

Staff Report 43

APPLICANT:

Derek Thew and Kimberly Smith

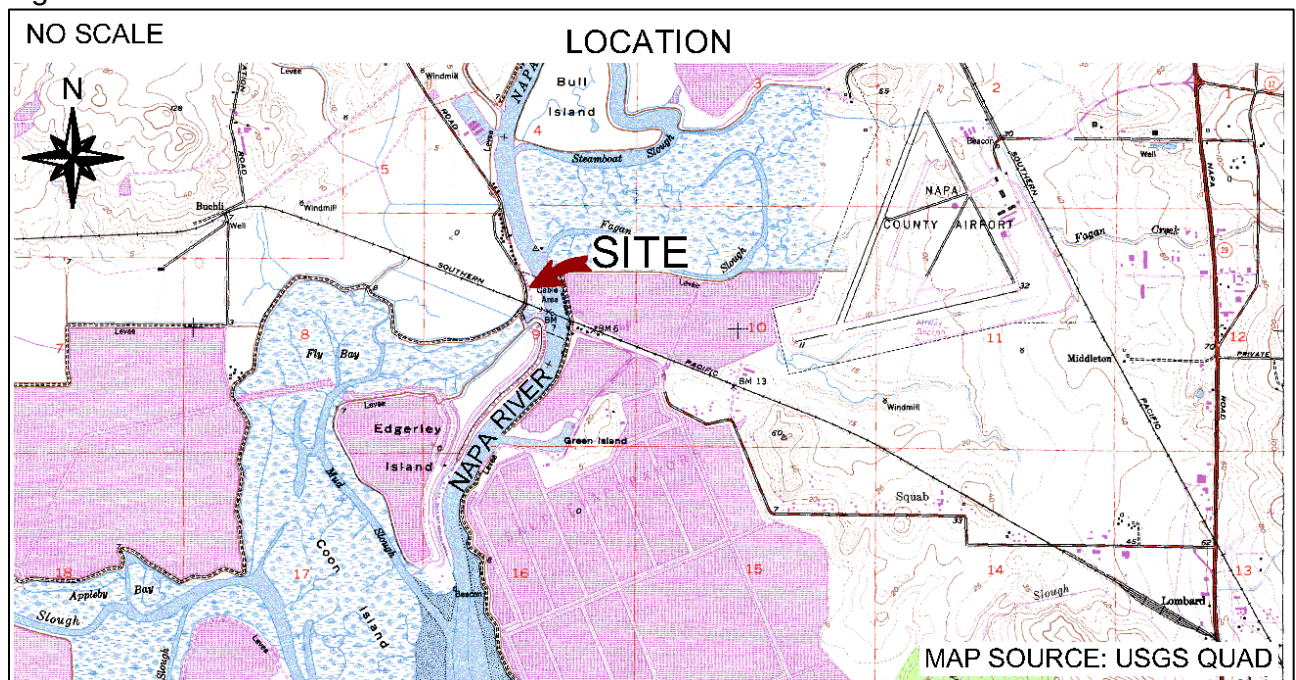
PROPOSED ACTION:

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

AREA, LAND TYPE, AND LOCATION:

Filled and unfilled sovereign land located in the Napa River, adjacent to 1428 Milton Road, Napa, Napa County (as shown in Figure 1).

