

**STAFF REPORT
C17**

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10/19/17
PRC 7051.1
M. Schroeder

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Edward P. Messerly and Sudha M. Pennathur, as Trustees of the Pennathur Messerly Trust, Under Declaration of Trust dated August 6, 2010

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Napa River, adjacent to 1358 Milton Road, city of Napa, Napa County.

AUTHORIZED USE:

Continued use and maintenance of three existing uncovered floating boat docks, two ramps, walkway, and six pilings.

LEASE TERM:

10 years, beginning April 23, 2017.

CONSIDERATION:

\$345 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, sections 2000 and 2003.

Public Trust and State's Best Interests Analysis:

On May 10, 2007, the Commission authorized a Recreational Pier Lease for three existing uncovered floating boat docks, two ramps, walkway, and six pilings to Sudha M. Pennathur and Edward P. Messerly ([Item C10, May 10, 2007](#)). That lease expired April 22, 2017. Since issuance of the lease, Sudha M. Pennathur and Edward P. Messerly deeded all interest in the upland to Edward P. Messerly and Sudha M. Pennathur, as Trustees of the Pennathur Messerly Trust, Under Declaration of Trust dated August

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6, 2010. The Applicant is now applying for a General Lease – Recreational Use for the continued use and maintenance of three existing uncovered floating boat docks, two ramps, walkway, and six pilings.

The Applicant owns the upland adjoining the lease premises. The subject docks and appurtenant facilities are privately owned and maintained and facilitate recreational boating. 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 land (Pub. Resources Code, § 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 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 occupation of public land.

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 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.

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

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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 lease premises consist of a fixed walkway, three uncovered floating boat docks, two adjustable ramps, and six pilings. The fixed and adjustable components of the uncovered floating boat docks and appurtenant facilities could be susceptible to damage from rising seas and flooding events. 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. 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.

Conclusion:

For all the reasons above, staff believes the issuance of this lease will not substantially interfere with the Public Trust needs at this location, at this time, or 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).

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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 the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, at this time, or for the foreseeable term of the lease, 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 the Applicant beginning April 23, 2017, for a term of 10 years, for the continued use and maintenance of three existing uncovered floating boat docks, two ramps, walkway, and six pilings, 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 \$345, with an

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annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 7051.1

LAND DESCRIPTION

A parcel of tide and submerged land situate on the right bank of the Napa River, lying adjacent to Swamp and Overflow 107, patented September 3, 1877, County of Napa, State of California, and more particularly described as follows:

All those lands underlying an existing three (3) floating boat docks, six (6) pilings, two (2) ramps and a walkway lying adjacent to those parcels as described in Exhibit A in that Grant Deed recorded August 27, 2010 as Document Number 2010-0019658, in Official Records of said County.

TOGETHER WITH any applicable impact area(s).

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

Accompanying plat is hereby made a part of this description.

END OF DESCRIPTION

Prepared February 6, 2017 by the California State Lands Commission Boundary Unit.



