

STAFF REPORT

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Lease 7463.1
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TERMINATION AND ISSUANCE OF A GENERAL LEASE – RECREATIONAL USE

LESSEE:

James I. Tanimoto and Evelyn K. Tanimoto, Trustees in Trust, under the James I. and Evelyn K. Tanimoto Living Trust, dated August 7, 2000

APPLICANT:

Ryan Max Bogle and Katie Butler

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in in the Sacramento River, adjacent to 639 Brickyard Drive, Sacramento, Sacramento County.

AUTHORIZED USE:

Removal of an existing boat dock; construction, use, and maintenance of a boat dock and two pilings; and the continued use and maintenance of an existing piling, two-pile dolphin, and ramp.

LEASE TERM:

10 years, beginning April 29, 2020.

CONSIDERATION:

\$167 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.

Lessee to pay compensation for the unauthorized occupation of State land in the amount of \$334 for the period beginning August 22, 2017, through April 28, 2020.

Lessee agrees to indemnify the Lessor for any liabilities arising from the period of unauthorized occupation of the State lands (prior to the issuance of the lease).

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Lessee agrees and acknowledges hazards associated with sea-level rise may require additional maintenance or protection strategies regarding the improvements on the Lease Premises.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 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 June 21, 2013, the Commission authorized a General Lease - Recreational Use for an existing boat dock, piling, two-pile dolphin, and ramp to James I. Tanimoto and Evelyn K. Tanimoto, Trustees in Trust, under the James I. and Evelyn K. Tanimoto Living Trust, dated August 7, 2000 ([Item C31, June 21, 2013](#)). That lease expires on June 20, 2023. On August 22, 2017, interest in the upland parcel was deeded to Ryan Max Bogle and Katie Butler. The Applicant is proposing to replace the existing boat dock and install two additional pilings and has requested that the existing lease be terminated and that a new 10-year lease be authorized. Staff recommends termination of the existing lease, Lease No. PRC 7463.1, based on the Lessee's abandonment of the lease area. The title transfer occurred without a lease quitclaim deed and notification to staff.

The Applicant's proposed project includes the removal of the existing boat dock and installation of two steel pilings, and a new boat dock with a larger footprint. The new dock will be pre-manufactured off-site and floated in position to reduce the in-water installation time and avoid negative environmental impact to water quality. The new dock installation and pile driving will be completed in 1 day between August 1 and November 30 to minimize potential impacts to sensitive fish species.

The existing (and proposed) improvements are privately owned and maintained and are for the docking and mooring of recreational boats. Recreational boating is water-dependent and 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 lands (Pub. Resources Code, § 6503.5). The existing floating boat dock and appurtenant facilities have existed at this location for many years and are located directly adjacent to the Applicant's upland property.

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 facilities do not significantly alter the

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land, and the lease does not alienate the State's fee simple interest, nor permanently impair 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.

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. Furthermore, the lessee agrees to indemnify the Commission for any liabilities arising from the period of unauthorized occupation of the State lands (prior to the issuance of the lease). The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved.

Staff recommends issuance of a new lease beginning April 29, 2020. Staff also recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$334 for the period beginning August 22, 2017, the day the upland parcel was deeded to the Applicant, through April 28, 2020, the day preceding the effective date of the proposed lease.

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 Sacramento River in a tidally influenced site vulnerable to flooding at current sea levels and at a 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 region as listed in Table 1.

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Table 1. Projected Sea-Level Rise for San Francisco¹

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: ¹ 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 and could increase the Sacramento River inundation levels within the lease area over the term of the lease. 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 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 as well as decreased bank stability and structure. Conversely, climate-change induced droughts could decrease river levels and flow for extended periods of time. Climate change and sea-level rise will further influence riverine areas by changing erosion and sedimentation rates. Flooding and storm flow, as well as runoff, will likely increase scour and decrease bank stability at a faster rate.

The combination of these projected conditions could increase the likelihood of damage and affect access 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 lease area structures to higher flood risks and cause facilities 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. Lowered water levels could also reduce navigability of the channel, thereby increasing hazards and impacting the function and utility of the lease area structures.

The proposed floating dock and ramp would be adaptable to variable water levels, allowing them to rise and fall with storms and droughts, and increasing their resiliency to some climate change impacts, but may

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require more frequent maintenance to ensure continued functionality during and after storm seasons and to avoid dislodgement. The fixed pilings may need reinforcement to withstand higher levels of flood exposure at a later date.

Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland (not within the lease area) 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 foreseeable term of the proposed lease; is consistent with the common law Public Trust Doctrine; 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. 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 as authorized by law. If the Commission denies the application, the Applicant may be required to remove the existing boat dock, ramp, and appurtenant facilities and restore the premises to their original condition. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.
3. Termination of the lease is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

4. **Existing Piling, Two-pile Dolphin, and Ramp:** Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of CEQA as a categorically exempt project. The project is

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exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

5. **Replacement of Boat Dock:** Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 2, Replacement or Reconstruction; California Code of Regulations, title 14, section 15302.

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:

Existing Piling, Two-pile Dolphin, and Ramp: Find that 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).

Replacement of Boat Dock: Find that 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 2, Replacement or Reconstruction; California Code of Regulations, title 14, section 15302.

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, and for the foreseeable term of the lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of compensation from the Applicant in the amount of \$334 for unauthorized occupation of State land for the period beginning August 22, 2017, through April 28, 2020.

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2. Authorize termination, effective April 28, 2020, of Lease No. PRC 7463.1, a General Lease – Recreational Use, issued to James I. Tanimoto and Evelyn K. Tanimoto, Trustees in Trust, under the James I. and Evelyn K. Tanimoto Living Trust, dated August 7, 2000, only upon issuance of the lease authorized by item 3 below.
3. Authorize issuance of a General Lease – Recreational Use to Ryan Max Bogle and Katie Butler, beginning April 29, 2020, for a term of 10 years, for the removal of an existing boat dock; construction, use, and maintenance of a boat dock and two pilings; and the continued use and maintenance of an existing piling, two-pile dolphin, and ramp, 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 \$167, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 7463.1

LAND DESCRIPTION

A parcel of tide and submerged land situate in the bed of the Sacramento River, lying adjacent to projected Section 27, Township 8 North, Range 4 East, M.D.B.&M., as shown Official Government Township Plat approved April 30, 1865, County Sacramento County, State of California, and more particularly described as follows:

All those lands underlying a proposed floating boat dock, two (2) proposed steel pilings, two (2) existing pilings and an existing gangway adjacent to that parcel described in that Grant Deed, recorded August 22, 2017 as Document Number 201708221559 in Official Records of Sacramento County.

TOGETHER WITH any applicable impact area(s).

EXCEPTING THEREFROM any portion(s) lying landward of the Ordinary High Water Mark of the left bank of the Sacramento River.

END OF DESCRIPTION

This description is based on Applicant provided design plans, by Mid-Cal Construction Inc. dated June 17, 2019, for a proposed pier, together with any and all appurtenances pertaining thereto, to be built at a later date within the Lease time frame. This description is to be updated once final as-built plans are submitted.

Prepared March 25, 2020 by the California State Lands Commission Boundary Unit.