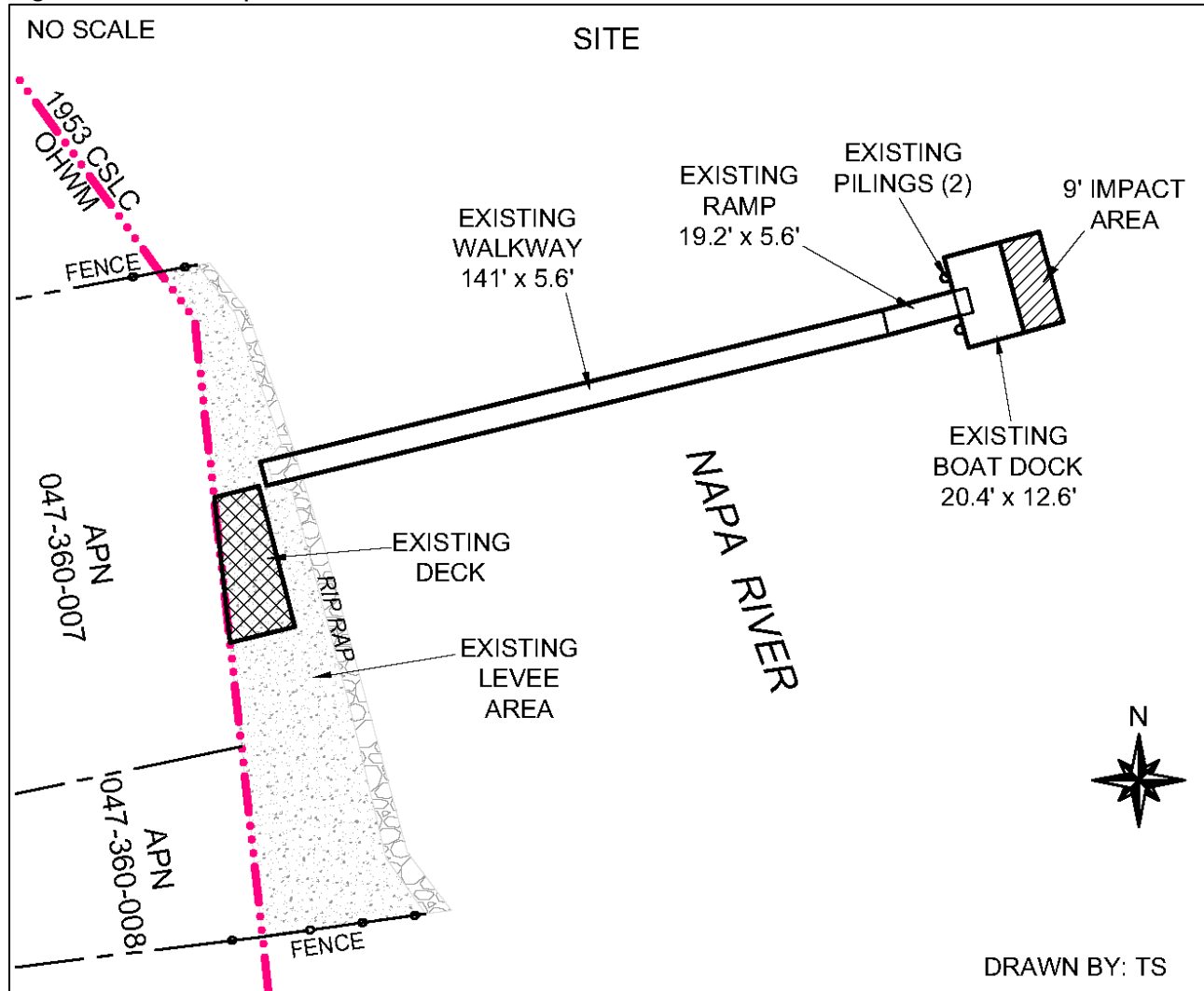
Figure 1. Location



AUTHORIZED USE:

Use of an existing deck, dock, appurtenant facilities, fence, rip rap, and levee area (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 February 1, 2026.

CONSIDERATION:

\$1,128 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.
- Restrictions on the expansion or rebuild of improvements within the levee area 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.

