

**STAFF REPORT
C31**

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02/27/18
PRC 7855.1
M. Schroeder

**GENERAL LEASE – RECREATIONAL AND
PROTECTIVE STRUCTURE USE**

APPLICANT:

Charles M. Weakley and Laura Kelley-Weakley

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Napa River, adjacent to 1532 Milton Road, city of Napa, Napa County.

AUTHORIZED USE:

Continued use and maintenance of an existing uncovered floating boat dock, ramp, walkway, and two pilings previously authorized by the Commission and an existing deck and retaining wall not previously authorized by the Commission.

LEASE TERM:

10 years, beginning February 27, 2018.

CONSIDERATION:

\$385 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

1. Liability insurance in an amount no less than \$1,000,000 per occurrence.
2. Lessee agrees and acknowledges hazards associated with sea-level rise may require additional maintenance or protection strategies regarding the improvements on the Lease Premises.
3. Restrictions on the expansion or rebuild of the deck if substantially destroyed.

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STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 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 November 21, 2006, the Commission authorized a Recreational Pier Lease for an existing uncovered floating boat dock, ramp, walkway, and two pilings to Carol Dalton ([Item C06, November 21, 2006](#)). That lease expired on October 11, 2016. Since issuance of the lease, ownership of the upland transferred multiple times.

Most recently, on June 10, 2014, the upland transferred to Charles M. Weakley and Laura Kelley-Weakley. The Applicant is applying for a new lease for the continued use and maintenance of an existing uncovered floating boat dock, ramp, walkway, and two pilings previously authorized by the Commission as well as an existing deck and retaining wall not previously authorized by the Commission. The Applicant's deck and retaining wall have been in the Napa River for many years, but the deck and retaining wall had not previously been brought under lease. Staff became aware of the existence of the deck and retaining wall at the time of the issuance of the Recreational Pier Lease, but did not believe it extended out onto sovereign land. Staff has since determined a portion of the deck and retaining wall are waterward of the ordinary high water mark and are therefore within the Commission's leasing jurisdiction.

Staff recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$1,155 for the period beginning June 10, 2014, through February 26, 2018, the day before the new lease becomes effective.

The Applicant owns the upland adjoining the lease premises. The subject dock and appurtenant facilities are privately owned and maintained, used for the docking and mooring of boats (except for the deck) and facilitate recreational boating. Recreational boating is a water-dependent use that is generally consistent with the common law Public Trust Doctrine. The existing deck is not associated with traditional Public Trust uses. The California Legislature has identified private recreational boating facilities as an authorized use of Public Trust land (Pub. Resources Code, § 6503.5).

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The deck is not associated with traditional Public Trust uses. While new decks are generally disfavored, decks that have been in place for years have been permitted, if, as in this instance, they do not significantly interfere with Public Trust needs. The deck is attached to the home situated on the upland parcel, and does not interfere with the public right of navigation or access. However, the lease contains provisions that the deck may not be expanded or rebuilt if substantially destroyed.

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 consist of a retaining wall; a walkway; a mobile, rolling ramp; two 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

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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. In addition, the walkway may experience periodic or continuous inundation with rising water levels and more frequent flooding, creating a public access safety hazard. Finally, 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.

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, 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 issuance of the lease is exempt from the requirements of the California Environmental Quality Act

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(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.

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the issuance of the lease 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, and for the foreseeable term of the lease, and is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of compensation from the Applicant in the amount of \$1,155 for unauthorized occupation of State lands for the period beginning June 10, 2014, through February 26, 2018.
2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning February 27, 2018, for a term of 10 years, for the continued use and maintenance of an existing uncovered floating boat dock, ramp, walkway, and two pilings previously authorized by the Commission and an existing deck and retaining wall 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; annual rent in the amount of \$385, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 7855.1

LAND DESCRIPTION

A parcel of tide and submerged land, whether filled or unfilled, situate in the bed of the Napa River lying adjacent to Swamp and Overflowed Land Survey 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, pilings (2), walkway, ramp, retaining wall and deck lying adjacent to and easterly of those lands as described in "Exhibit A" of that Grant Deed, recorded June 10, 2014 in Document Number 2014-0011524 in Official Records of said County.

