

Staff Report 26

APPLICANT:

Jacqueline D. Wilder, as Trustee of The Jacqueline D. Wilder 1987 Revocable Trust UDT dated June 23, 1987

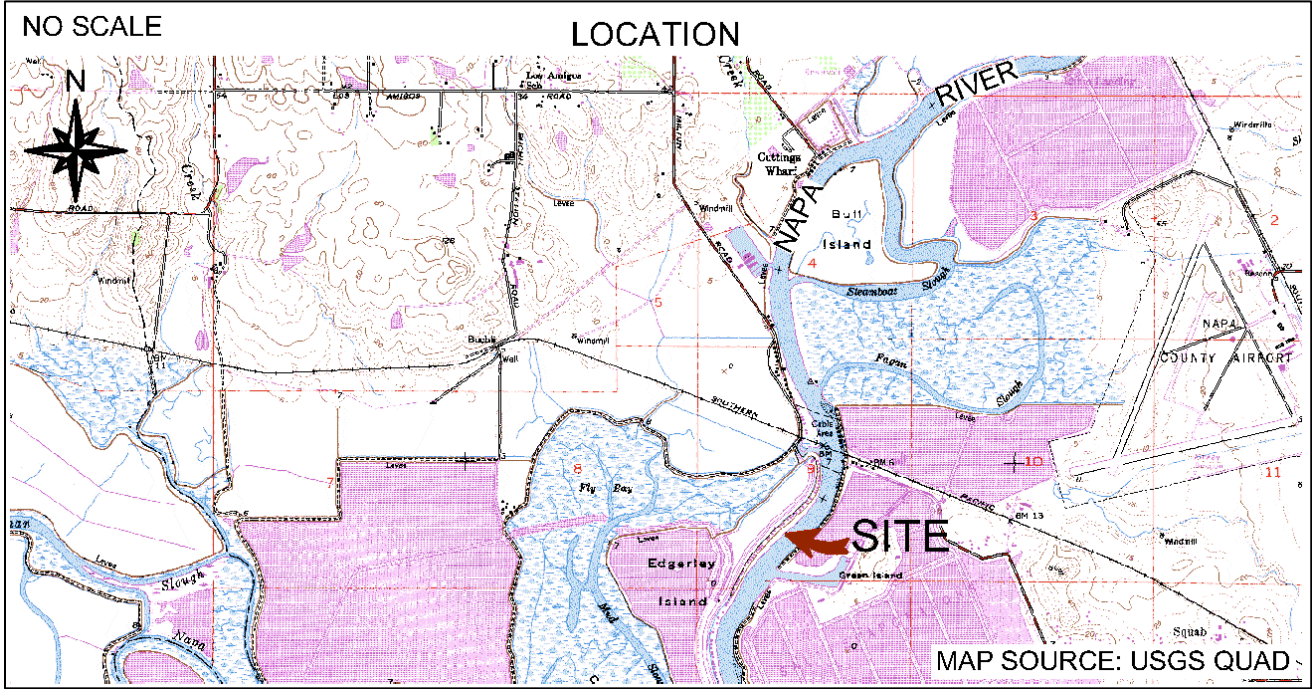
PROPOSED ACTION:

Issuance of a General Lease – Recreational and Protective Structure Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Napa River, adjacent to 1632 Milton Road, near Napa, Napa County (as shown in Figure 1).

