

**CALENDAR ITEM
C18**

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12/06/16
PRC 7022.1
M. Schroeder

GENERAL LEASE – RECREATIONAL AND PROTECTIVE STRUCTURE USE

APPLICANT:

David Tenenberg and Tricia Grose Tenenberg, as 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 1800 Milton Road, city of Napa, Napa County.

AUTHORIZED USE:

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

LEASE TERM:

10 years, beginning June 26, 2016.

CONSIDERATION:

Uncovered Floating Boat Dock, Walkway, Ramp, and Six Pilings:
\$172 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:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6501.1, 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:

On June 26, 2006, the Commission authorized a 10-year Recreational Pier Lease to David Tenenberg ([Calendar Item C16, June 26, 2006](#)). That lease expired on June 25, 2016. On November 5, 2015, ownership of the upland was transferred to David Tenenberg and Tricia Grose Tenenberg, as Trustees of the Tenenberg Family Trust dated July 7, 2015. The Applicant is applying for a General Lease – Recreational and Protective Structure Use for the existing facilities.

Applicant owns the upland adjoining the lease premises. The subject dock and appurtenant facilities are privately owned and maintained and are used 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, section 6503.5).

The dock and appurtenant facilities have existed for many years at this location. The facilities are built on a gently sloped portion of the river bank. The upland houses are close together and 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. 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. The bank protection will help maintain the integrity of the river channel for recreational and navigational purposes by the public.

Sea Level Rise

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 lower Napa River, a tidally-influenced site vulnerable to flooding at current sea levels that will be at higher risk of flood exposure given projected scenarios of sea-level rise.

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The lease premises consist of bank protection; a fixed walkway secured by pilings; a mobile, rolling ramp; six pilings; and an uncovered floating boat dock. The existing facilities are in good condition. The fixed and moving components of the uncovered floating boat dock and appurtenant facilities could be susceptible to damage from rising seas and flooding events. The lease premises are in an area that is designated as a Special Flood Hazard Zone by the Federal Emergency Management Agency.

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. 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 uncovered floating boat dock and ramp are adaptable to variable water levels, but may require more frequent maintenance to avoid dislodgement and ensure continued function during and after storm seasons. The fixed walkway and pilings may need reinforcement to withstand higher levels of flood exposure. The 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 adjacent upland are located in an area that may be subject to effects of climate change, including sea-level rise.

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Conclusion

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 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.

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

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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 for the existing uncovered floating boat dock, walkway, ramp, six pilings, and bank protection will not impact the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location at this time and 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 and Protective Structure Use to David Tenenberg and Tricia Grose Tenenberg, as Trustees of the Tenenberg Family Trust dated July 7, 2015; beginning June 26, 2016, for a term of 10 years, for the continued use and maintenance of an existing uncovered floating boat dock, walkway, ramp, and six pilings previously authorized by the Commission and use and maintenance of existing 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 uncovered floating boat dock, walkway, ramp, and six pilings: \$172 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

PRC 7022.1

LAND DESCRIPTION

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

All those lands underlying an existing uncovered floating boat dock, ramp, walkway, two (2) 12 inch in diameter pilings, two (2) 8 inch in diameter pilings, and two (2) 6 inch in diameter pilings lying adjacent to that parcel as described in "Exhibit "A"" of that Trust Transfer Deed, recorded November 5, 2015 in Document No. 2015-0027800 in Official Records of said County.

TOGETHER WITH any applicable impact area(s).