TOGETHER WITH a 9 foot impact area.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the said river.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

PREPARED 8/16/16 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



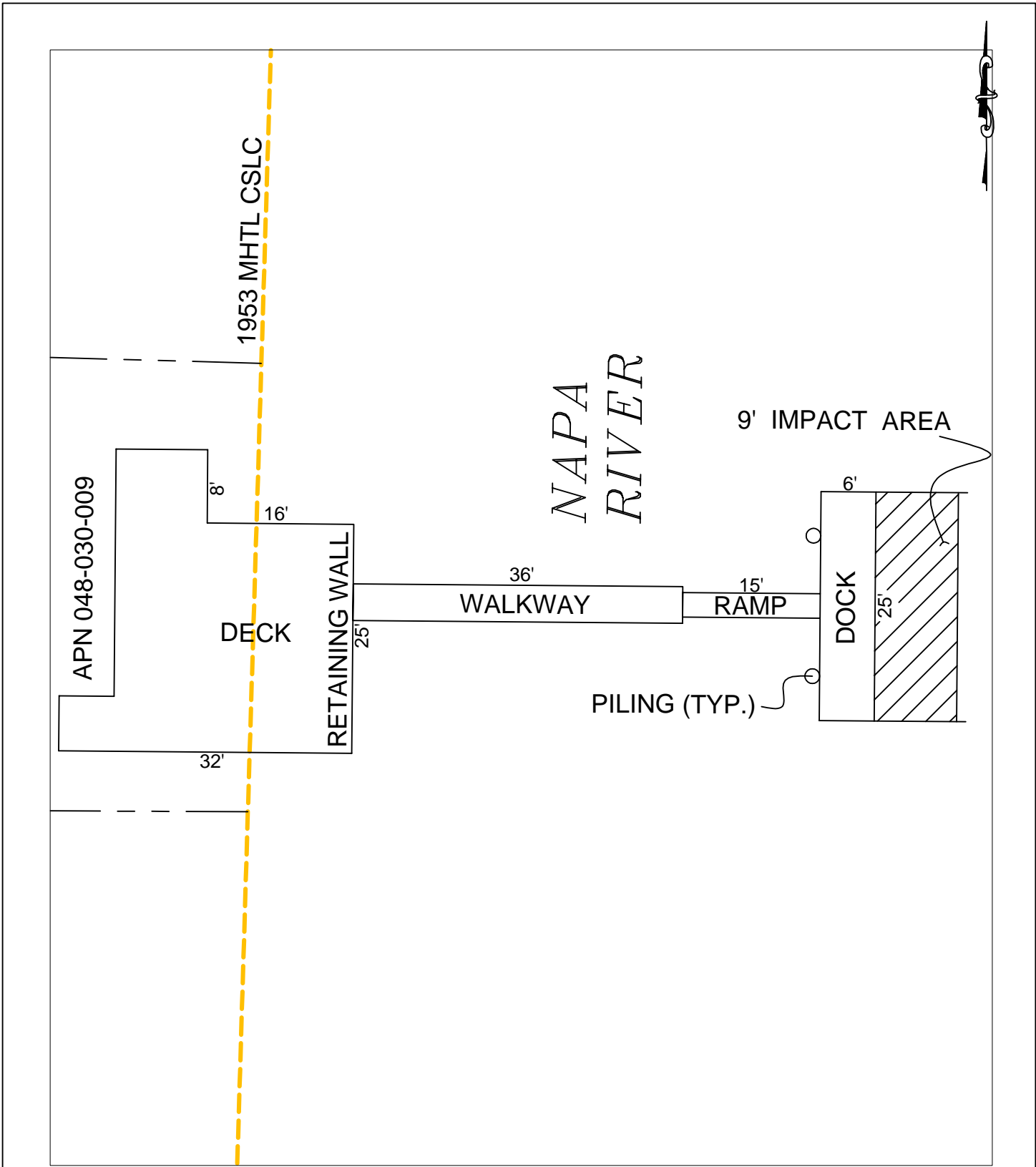
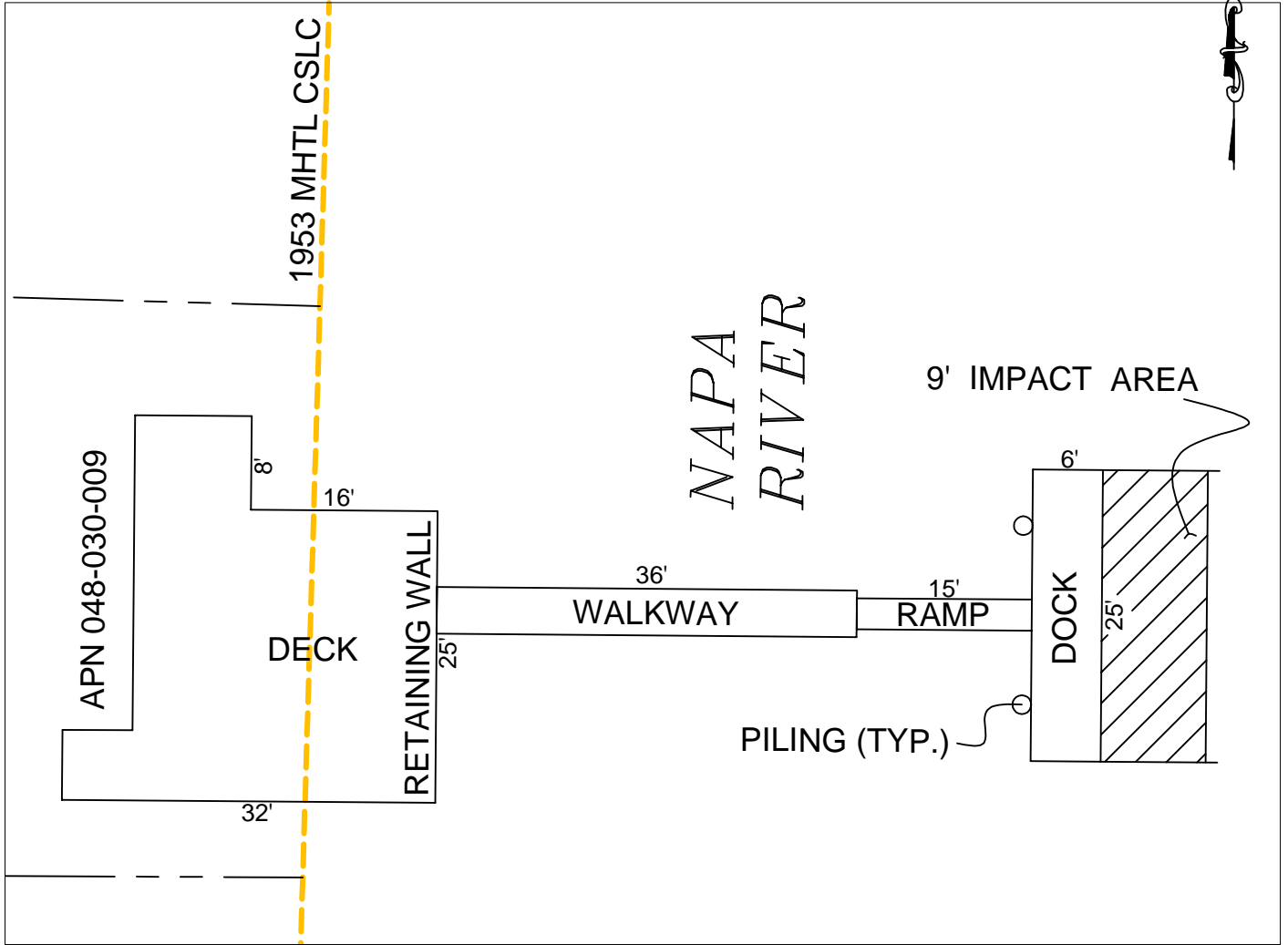