BACKGROUND:

In general, the State's sovereign ownership interest in the Napa River is waterward of the ordinary high-water mark (OHWM), as is generally shown by the Mean High Tide Line (MHTL), as that line existed prior to any fill or artificial accretion. The Napa River at this location is natural, subject to artificial conditions (levees, dredging, fill), tidal, and navigable. The upland properties at this location were originally sold as Swamp and Overflowed Land (S&O) Location 840, patented on July 3, 1893. Commission staff performed a survey in 1953 of the OHWM of the Napa River, which was filed September 14, 1954 (BK1 PG101-113). Commission staff has determined that the 1953 OHWM survey is the best evidence of the last natural boundary prior to the upland development and fill placement, that has artificially fixed the boundary at this location.

The Commission has had lease agreements with some property owners with improvements extending onto State-owned sovereign lands. Staff began the initial compliance efforts in late 2019 to bring the remaining properties under lease. This effort was stalled due to the COVID-19 pandemic.

In 2019, Commission staff commissioned an aerial photogrammetric survey to locate existing structures and conditions as of the date of the survey. In addition, staff recovered monuments from the 1953 survey to tie the two surveys together. Using this data, staff identified the areas of encroachment on State land waterward of the 1953 OHWM.

On April 11, 2024, staff conducted an aerial drone survey to update imagery and existing structures and topography. Areas of encroachment were updated based on new, removed, or modified facilities or structures.

PUBLIC OUTREACH:

Over time, the number of active leases has slowly declined leaving many of the property owners with unauthorized facilities on State lands. To remedy the situation, the Commission's compliance staff conducted public outreach efforts to educate the community on the Commission's jurisdiction, leasing practices, and lease application process. In addition to the community residents, the outreach effort included State and local legislators for the area and other regulatory entities.

In May 2024, staff met with State Senator Bill Dodd and Congressman Mike Thompson's offices and in early June 2024, with Napa County Supervisor Joelle Gallagher to give a briefing on the public outreach meetings.

On June 22, 2024, Commission staff hosted two public meetings regarding the use of State sovereign land for privately owned facilities located in the Napa River and developed a frequently asked questions document. These meetings provided background information on the Commission and outlined the requirement of a lease to use State sovereign land and offered property owners and interested parties an opportunity to ask staff questions on the Commission's land ownership, jurisdiction, leasing practices, and lease application process.

In November and December 2024, staff met with a small group of Milton Road residents representing the community to answer additional questions.

Over the course of the outreach effort, through meetings, many phone conversations, and email communications, staff has worked with property owners and their representatives to come to an agreement on lease terms and conditions acceptable to the parties involved, and also in the best interests of the State. Staff and stakeholders participated in negotiations resulting in changes and adjustments to the proposed lease provisions. Additionally, in response to input from the community, a new Category 1 San Pablo Bay benchmark ([Item 3, February 25, 2025](#)) and a revision of the Category 2 Napa River benchmark ([Item 3, April 2, 2025](#)) were approved by the Commission.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On July 5, 2025, the Applicant applied for a General Lease – Recreational and Protective Structure Use, for an existing deck, dock, appurtenant facilities, fence, rip rap, and levee area that have existed at this location for many years but have not been previously authorized by the Commission.

The subject dock and appurtenant facilities are privately owned and maintained by the Applicant. The facilities 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.)

While the existing rip rap within the Lease Premises primarily serves to protect the property of the upland owner, it also provides some ancillary public benefits by stabilizing the bank, preventing erosion, supporting the integrity of the river, and helping to ensure that the river remains navigable. Loss or degradation of this structure could result in property damage and public safety concerns. The bank protection occupies a small area and does not negatively impact the Public Trust uses in this location at this time.

The existing deck, fence, and levee area are not associated with traditional Public Trust uses. While improvements in the levee area are generally disfavored, this area has been in place for years and does not significantly interfere with Public Trust needs. The levee area is adjacent to the home situated on the upland parcel and does not interfere with the public right of navigation. However, the lease contains provisions that the levee area may not be expanded or rebuilt if improvements are substantially destroyed.

There is no public access at this location because the private upland property directly abuts the retaining wall that defines the limits of the river. Virtually the entire Napa River along Milton Road has been developed for many decades with closely spaced houses, leaving little to no vertical access to the river.

