

**STAFF REPORT
C24**

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06/21/18
PRC 6960.1
S. Avila

GENERAL LEASE – RESIDENTIAL AND RECREATIONAL USE

APPLICANT:

Barry E. Sheridan and Lorna M. Sheridan

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Napa River, adjacent to 1436 Milton Road, city of Napa, Napa County.

AUTHORIZED USE:

Continued use and maintenance of an existing portion of residence and deck, a walkway, pilings, and an uncovered floating boat dock.

LEASE TERM:

3 years, beginning June 21, 2018.

CONSIDERATION:

\$511 per year, with an annual Consumer Price Index adjustment, for the term of the lease; with the rent of any future lease, if authorized, to be determined by rental options available to the Commission at that time. Lessee may elect to pay rent for the entire 3-year term of the lease in the amount of \$1,533 at the time of the first annual payment.

SPECIFIC LEASE PROVISIONS:

1. Liability insurance in an amount no less than \$2,000,000 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 and residence if substantially destroyed.
4. Future rent to be determined by rental options available to the Commission at that time, if a subsequent lease is authorized.

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5. Consideration for the lease term reflects a temporary and negotiated amount that does not correlate with the value of the Lessor's interest at the time the lease was executed. Lessee understands that subsequent rents will likely be substantially higher than the current rent.

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 February 26, 1996, the Commission authorized a General Lease - Recreational and Residential Use, for an existing portion of residence and deck, walkway, pilings, and uncovered floating boat dock to Donna G. Cave ([Item C27, February 27, 1996](#)). The lease expired on October 7, 2010. In the ensuing years, staff and Ms. Cave entered negotiations for a new lease; but various issues, including discrepancies between the historic depictions of the improvements and current aerial photographs, created delays the effect of which was that Ms. Cave's lease went into holdover. Ms. Cave continued to pay rent while in holdover up until the transfer of the property.

On September 30, 2014, ownership of the upland property transferred to Barry E. Sheridan and Lorna M. Sheridan (Applicant). In October 2015, when the transfer of ownership was discovered, staff conducted a site visit at the subject parcel to obtain current dimensions. The Applicant is applying for a new General Lease – Residential and Recreational Use, for the continued use and maintenance of an existing portion of residence and deck, walkway, pilings, and uncovered floating boat dock.

The Applicant states they were not informed of the lease obligation at the time of their purchase of the upland property. Additionally, because the law changed to require rent for water-dependent private recreational uses as well as non-water-dependent uses and because staff has now determined that a much larger portion of the residence is on State lands, the rent for this lease has increased substantially from the previous rent.

Staff understands that there is currently a dispute between the Applicant and Ms. Cave to resolve the disclosure issue. Ms. Cave is claiming that staff's delay in informing her that new information was discovered about the relative location of the house and the property boundary has

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contributed to the dispute. Staff acknowledges the significant increase in the rent associated with the increased area of encroachment plays a role in the dispute. The Commission has not been named in or directly threatened with litigation by the parties yet. However, both parties have submitted Public Records Act requests and expressed significant frustration with staff on this issue. Additionally, the Commission has received a formal invitation to participate in the ongoing mediation between the parties. Depending upon the outcome of the mediation between the parties, there is a possibility that one or both could initiate litigation against the Commission.

Due to the disclosure dispute, staff's processing issues that delayed the increase in rent until after the sale, and the absence of information concerning why the previous lease did not include the entire area of encroachment of the residential structure, staff believes it is reasonable for the Applicant to pay the same rate that Ms. Cave was paying at the time of the sale for a limited lease term.

For all the reasons above, staff recommends the Commission approve a negotiated rent amount in this circumstance. Staff is recommending a short lease term of 3 years for the proposed lease. During this 3-year lease term, staff will work to establish a Category 2 Benchmark rate for non-water dependent uses for the Milton Road area, and continue to conduct outreach to the affected property owners in the Milton Road area in an effort to bring everyone in the area with improvements within the Commission's jurisdiction of the Commission under lease. The establishment of this benchmark will assist the Commission in setting rent amounts for future leases.