ALSO TOGETHER WITH all those lands underlying any existing bank protective structure lying adjacent to that parcel as described in said Trust Transfer Deed.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the Napa River.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

PREPARED 4/06/16 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



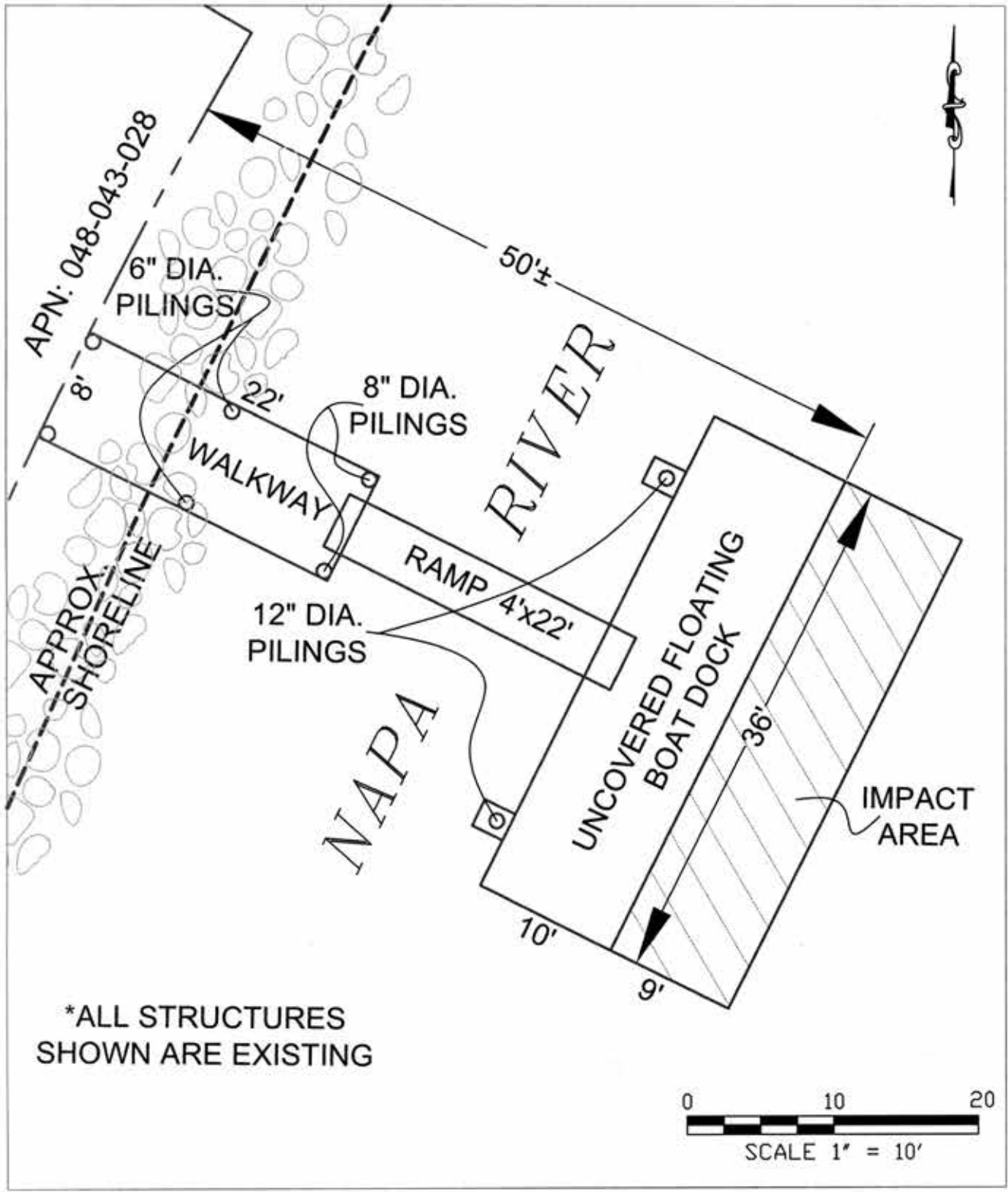
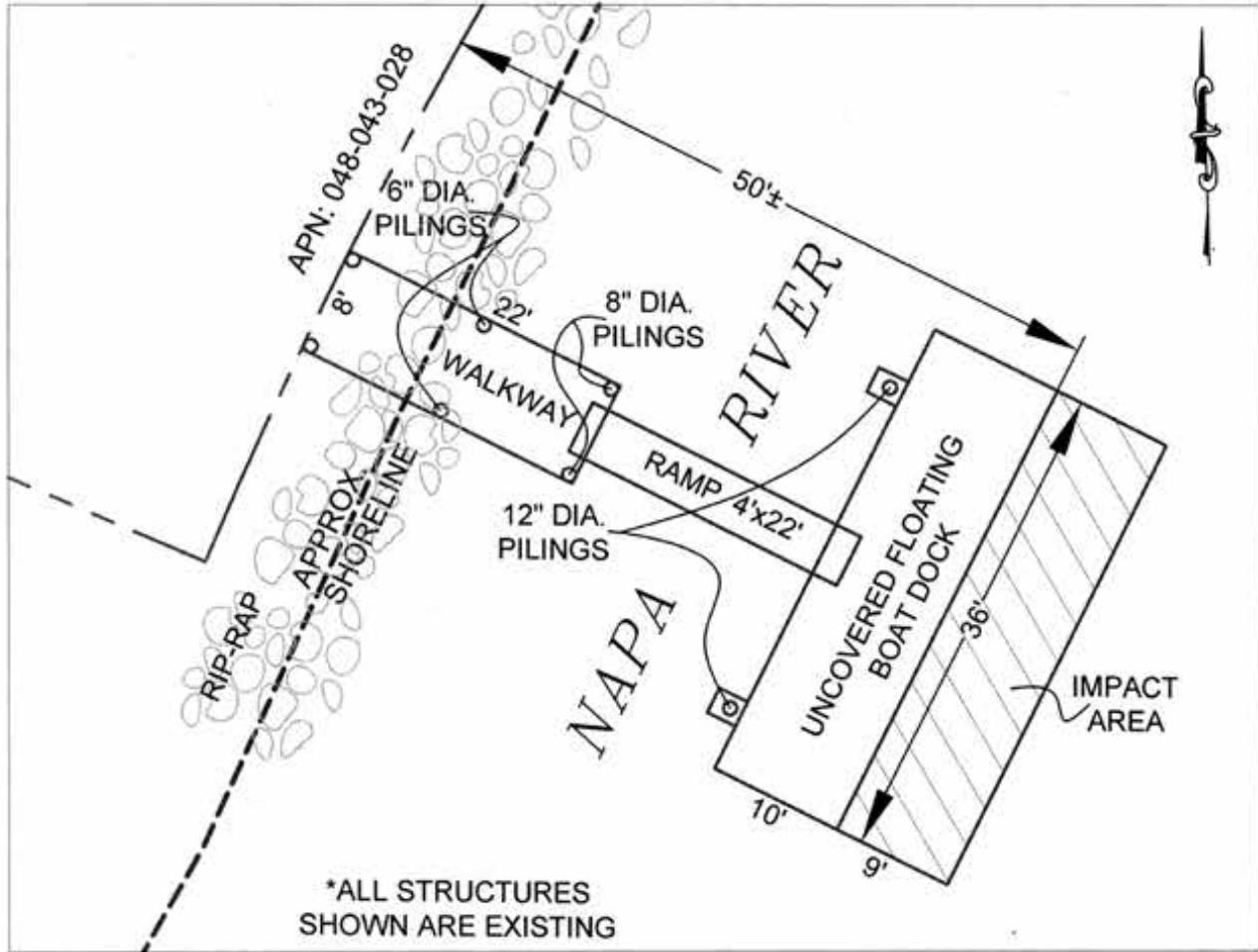


EXHIBIT A



NO SCALE

SITE



1800 MILTON ROAD, NAPA RIVER

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 7022.1
 TENENBERG FAMILY TRUST
 APN:048-043-028
 GENERAL LEASE -
 RECREATIONAL & PROTECTIVE
 STRUCTURE USE
 NAPA 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.