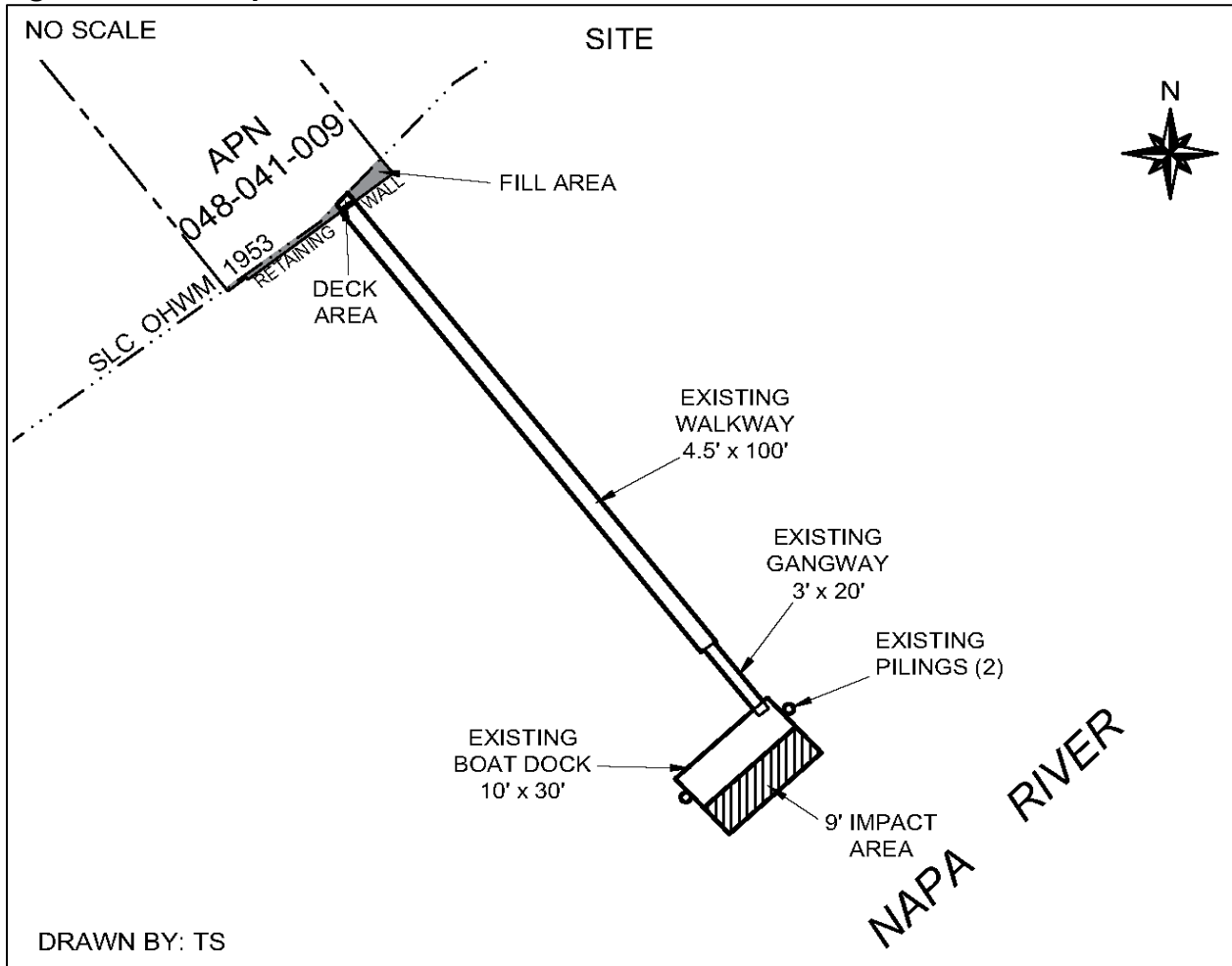
Figure 1. Location



AUTHORIZED USE:

Use of a boat dock, two pilings, gangway, and walkway previously authorized by the Commission and an existing deck area and retaining wall with fill not previously authorized by the Commission (as shown in Figure 2).

Figure 2. Site Map



NOTE: This depiction of the lease premises is based on unverified information provided by the Applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

TERM:

10 years, beginning June 7, 2024.

CONSIDERATION:

\$1,084 per year, with an annual Consumer Price Index adjustment; and \$59 for the unauthorized occupation of state land for the period prior to June 7, 2024.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Restrictions on the expansion or rebuild of the deck if substantially destroyed.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 6501.1, 6503, 6503.5, and 6505.5; California Code of regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE’S BEST INTERESTS:

On June 19, 2014, the Commission authorized issuance of a General Lease – Recreational Use to Jacqueline D. Wilder, trustee of the Wilder Family 1985 Revocable Trust Dated June 29, 1985, for the use an existing boat dock, two pilings, gangway, and walkway previously authorized by the Commission ([Item 27, June 19, 2014](#)). On February 4, 2019, staff performed a revision of rent as directed by lease terms and conditions ([Item 27, February 4, 2019](#)). This resulted in annual rent being revised from \$243 per year to \$290 per year. This lease expired on March 21, 2024.

On December 10, 2020, ownership interest in the upland parcel was transferred to Jacqueline D. Wilder, as Trustee of The Jacqueline D. Wilder 1987 Revocable Trust UDT dated June 23, 1987. Staff was not notified of this transfer of ownership, nor was an assignment of lease sought; however, the same individuals exercise controlling authority over both Trusts.

The Applicant is now applying for a General Lease – Recreational and Protective Structure Use, for the use of an existing boat dock, appurtenant facilities, deck, and retaining wall with fill. The existing deck and retaining wall with fill have existed for many years at this location. Staff has done extensive analyses of the water boundaries in this area and determined that these improvements are waterward of the ordinary high-water mark and are therefore within the Commission’s leasing jurisdiction. Staff recommends issuance of a General Lease – Recreational and Protective Structure Use to the Applicant to take effect on June 7, 2024.

Staff recommends that the Commission accept compensation for the boat dock, two pilings, gangway, and walkway from the Applicant for the unauthorized occupation of State land in the amount of \$59 for the period beginning March 22, 2024 through June 6, 2024, the day before the new lease becomes effective. The

lease provisions regarding indemnity for the existing deck and retaining wall with fill will apply for the entire period of unauthorized occupation prior to June 7, 2024, the first day of the new lease.