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 portion of residence and 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 California Legislature has identified private recreational boating facilities as an authorized use of Public Trust land (Pub. Resources Code, § 6503.5).

The portion of residence and deck are 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 portion of residence and deck are situated on the upland parcel and are partially

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located on State sovereign land do not interfere with the public right of navigation or access. However, the lease contains provisions that the deck and portion of residence located on sovereign land 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 3-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 Flood Zone by the Federal Emergency Management Agency, and the risk of flood exposure for the lease premises is likely to increase with time. By 2030, this region could see up to 1 foot of sea-level rise (from year 2000 levels), 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

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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 floating boat dock is adaptable to variable water levels, allowing it to rise and fall with storms and droughts and increasing its resiliency to some climate change impacts, but may require more frequent maintenance to ensure continued function during and after storm seasons and to avoid dislodgment of dock facilities. The fixed walkway, fixed deck, fixed portion of residence, 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 Public Trust uses and values 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 (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

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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:

Authorize issuance of a General Lease – Residential and Recreational Use to the Applicant beginning June 21, 2018, for a term of 3 years, for the continued use and maintenance of an existing portion of residence and deck, walkway, pilings, and uncovered floating boat dock, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; rent in the amount of \$511 per year, with an annual Consumer Price Index adjustment, or payment of \$1,533 for the entire 3-year lease term, with the rent of any future lease, if authorized, to be determined by rental options available to the Commission at that time; and liability insurance in an amount no less than \$2,000,000 per occurrence.

EXHIBIT A

PRC 6960.1

LAND DESCRIPTION

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

All those lands underlying an existing walkway, uncovered floating boat dock, deck, and a portion of residence lying adjacent to that parcel described in Grant Deed, recorded September 30, 2014 in document number 2014-0020228 in official records of said County.

TOGETHER WITH any applicable Impact Area(s).

EXCEPTING THEREFROM any portion lying landward of the Ordinary High Water Mark of the Napa River.

END OF DESCRIPTION

Prepared 12/20/2017 by the California State Lands Commission Boundary Unit.