Staff recommends issuance of a General Lease – Recreational and Protective Structure Use to the Applicant, effective on February 1, 2026. The subject facilities 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 term of the proposed lease. 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. Upon termination of the lease, the lessee may be required to remove all improvements from State land and restore the lease premises to their natural 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:

INTRODUCTION:

The climate crisis and rising sea levels are impacting California's coastal and inland waterways now. Likely impacts to the lease premises include, but are not limited to, sea level rise, saltwater intrusion, prolonged drought, extreme heat, and changes to the intensity and timing of precipitation events. These impacts can exacerbate natural hydrological processes such as erosion, scour, and sedimentation. These impacts may affect the existing structures subject to the proposed lease, located on Milton Road on the west bank of the Napa River.

DATA & PROJECTIONS:

Water levels in tidally-influenced rivers will rise as sea levels rise. The California Ocean Protection Council updated the [State of California Sea Level Rise Guidance](#) in 2024 to provide a synthesis of the best available science on sea level rise projections and rates for multiple emissions scenarios. Commission staff evaluated the “intermediate-high” and “high” scenarios due to the vulnerability and exposure of the lease location and the continued global reliance on fossil fuels. 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	Intermediate-High (feet)	High (feet)
2040	0.7	0.8
2050	1.0	1.3
2060	1.5	2.0
2070	2.2	2.9

Source: Table 6, State of California Sea Level Rise Guidance: 2024 Update

Note: Projections are with respect to a 2000 baseline.

The Milton Road area floods during high tides, storm surges, and high river flows during extreme rain events, with substantial floods occurring historically about once

per decade.¹ Sea level rise will increase the flood risk to Milton Road. To evaluate risks to the lease premises and structures from sea level rise, Commission staff used the [Adapting To Rising Tides](#) and [Our Coast Our Future](#) online sea level rise mapping tools. At present sea levels, the Napa River at Milton Road regularly floods and the river banks are subject to erosion, which could potentially damage any structures or improvements on the lease premises. Episodic or short-term events, such as extreme storms, very high or King tides, and El Niño events, alone or in combination, increase the vulnerability of the lease premises and expose it to higher water levels and stronger wave runup, overtopping, and erosion. At one foot of sea level rise (estimated to occur around 2050, based on Table 1), the levees protecting the Milton Road area could be overtopped at least once per year, causing widespread flooding. At two feet of sea level rise (estimated to occur between 2060 and 2070, based on Table 1), the levees could be overtopped on a regular basis during high tides. As sea level rises, it will increase the frequency of flooding from high tides, King tides, and storms.

Climate change is also driving changes to precipitation and temperature patterns in the Bay Area ([California's Fourth Climate Change Assessment, San Francisco Bay Area Regional Report, 2018](#)). Precipitation in the region will exhibit high year-to-year variability characterized by periods of drought or large storms. These large rain events represent a substantial flood risk to the lease area. The frequency of minor and moderate flooding (flooding events defined as disruptive to damaging), attributed to higher water levels, is expected to increase five to ten orders of magnitude by 2100, according to [NOAA's 2022 Sea Level Rise Technical Report](#). Hotter and drier conditions also increase the risk of wildfire in the region which can affect and alter the watershed ([California's Fourth Climate Change Assessment, San Francisco Bay Area Regional Report, 2018](#)). Severe fire events can cause increased runoff and bank erosion.