The subject boat dock, two pilings, gangway, and walkway are privately owned and maintained by the Applicant. The boat dock, two pilings, gangway, and walkway all serve to 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 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 retaining wall with fill is not associated with traditional Public Trust uses, however this improvement has existed for many years, occupies a very small area, and does not significantly interfere with Public Trust needs.

The subject boat dock, two pilings, gangway, and walkway are located directly waterward of the upland property and occupy a relatively small area of the river. The proposed lease will not interfere with navigation nor substantially interfere with any Public Trust needs at this time or for the foreseeable future.

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, does not grant the lessee exclusive rights to the lease premises, and reserves an easement to the public for Public Trust-consistent uses. Upon termination of the lease, the lessee may be required to remove all improvements from State land 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, more frequent and intense storm events, and increased flooding and erosion, affect both open coastal areas and inland waterways in California. The leased facilities are located on the lower Napa River, in a tidally influenced site that includes salt and brackish water marshes vulnerable to shallow coastal flooding at current sea levels and that will be at higher risk of flood exposure given projected scenarios of sea level rise.

The California Ocean Protection Council updated the *State of California Sea-Level Rise Guidance* in 2018 to provide a synthesis of the best available science on sea level rise projections and rates. Commission staff evaluated the “high emissions,” “medium-high risk aversion” scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. The San Francisco tide gauge was used for the projected sea level rise scenario for the lease area as listed in Table 1.

Table 1. Projected Sea Level Rise for San Francisco

Year	Projection (feet)
2030	0.8
2040	1.3
2050	1.9
2100	6.9

Source: Table 13, [State of California Sea-Level Rise Guidance: 2018 Update](#)

Note: Projections are with respect to a 1991 to 2009 baseline.

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 Plan: 2018 Update](#) (California Natural Resources Agency 2018), 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 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. Near-coastal areas will be exposed to increased wave force and run up, potentially resulting in greater bank erosion than previously experienced. Finally, in tidally influenced waterways, flooding and storm flow will likely increase scour, decreasing bank stability and structure.

The lease premises are in an area that is designated as a Special Flood Hazard Zone by the Federal Emergency Management Agency, and the facilities could be

susceptible to damage from both rising seas and flooding events. The floating boat dock and gangway are adaptable to higher water levels allowing them to rise and fall with storms and droughts and increasing their resiliency to some climate change impacts, but they may require more frequent maintenance or replacement to ensure continued function during and after storm seasons and to avoid dislodgement of the facilities. However, the pilings, walkway, deck, and retaining wall are fixed and therefore more vulnerable to sea level rise and more frequent flood events. These structures may experience periodic or continuous inundation with rising water levels and more frequent flooding, creating a public access safety hazard. These structures may need additional fortification or repair and maintenance to ensure they do not become dislodged or degraded, as they could pose risks to public safety and navigation.

The bank is protected with a concrete block retaining wall which is at risk of scouring, loss of backfill, slope failure, and accelerated deterioration from currents, floods, and increased precipitation. As sea levels rise, the retaining wall will provide decreasing protection against flood waters, increasing the vulnerability of the retaining wall and upland parcel. The retaining wall may also increase the vulnerabilities of riparian habitat and species. Compared to naturally vegetated riverbanks, the flat and vertical design of the bulkhead can increase river flow rates along the bank and accelerate erosion of the bank immediate downriver of the bulkhead, potentially damaging fish and wildlife habitat. Alternative bank protection strategies, such as bank restoration and revegetation, may be required to protect the anchoring points of the other structures in the lease premise and reduce flood impacts to the upland parcel (not within the lease area). Additionally, maintaining a wide buffer between the bank and upland improvements will minimize potential impacts from flooding and erosion.

Regular maintenance, as required by the lease, will reduce the likelihood of severe structural degradation to the upland structures. 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 Public Trust needs at this location, at this time, and for the term of the proposed lease; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands. If the Commission denies the application, the Applicant may be required to remove the improvements and return the premises to their original condition. The lessee has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Leading Climate Activism" and "Meeting Evolving Public Trust Needs" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. 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 14, section 15301.

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

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 14, section 15301.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

1. Find that the boat dock, two pilings, gangway, and walkway will not substantially impair the public rights to navigation and fishing or substantially interfere with 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.

2. Find that the existing and continuing use of the deck and retaining wall with fill is not generally associated with Public Trust uses, but the current use does not substantially interfere with Public Trust needs and values at this location, at this time.
3. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

1. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning June 7, 2024, for a term of 10 years, for the use of a boat dock, two pilings, gangway, and walkway previously authorized by the Commission and an existing deck area and retaining wall with fill not previously authorized by the Commission in the Napa River; annual rent in the amount of \$1,084, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.
2. Accept compensation from the Applicant in the amount of \$59, for the unauthorized occupation of State land for the period prior to June 7, 2024.