

**CALENDAR ITEM
C36**

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02/07/17
PRC 3714.1
D. Tutov

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Jeffrey Ehlers

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Petaluma River, adjacent to 152 Beattie Avenue, in Black Point, near the city of Novato, Marin County.

AUTHORIZED USE:

Continued use and maintenance of an existing fishing pier and deck.

LEASE TERM:

10 years, beginning February 7, 2017.

CONSIDERATION:

\$166 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, and 6503.5; California Code of Regulations, title 2, section 2000, subdivision (b).

Public Trust and State's Best Interests Analysis:

On June 27, 2000, the Commission authorized a 10-year Recreational Pier Lease to Jeffrey Ehlers and Linda Ehlers ([Calendar Item C43, June 27, 2000](#)). That lease expired on January 16, 2010. The improvements are in a marshy, isolated area that is secluded and difficult to access. The marsh where the improvements are located is not susceptible to navigation and there is minimal boat traffic in this area.

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There are numerous similar improvements in this area, known as Black Point, some of which have not been brought under lease due to longstanding uncertainty about the location and extent of the State's jurisdiction. Staff conducted a boundary analysis in this area in August 2012 to determine the extent of the state's jurisdiction. Since that time, staff has been reaching out to the community to identify and contact owners and bring improvements within the state'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 fishing pier is used for fishing. Recreational fishing is water-dependent and generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private recreational fishing facilities as an authorized use of Public Trust lands (Pub. Resources Code, § 6503.5).

The subject deck is generally not associated with traditional Public Trust uses. However, the deck and fishing pier, have existed for many years at this location. There is no public access from the upland to the water at the subject location. The facilities do not significantly alter the land, and the lease does not alienate the State's fee simple interest, nor does it permanently impair public rights. 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, are not limited to the open coast and may involve increased wave activity, storm events, and flooding. The existing structures within the proposed lease area are located along the Petaluma River within a tidally-influenced region. The subject facilities are vulnerable to flooding at current sea levels and at higher risk of flood exposure given future projected scenarios of sea-level rise. The facilities are fixed, meaning they do not have the ability to rise and fall with the water level. By 2030, California's coast could see up to 1 foot of sea-level rise (from year 2000 levels), 2 feet by 2050, and possibly

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over 5 feet by 2100 (NRC 2012). This effect could increase the Petaluma River's inundation levels within the lease area. 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, drought, and storms (especially when coupled with sea-level rise).

The combination of these projected conditions could potentially raise the likelihood of damage to structures within the lease premises during the term of the lease. For example, the potential for more frequent and stronger storm events may expose the lease area structures to higher flood risks and cause structures to be damaged or dislodged, presenting hazards to public safety. Conversely, prolonged drought conditions could lower water levels exposing previously submerged structures to the elements potentially leading to increased wear and tear on the pilings and impact the function and utility of the lease area structures. The fixed features may need to be reinforced to withstand higher levels of flood exposure because they would not be able to rise and fall with storms and droughts. The salt marsh habitat surrounding the existing improvements currently provides some natural bank stabilization. Regular maintenance, as required by the terms of the lease, will reduce the likelihood of severe structural degradation or dislodgement.

Conclusion:

For all the reasons above, staff believes the issuance of this lease, on balance, will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable 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:

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).

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Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

3. 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 staff's consultation with the persons nominating such lands and through the CEQA review process, it is staff's opinion that the project, as proposed, is consistent with its use classification.

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, on balance, the proposed lease will not substantially interfere with the Public Trust needs and values at this location at this time, or for the foreseeable term of the lease, is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

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:

Authorize issuance of a General Lease – Recreational Use to Jeffrey Ehlers; beginning February 7, 2017, for a term of 10 years, for the continued use and maintenance of an existing fishing pier and deck 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 \$166, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 3714.1

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 fishing pier and deck lying adjacent to those parcels as described in Grant Deed, recorded December 9, 2009 in Document Number 2009-0067989 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 11/16/16 by the California State Lands Commission Boundary Unit





