

**CALENDAR ITEM
C31**

A 10
S 2

02/07/17
W 27048
J. Holt

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Dawson D. Zaug and Charlotte A. Lee, as Trustees of the Zaug-Lee Family Trust, dated July 14, 1994

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Petaluma River, adjacent to 95 Mistletoe Lane, near the city of Novato, Marin County.

AUTHORIZED USE:

Use and maintenance of an existing pier, floating boat dock, walkway, and two pilings not previously authorized by the Commission.

LEASE TERM:

10 years, beginning February 7, 2017.

CONSIDERATION:

\$255 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, and 6503.5; California Code of Regulations, title 2, section 2000, subdivision (b).

Public Trust and State's Best Interests Analysis:

On September 21, 2016, the Commission received a lease application from Dawson D. Zaug and Charlotte A. Lee, as Trustees of the Zaug-Lee Family Trust, dated July 14, 1994. The Applicant applied for a General Lease – Recreational Use for the use and maintenance of an existing pier, floating boat dock, walkway, and two pilings. These facilities are privately owned and maintained and have existed in this location for many years,

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but were not previously authorized by the Commission. Staff became aware of these facilities while conducting site visits along the Petaluma River.

The existing pier and floating boat dock are used for boating in the Petaluma River. Recreational boating is water-dependent and is generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private recreational facilities as an authorized use of Public Trust lands (Pub. Resources Code, § 6503.5).

The subject structures do not significantly alter the land; the lease does not alienate the State's fee simple interest or permanently impair or public rights. Upon termination of the lease, the lessee may be required to remove any improvements and restore the lease premises to their original condition. Based on the foregoing, Commission staff believes that the existing pier, floating boat dock, and appurtenant facilities will not substantially interfere with Public Trust needs at this location at this time, and for the foreseeable term of the proposed lease.

The proposed lease includes certain provisions protecting the public use of the proposed lease area, including a limited lease term of 10 years and a non-exclusive use provision. 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.

For all the reasons above, Commission staff believes the issuance of this lease is consistent with the common law Public Trust Doctrine and in the best interests of the State.

Climate Change:

Climate change impacts, including sea-level rise, are not limited to the open coast and may involve increased wave activity, storm events, and flooding. The existing structures within the proposed lease area are located along the Petaluma River, within a tidally-influenced region. The subject facilities are vulnerable to flooding at current sea levels and at a higher risk of flood exposure given future projected scenarios of sea-level rise. The lease area contains a fixed pier, fixed walkway, and two pilings. By 2030, the region could see up to 1 foot of sea-level rise (from year 2000 levels), 2 feet by 2050, and possibly over 5 feet by 2100 (NRC, 2012). This effect could increase the Petaluma River's inundation levels within the lease area. In addition, as stated in *Safeguarding California*

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(California Natural Resources Agency 2014), climate change is projected to increase the frequency and severity of natural disasters related to flooding, drought, and storms (especially when coupled with sea-level rise).

The combination of these projected conditions could potentially raise the likelihood of damage to structures within the lease premises during the term of the lease. For example, the potential for more frequent and stronger storm events may expose the structures to higher flood risks and cause them to be damaged or dislodged, presenting hazards to public safety, as well as dangers for navigation within the channel. Conversely, prolonged drought conditions could lower water levels, exposing previously submerged structures to the elements and potentially leading to increased wear and tear on the pilings and dock; reduce navigability of the channel, thereby increasing hazards; and impact the function and utility of the lease area structures. 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 dislodgement of dock facilities. The fixed features may need to be reinforced to withstand higher levels of flood exposure because they would not be able to rise and fall with storms and droughts. The salt marsh habitat surrounding the existing walkway currently provides some natural bank stabilization. Regular maintenance, as required by the terms of the lease, will reduce the likelihood of severe structural degradation or dislodgement.