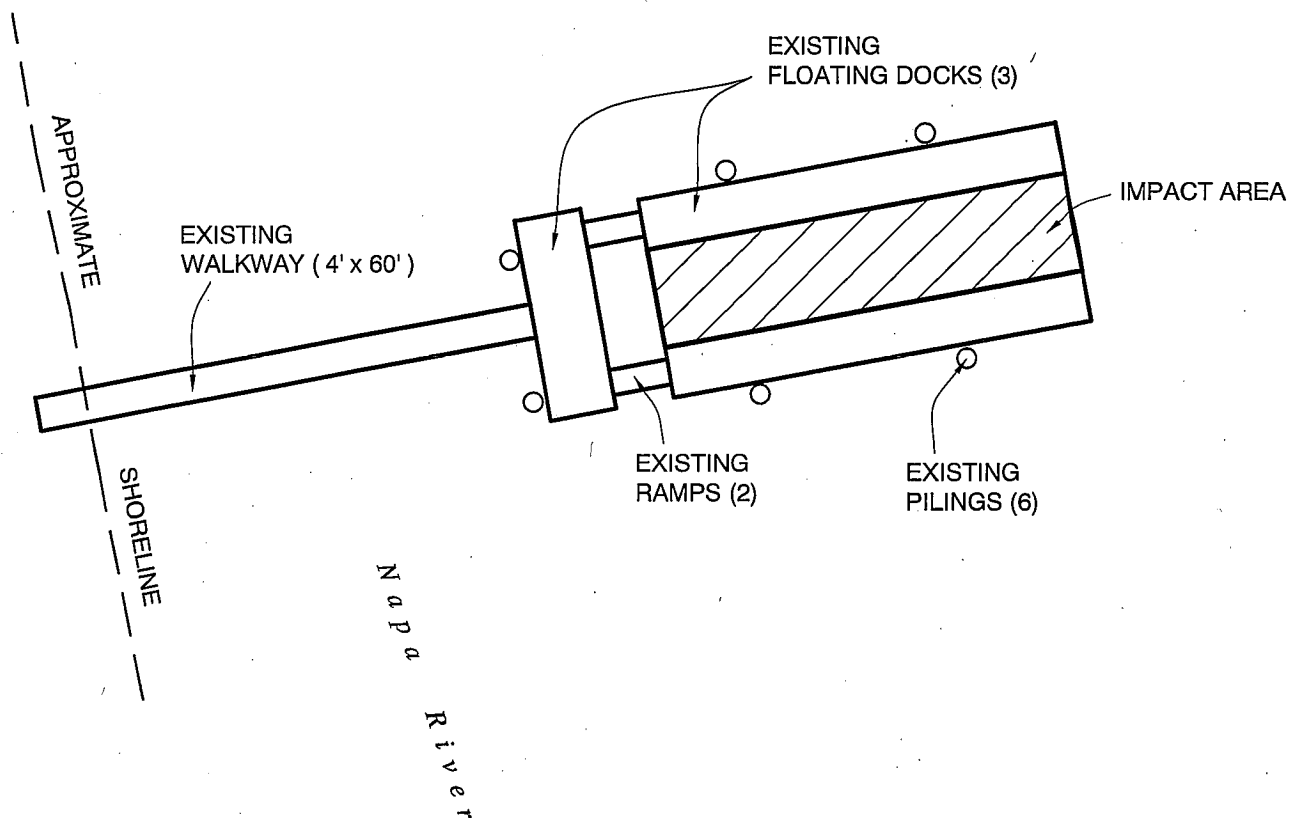


EXHIBIT A

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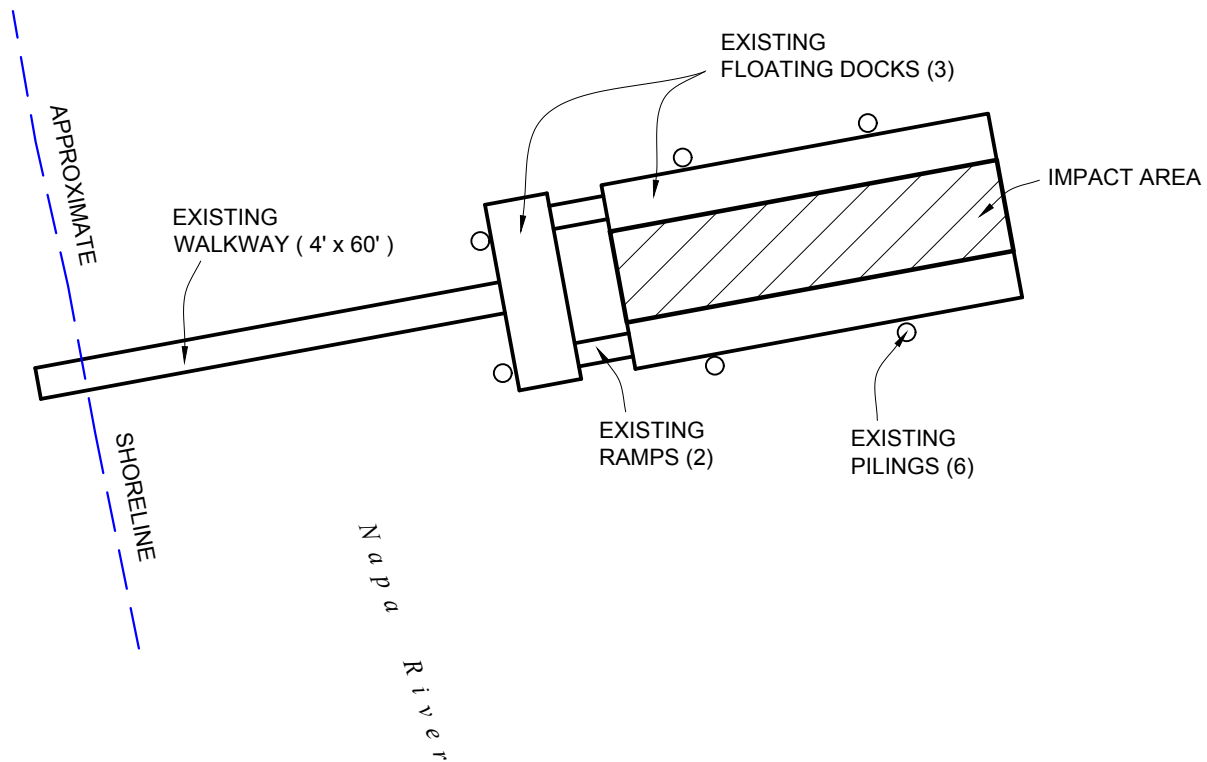
LAND DESCRIPTION PLAT
PRC 7051.1, PENNATHUR MESSERLY TRUST
NAPA COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

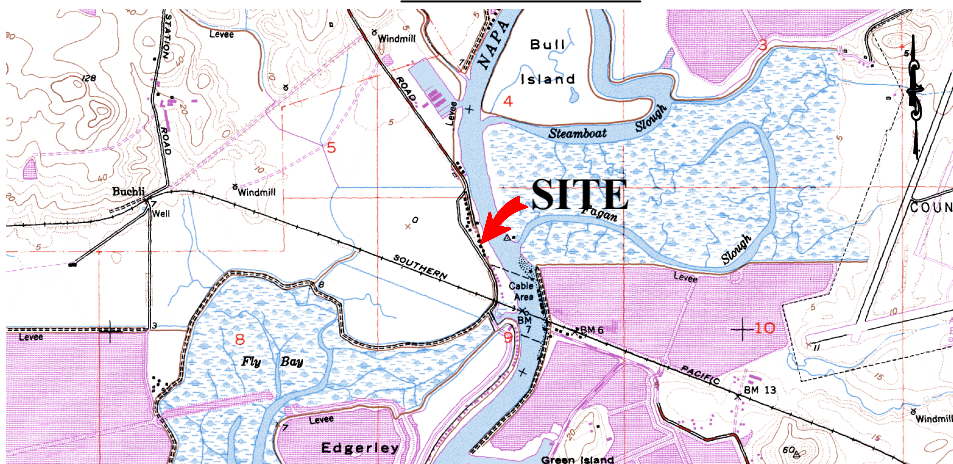
SITE



1358 MILTON ROAD, NAPA RIVER

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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.

Exhibit B

PRC 7051.1
PENNATHUR MESSERLY TRUST
APN 047-350-022
GENERAL LEASE -
RECREATIONAL USE
NAPA COUNTY



MJJ 01/30/2017