Ground settlement and earthquakes are two other factors that will increase the risk of flooding in the area. Settlement is the process of soil compaction that occurs over time, lowering the ground surface elevation. The rate of settlement in the area is about 0.12 inches per year, which would result in a projected loss of about one foot of elevation over this century², reducing the height of the levee and increasing

¹ [Edgerly Island and Ingersoll Tract Flood Management Plan and Adaptation Plan, 2018](#)

² [Edgerly Island and Ingersoll Tract Flood Management Plan and Adaptation Plan, 2018](#)

its susceptibility to overtopping by floodwaters. Settlement can be accelerated by the installation of heavy structures, like concrete or steel, materials commonly used for flood protection walls, and, at times, in levee construction. Milton Road also is located within a zone of high earthquake activity, with active faults found throughout the surrounding region (see: [USGS Map of known active geologic faults in the San Francisco Bay region](#)). A recent earthquake in 2014 caused new seepage paths to develop within the Milton Road levee and may have caused cracking in some of the low floodwalls on the levee crest ([Napa County Flood Control and Water Conservation District and Napa River Reclamation District's 2018 Flood Management Plan and Adaptation Study](#)). Ground shaking also has the potential to cause rapid slope failure of levees, particularly if they are saturated from recent storms or floods.

ANALYSIS:

The lease premises are likely to experience more extreme conditions over the lease term than in the past, due to climate change. Changes to the timing and amount of runoff from the higher elevations of the watershed, stronger storm surge, and rising water levels will result in higher flood risks. Bank and levee stability may be compromised due to increased channel erosion and undercutting from more intense precipitation and floods. Structures on the lease premises may be exposed to saltier water and corrode faster than before. Ground settlement and seismic instability may exacerbate these risks affecting the levees and other protective structures and flood management strategies.

Several interrelated efforts are underway to improve flood management along the Napa River. Napa County has several flood protection projects in planning and implementation stages, including a [project](#) to restore the floodplains around the City of Napa. Reducing flooding pressure upstream should help decrease the flood risk in the Milton Road area. The Napa County Flood Control and Water Conservation District and Napa River Reclamation District partnered in 2018 on a [Flood Management Plan and Adaptation Study](#) to better understand the options for protecting and adapting the area of Milton Road (Edgerly Island and the Ingersoll Tract). That report identified three options for flood management, including two options that call for installing a regional floodwall. The baseline for all three options was enhanced coordination among residents, community service providers, and agencies to plan and support individual floodproofing actions and flood response planning, as well as the creation of a communal levee repair fund

and part-time levee coordinator that could help residents secure grant funding and permits for levee repair work.

RECOMMENDATIONS:

To reduce the likelihood of adverse impacts to the lease premises and improvements, the lessee should consider the following adaptation strategies to improve resiliency to climate change: 1) coordinate with the Napa County Flood Control and Water Conservation District, consistent with the Napa River Reclamation District's 2018 [Flood Management Plan and Adaptation Study](#)³, for community-wide flood planning and adaptation approaches to effectively maintain the levee and support flood protection⁴; 2) regularly inspect fixed structures and replace damaged parts when necessary; 3) when exposure to flooding impacts improvements in the lease, work with local permitting agencies to consider elevating or relocating structures; and 4) regularly inspect floating structures for any damage to joints, brackets, hinges, and piling hoops, and replace as necessary. Lessee agrees that any significant changes to the lease premises may require environmental analyses and additional permitting approval from various governing agencies.

Regular maintenance, as referenced in the lease, may 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 the effects of climate change, including sea level rise. For more information regarding nature-based strategies for shoreline adaptation, please refer to the [2023 Shoreline Adaptation and the Public Trust](#) report.

³ Please refer to Section 4 of the Flood Management Plan and Adaptation Study for other 'Suggested Next Steps,' including opportunities for grant funding and integrating with regional plans and flood management projects.

⁴ Taylor-Burns, R., Reguero, B.G., Barnard, P.L. *et al.* Nature-based solutions extend the lifespan of a regional levee system under climate change. Sci Rep 15, 16218 (2025) <https://doi.org/10.1038/s41598-025-99762-7>

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 15061.

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 dock and appurtenant facilities 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, fence, rip rap, and levee area 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:

Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning February 1, 2026, for a term of 10 years, for an existing deck, dock, appurtenant facilities, fence, rip rap, and levee area; annual rent in the amount of \$1,128, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.