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. The 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).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

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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 interfere with the Public Trust needs and values at this location at this time, is consistent with the common law Public Trust Doctrine, 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 Dawson D. Zaug and Charlotte A. Lee, as Trustees of the Zaug-Lee Family Trust, dated July 14, 1994, beginning February 7, 2017, for a term of 10 years, for the use and maintenance of an existing pier, floating boat dock, walkway, and two pilings, 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 \$255, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

W 27048

LAND DESCRIPTION

A parcel of tide and submerged land situate in the bed of the Petaluma River, lying adjacent to Rancho De Novato, patented April 10, 1866, Marin County, State of California and more particularly described as follows:

All those lands underlying an existing pier, floating boat dock, walkway and two pilings lying adjacent to those parcels described in Grant Deed, recorded December 21, 1995 in Document Number 95-061638 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 right bank of said river.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 12/09/16 by the California State Lands Commission Boundary Unit





PETALUMA RIVER

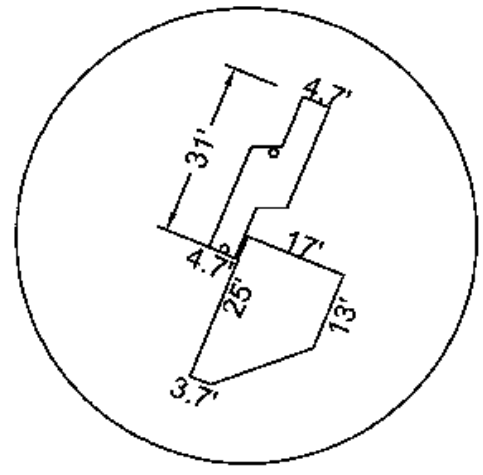
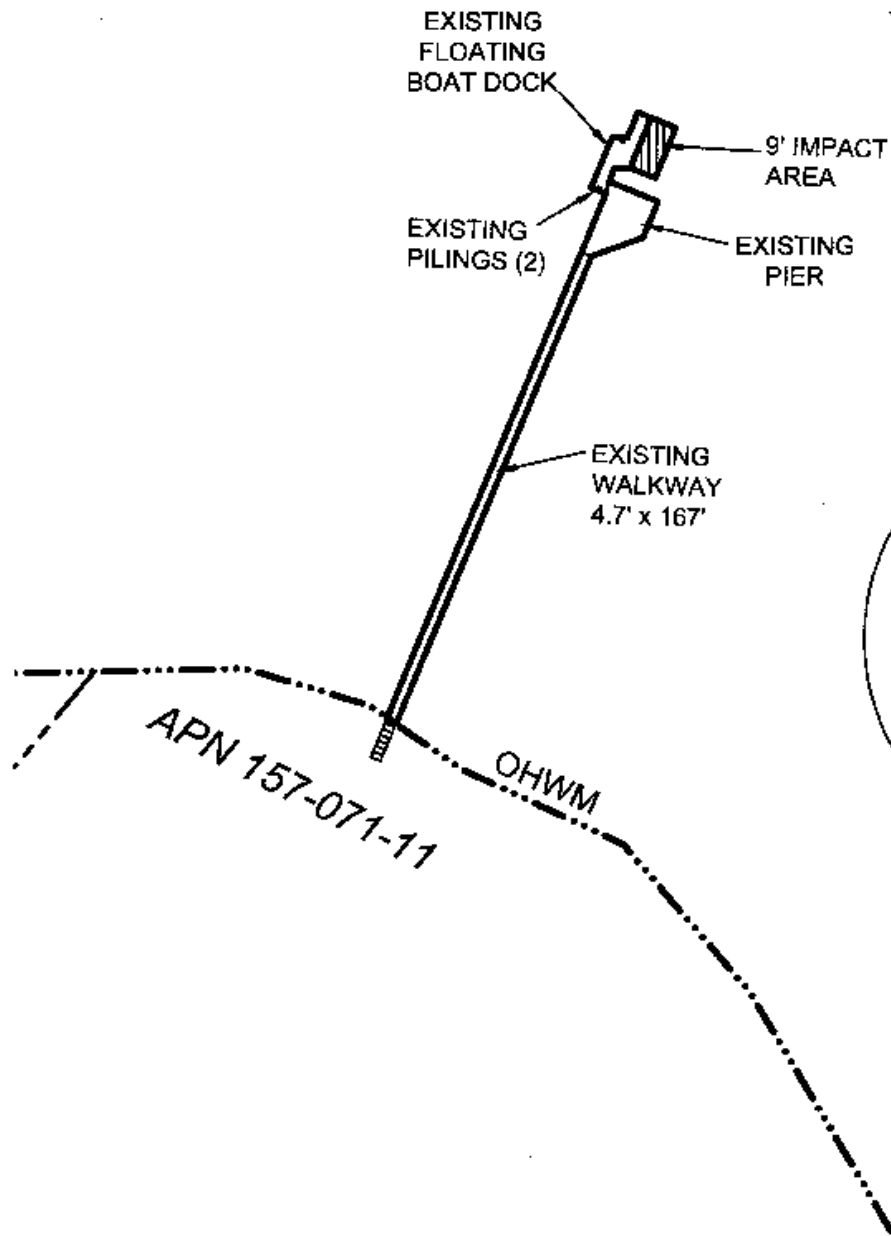