EXHIBIT A

NO SCALE

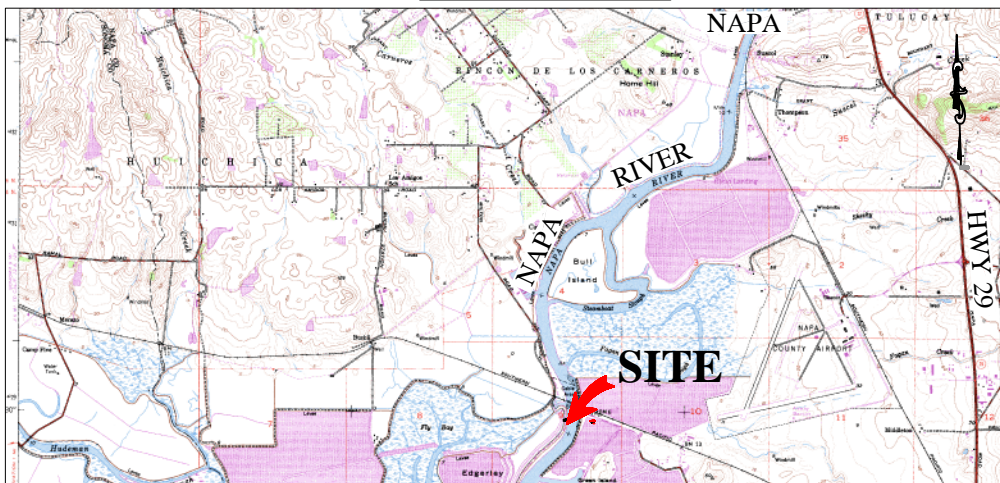
SITE



1532 Milton Road, near Napa

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 7855.1
 WEAKLEY
 APN 048-030-009
 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.

MJF 12/01/17