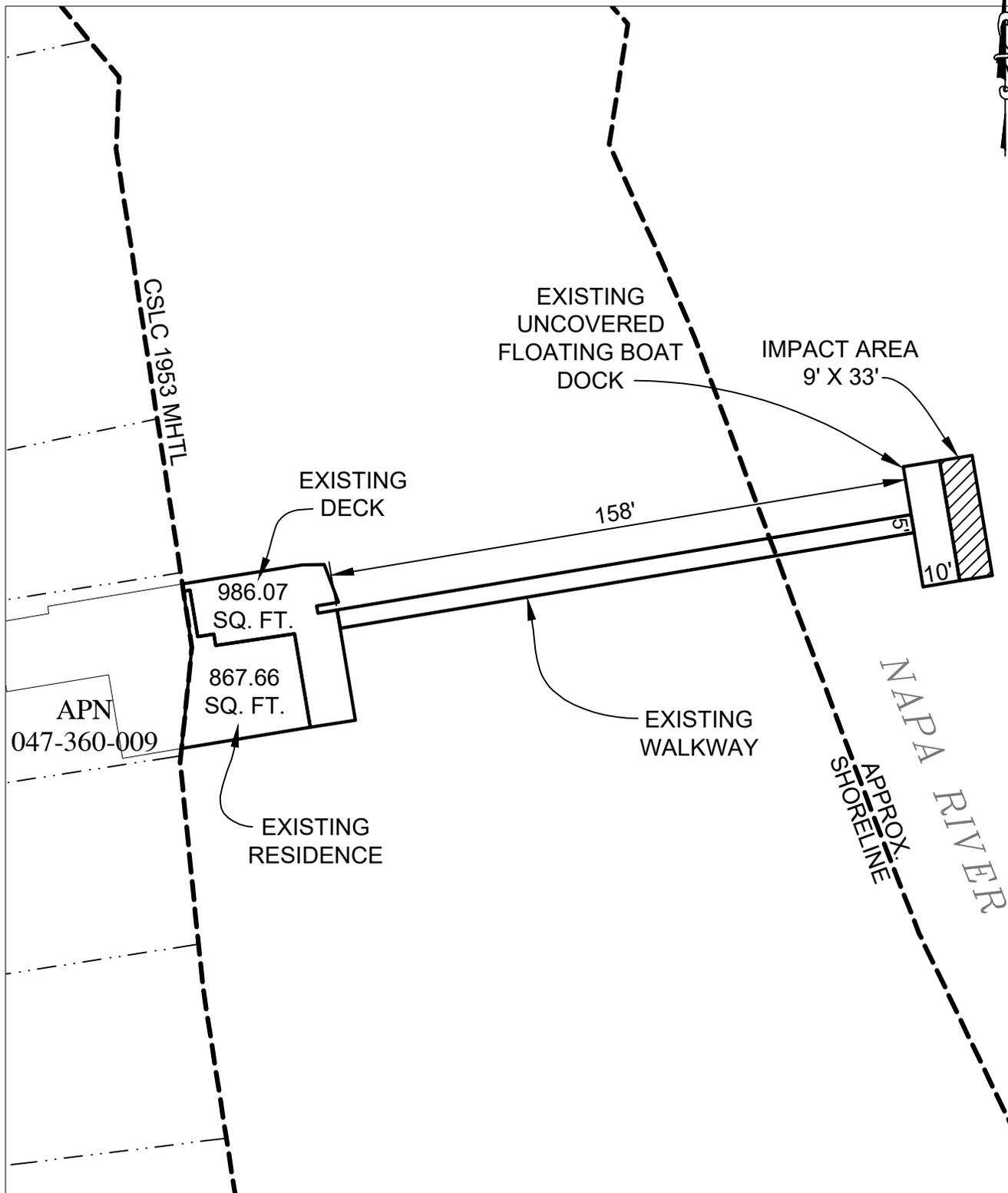


EXHIBIT A

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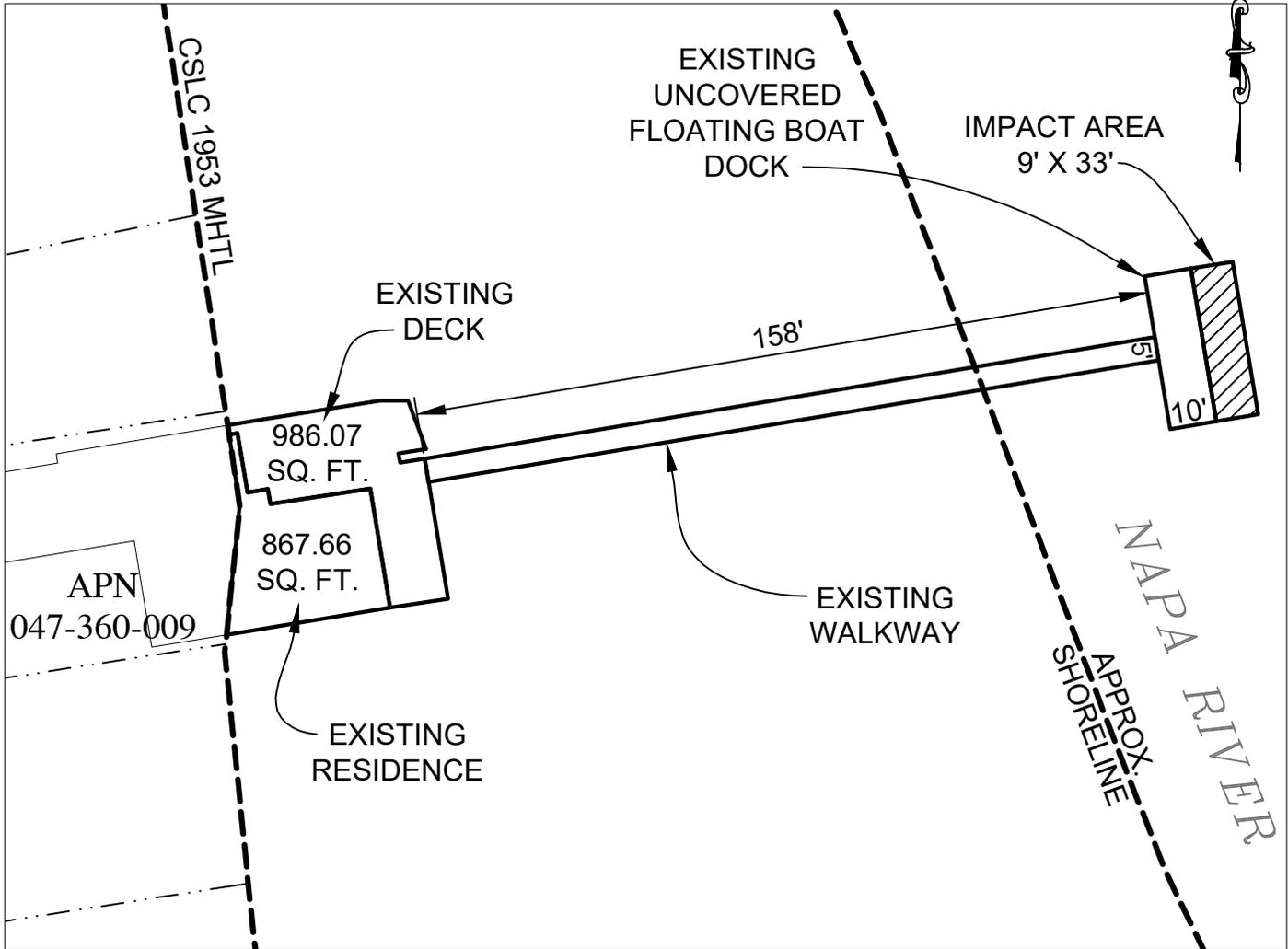
LAND DESCRIPTION PLAT
 PRC 6960.1, SHERIDAN
 NAPA COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

