverage in the amount of no less than  
\$1,000,000 per occurrence.

**EXHIBIT A**

**PRC 5962.1**

**LAND DESCRIPTION**

A parcel of submerged land situate in Mare Island Strait, City of Vallejo, County of Solano, State of California, lying adjacent to and within the external boundaries of Parcel 8 as shown on that certain Record of Survey titled "Sandy Beach Cabin Sites", filed February 14, 1944 in Book 1 of Maps, at Pages 1 and 2, Solano County Records, and being more particularly described as follows:

BEGINNING at the most northerly corner of said parcel; thence southwesterly along the northwesterly boundary and the southwesterly prolongation of said boundary, 127.6 feet; thence leaving said prolongation in a southeasterly direction perpendicular to said prolongation to a point on a line parallel with and three feet southeasterly of the southwesterly prolongation of the southeasterly boundary of said parcel; thence northeasterly along said line 47.1 feet; thence leaving said line in a northwesterly direction perpendicular to said line 3.0 feet to a point on the southwesterly prolongation of the southeasterly boundary of said parcel; thence northeasterly along said southwesterly prolongation and the southeasterly boundary of said parcel, 78.9 feet to the easterly corner of said parcel; thence in a northwesterly direction along the northeasterly boundary of said parcel to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion lying landward of the ordinary low water mark of Mare Island Strait.

**END OF DESCRIPTION**

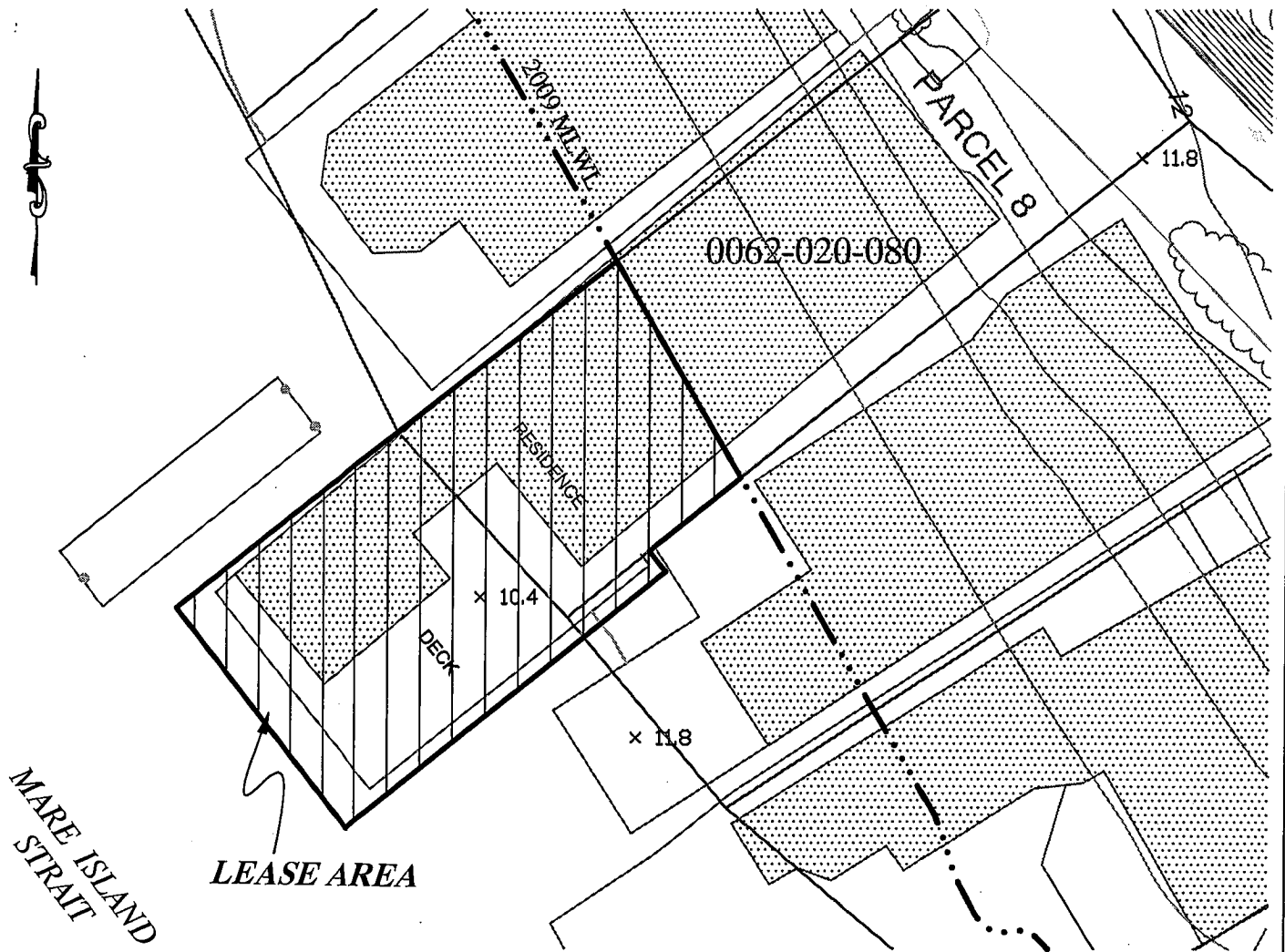
Prepared 10/14/2015 by the California State Lands Commission Boundary Unit.





NO SCALE

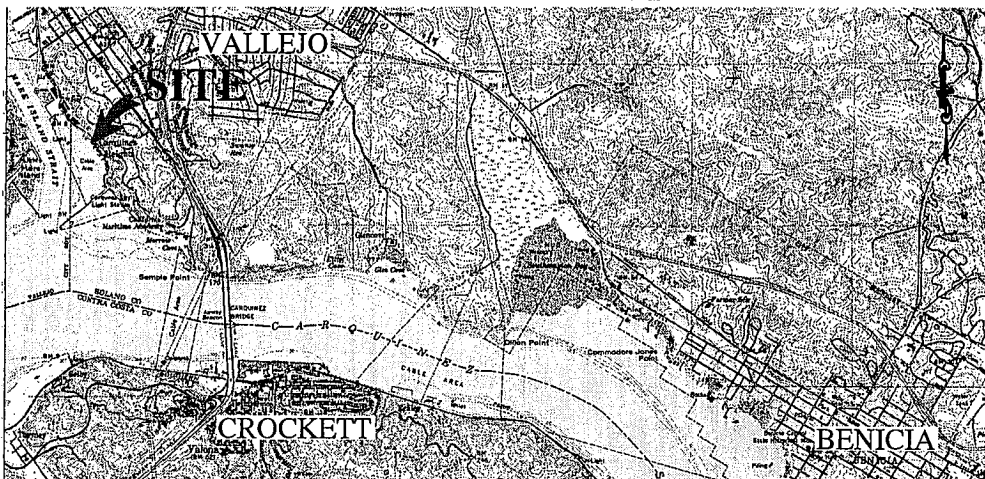
### SITE



4 SANDY BEACH ROAD, VALLEJO

NO SCALE

### LOCATION



MAP SOURCE: USGS QUAD

### Exhibit B

PRC 5962.1  
 BRANDSTATER FAMILY TRUST  
 APN 0062-020-080  
 GENERAL LEASE -  
 RESIDENTIAL &  
 RECREATIONAL USE  
 SOLANO COUNTY



TS 10/14/15

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.