PETALUMA
RIVER

EXISTING
DECK

EXISTING
FISHING
PIER

OUTER EDGE OF MARSH

APN 157-061-07

OHWM per Chapter 1834,
Statute 1953

INNER
EDGE OF MARSH

EXHIBIT A

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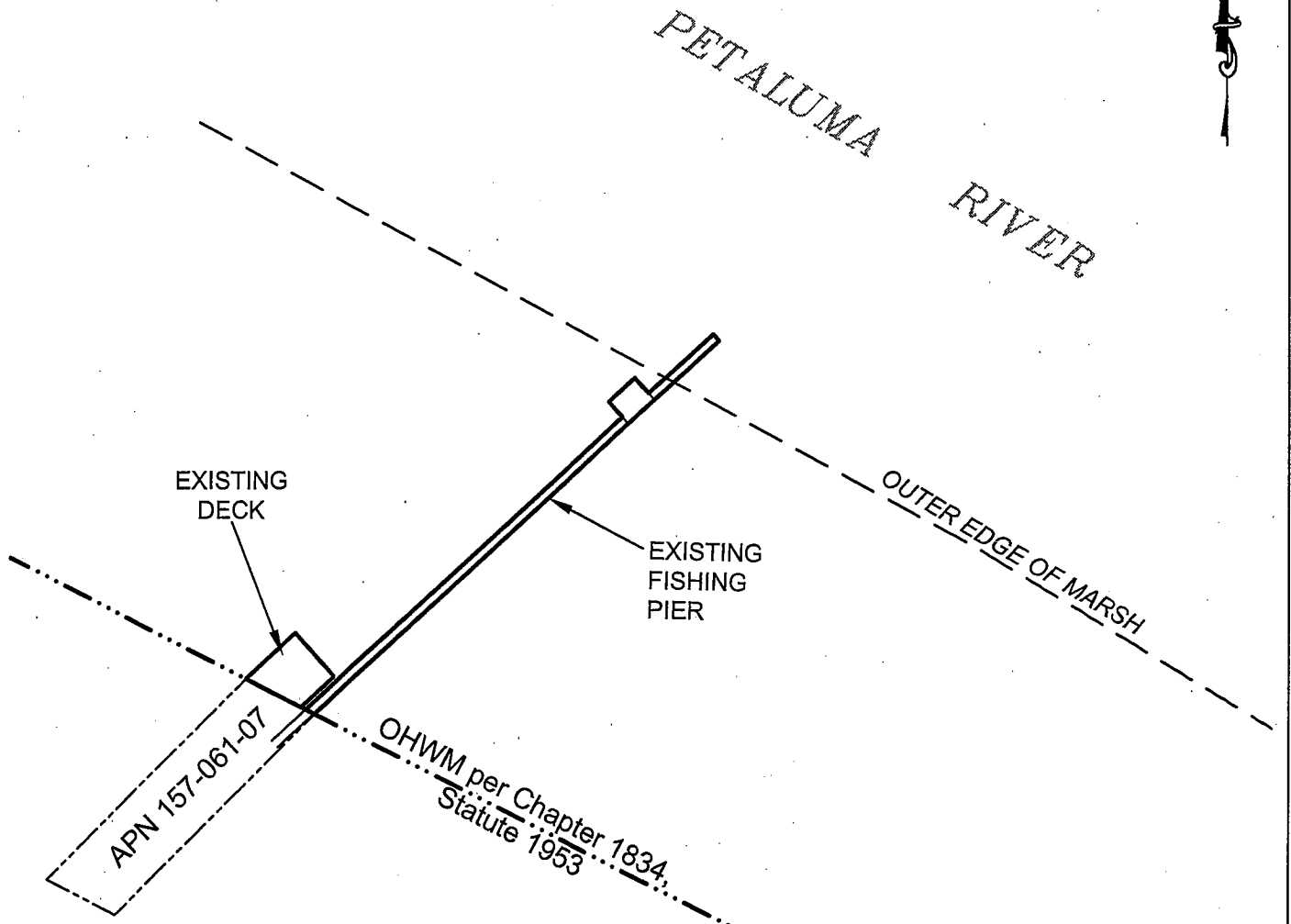
LAND DESCRIPTION PLAT
PRC 3714.1, EHLERS
MARIN COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

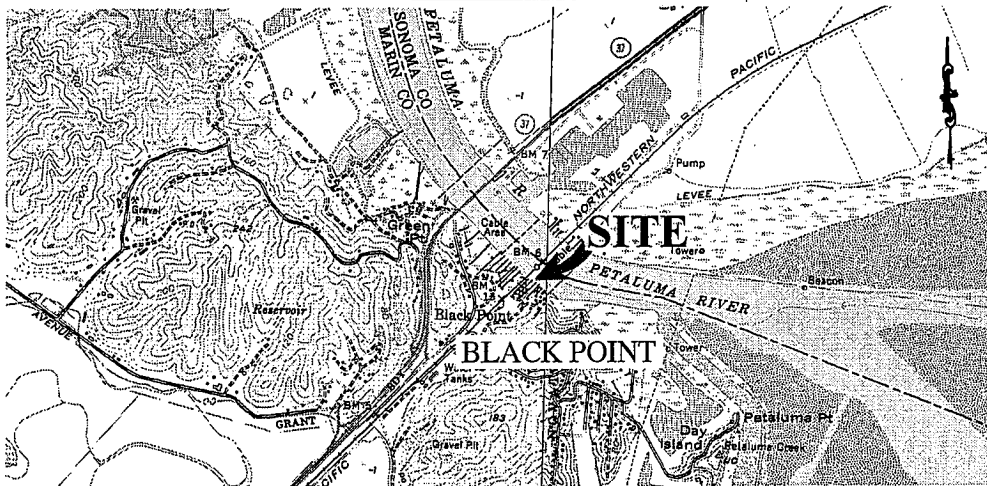
SITE



152 BEATTIE AVE. , NOVATO

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 3714.1

EHLERS

APN 157-061-07

GENERAL LEASE-
RECREATIONAL USE
MARIN COUNTY



TS 11/16/16

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.