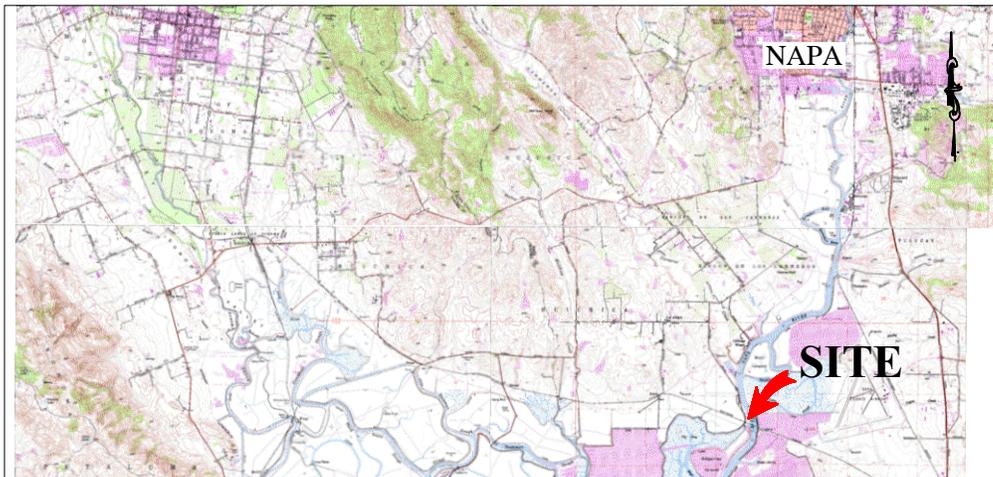
SITE



1436 MILTON ROAD, NEAR NAPA

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 6960.1
 SHERIDAN
 APN 047-360-009
 GENERAL LEASE -
 RESIDENTIAL &
 RECREATIONAL 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.