

**CALENDAR ITEM
C12**

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S 3

04/05/16
W 26939
M. Schroeder

GENERAL LEASE – RECREATIONAL AND PROTECTIVE STRUCTURE USE

APPLICANT:

David Tenenberg and Tricia Grose Tenenberg, Trustees of the Tenenberg Family Trust dated July 7, 2015

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Napa River, adjacent to 1796 Milton Road, city of Napa, Napa County.

AUTHORIZED USE:

Reconstruction, use and maintenance of an existing uncovered floating boat dock and two pilings, and the use and maintenance of an existing ramp and bank protection not previously authorized by the Commission.

LEASE TERM:

10 years, beginning April 5, 2016.

CONSIDERATION:

Uncovered Floating Boat Dock, Ramp, and Two Pilings: \$125 per year, with an annual Consumer Price Index adjustment.

Bank Protection: The public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests.

SPECIFIC LEASE PROVISIONS:

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

STAFF ANALYSIS AND RECOMMENDATION:

Statutory Authority:

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

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Public Trust and State's Best Interests Analysis:

The subject dock and appurtenant facilities are for the docking and mooring of boats. 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 lands (Pub. Resources Code, § 6503.5).

The subject facilities have existed for many years at this location. The uncovered floating boat dock and two pilings were damaged in 2014 with only the ramp left in good condition. The Applicant proposes to reconstruct the uncovered floating boat dock and two pilings. The subject facilities are built on a relatively flat portion of the shore with the bank protection built of moderate sized rocks. The upland houses are close together. The topography and upland structures restrict the available uses of the proposed lease area.

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 and does not grant the Lessee exclusive rights to the lease premises. The bank protection is consistent with the common law public trust doctrine because it serves as an aid to navigation by providing reinforced structural support to the banks of the waterway and limiting potentially harmful erosion of the bank into the waterway. The bank protection also confers benefits to the upland owner by ensuring sufficient sublateral support to the adjoining property. Like the dock and appurtenant facilities, the bank protection has existed for many years at this location and does not significantly alter the land or permanently alienate any State property interest. Based on the foregoing, Commission staff believes that the bank protection is consistent with the public trust doctrine. In the alternative, Commission staff believes that the bank protection will not substantially interfere with the public trust needs at this location for the foreseeable term of the proposed lease. Upon termination of the lease, the Lessee may be required to remove all improvements from State land.

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 use of public land. For all the reasons above, Commission staff believes the issuance of this lease is consistent with the common law public trust doctrine, will not substantially interfere with the public trust needs at this location, at this time, and for the

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foreseeable term of the proposed lease, and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Applicant owns the upland adjoining the lease premises.
2. The existing dock facilities and bank protection were never authorized but have existed at this location for many years. In August 2014, the existing dock and two wood pilings were severely damaged due to an earthquake and required immediate removal. The ramp was not damaged and will continue to be used and maintained. The dock will either be a manufactured aluminum dock or a wooden dock. The in-water work will take place between June 1 and October 31. The Applicant has submitted applications to other permitting agencies. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use. Staff recommends authorization of these facilities.
3. 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.
4. **Installation of New Dock and Two Pilings:** The 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 3, New Construction of Small Structures; California Code of Regulations, Title 2, section 2905, subdivision (c)(1).

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

5. **Existing Ramp and Bank Protection:** 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.

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6. 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.

APPROVALS REQUIRED:

U.S. Army Corps of Engineers
San Francisco Bay Regional Water Quality Control Board
San Francisco Bay Conservation and Development Commission
California Department of Fish and Wildlife

EXHIBITS:

- A. Land Description
B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Installation of New Dock and Two Pilings: 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 3, New Construction of Small Structures; California Code of Regulations, Title 2, section 2905, subdivision (c)(1).

Existing Ramp and Bank Protection: 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 the public's public trust needs and values at this location, 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.

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AUTHORIZATION:

Authorize issuance of a General Lease – Recreational and Protective Structure Use to David Tenenberg and Tricia Grose Tenenberg, Trustees of the Tenenberg Family Trust dated July 7, 2015, beginning April 5, 2016, for a term of 10 years, for the reconstruction, use and maintenance of an existing uncovered floating boat dock and two pilings, and the use and maintenance of an existing ramp and bank protection not previously authorized by the Commission, as described in Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof; consideration for the existing uncovered floating boat dock, ramp, and two pilings: \$125 per year with an annual Consumer Price Index adjustment; consideration for the bank protection: the public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

W 26939

LAND DESCRIPTION

A parcel of tide and submerged land situate in the bed of the Napa River lying adjacent to Swamp and Overflow Location Survey 840, patented July 3, 1893, County of Napa, State of California, more particularly described as follows:

All those lands underlying a proposed dock, and two (2) pilings and an existing ramp lying adjacent to those parcels as described in Exhibit "A" of that Trust Transfer Deed recorded November 5, 2015 in Document 2015-0027801 in Official Records of said County.