EXHIBIT A

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LAND DESCRIPTION PLAT
 W 27048, ZAUG/LEE, TRUSTEES
 MARIN COUNTY

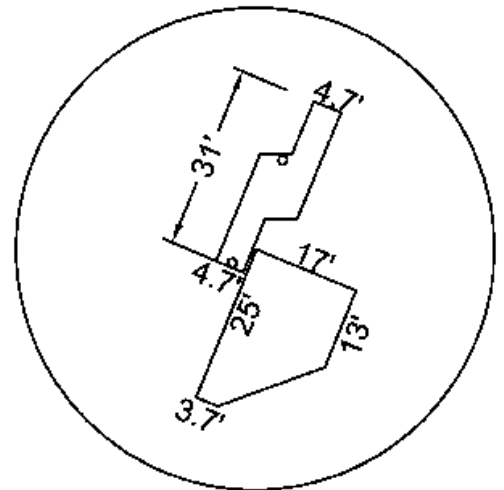
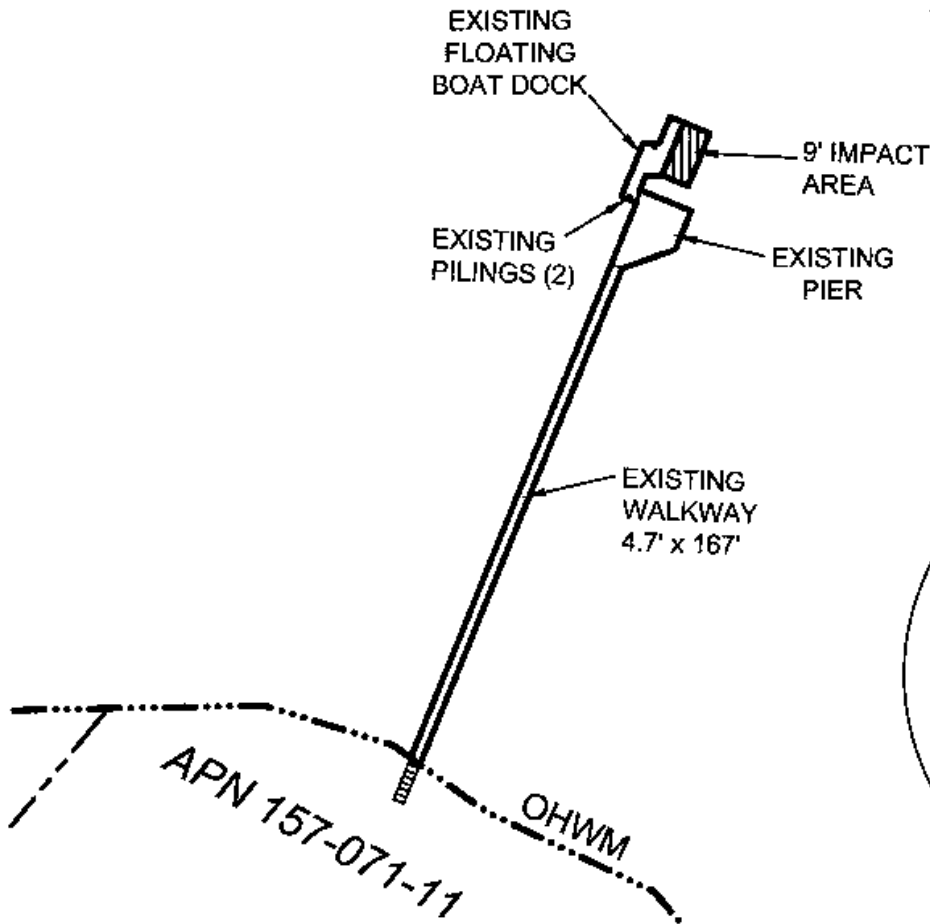
CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

SITE

PETALUMA RIVER



95 MISTLETOE LANE, NEAR THE CITY OF NOVATO

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

W 27048
 ZAUG/LEE, TRUSTEES
 APN 157-071-11
 GENERAL LEASE -
 RECREATIONAL USE
 MARIN COUNTY



SITE

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.

TS 12/09/16