TOGETHER WITH any applicable impact area(s).

ALSO TOGETHER WITH that land lying immediately beneath any bank protection structure lying adjacent to said parcel.

EXCEPTING THEREFROM any portion(s) lying landward of the Ordinary High Water Mark of the right bank of the Napa River.

This description is based on Applicant provided design plans found in the Application for Lease of State Lands for a proposed pier and pilings, together with any and all appurtenances pertaining thereto, to be built at a later date within the Lease time frame. This description is to be updated once final as-built plans are submitted.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared March 10, 2016 by the California State Lands Commission Boundary Unit.



APN 048-042-031

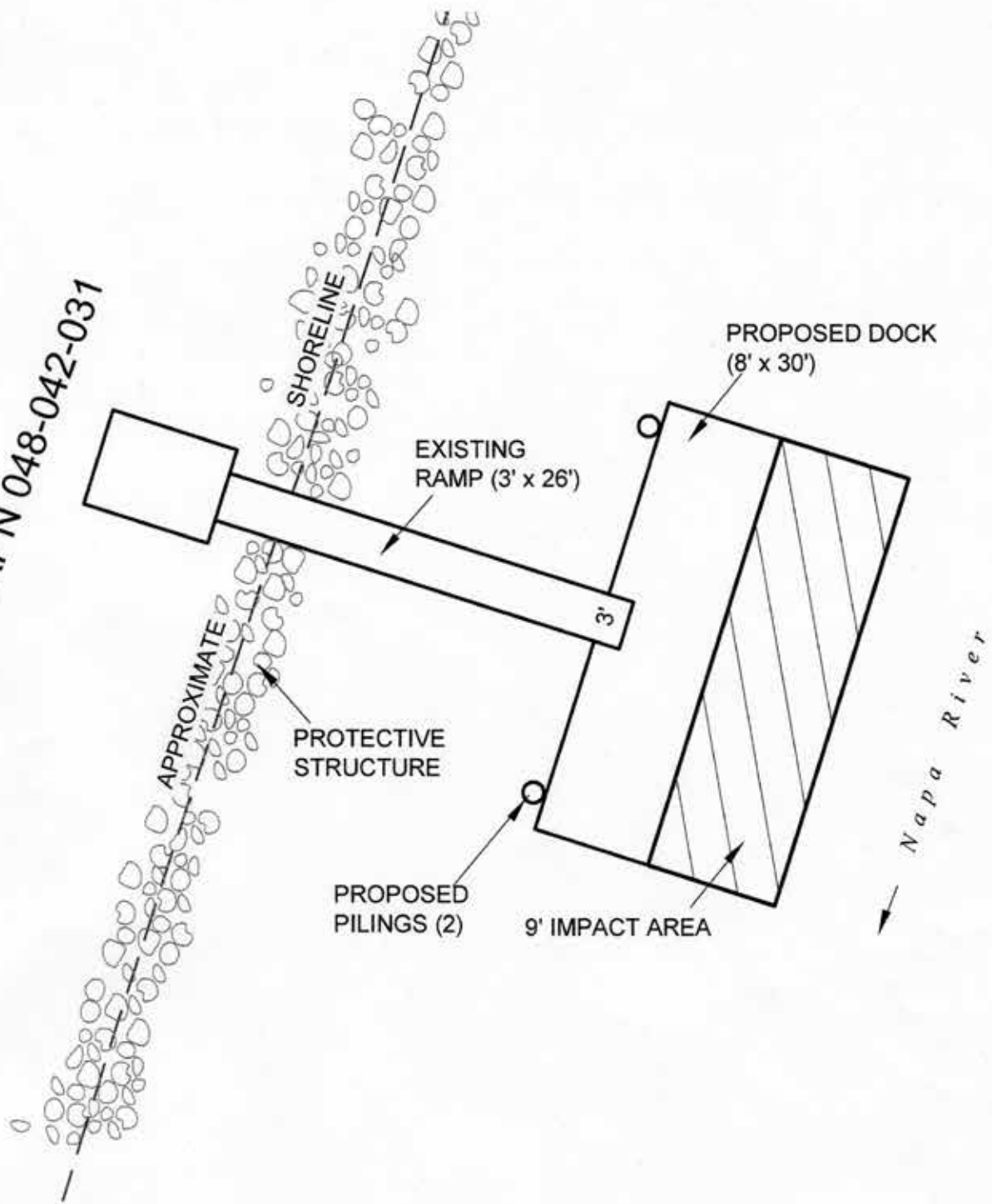


EXHIBIT A

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LAND DESCRIPTION PLAT
W 26939, TENENBERG TRUST
NAPA COUNTY

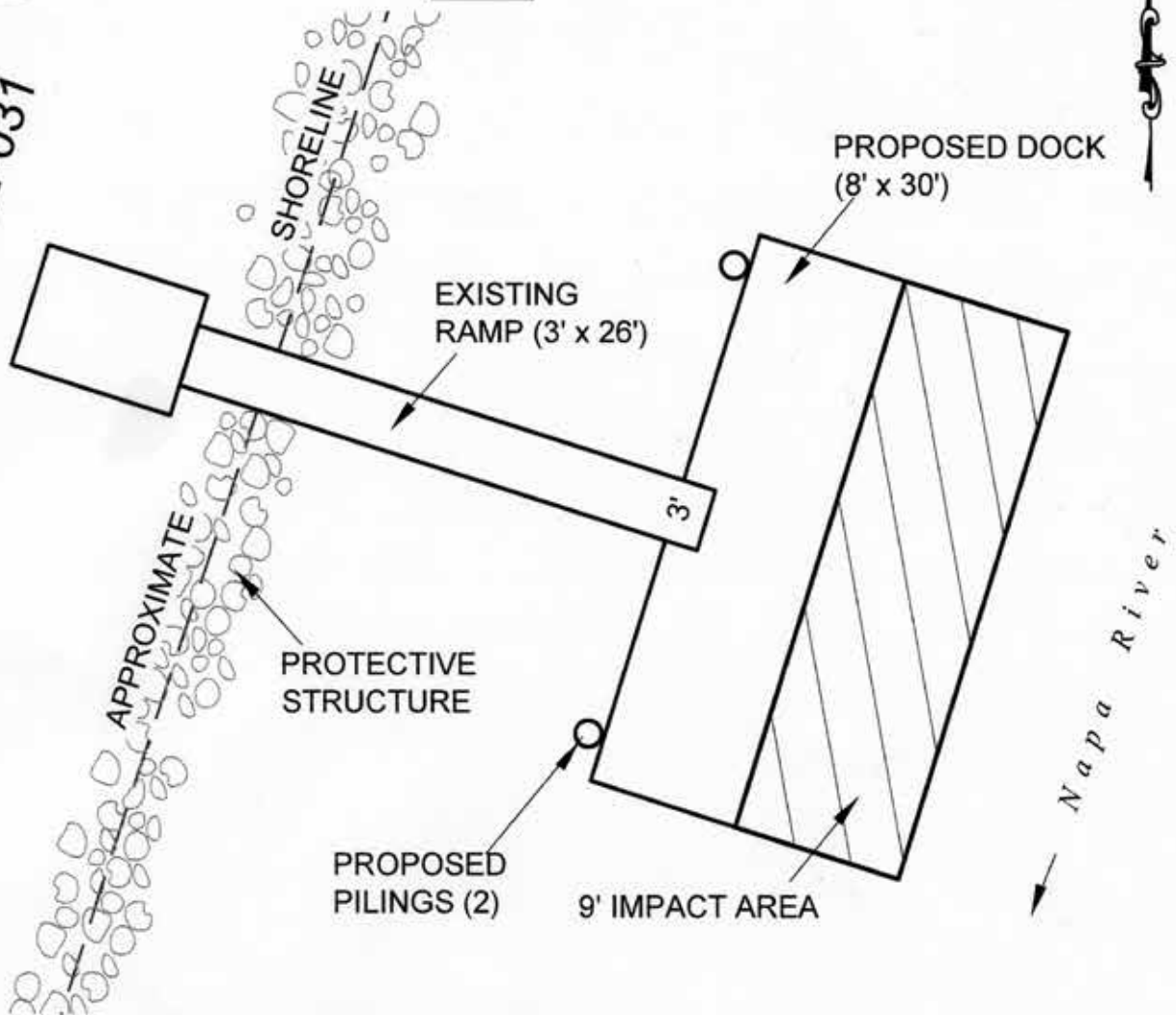
CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE

APN 048-042-031



1796 MILTON ROAD, NAPA

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

W 26939
 TENENBERG TRUST
 APN 048-042-031
 GENERAL LEASE -
 RECREATIONAL &
 PROTECTIVE STRUCTURE USE
 NAPA COUNTY



MJJ 01/08/16

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.