SACRAMENTO RIVER

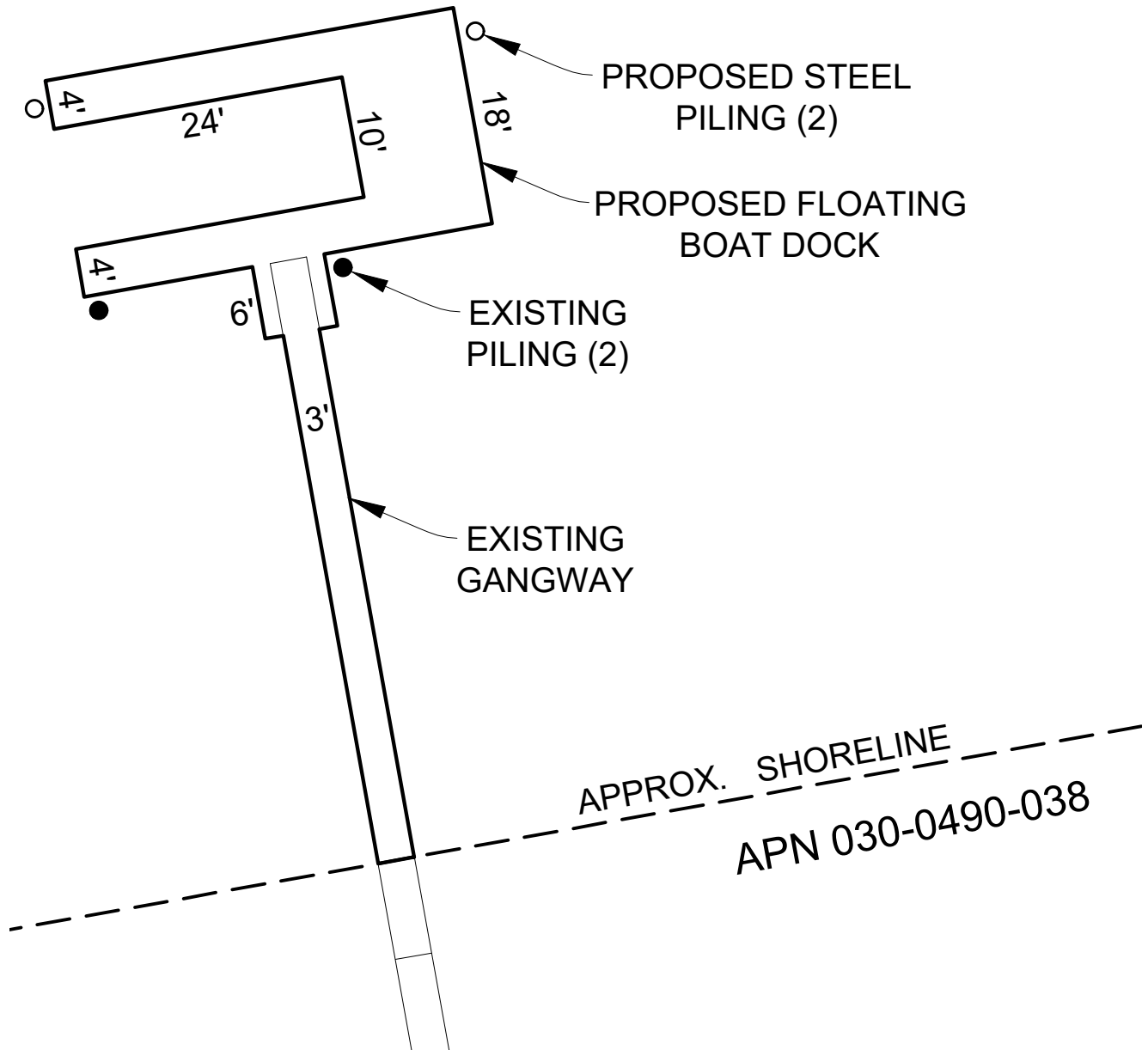


EXHIBIT A

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LAND DESCRIPTION PLAT
LEASE 7463.1, BOGLE BUTLER
SACRAMENTO COUNTY

CALIFORNIA STATE
LANDS COMMISSION

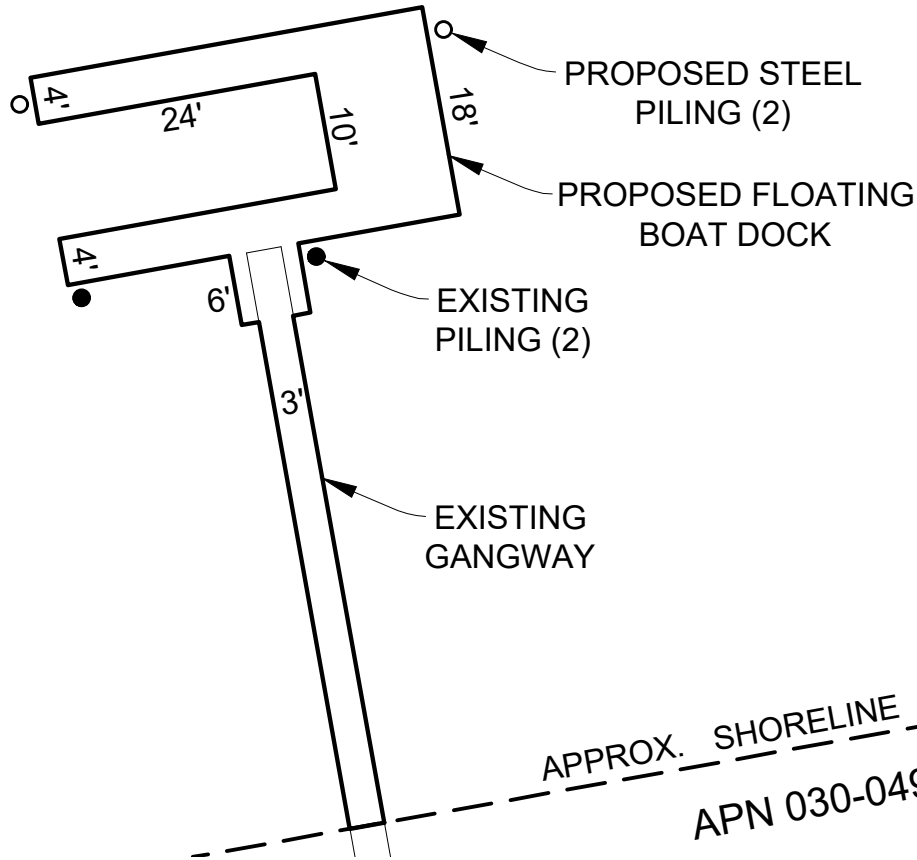


NO SCALE

SITE



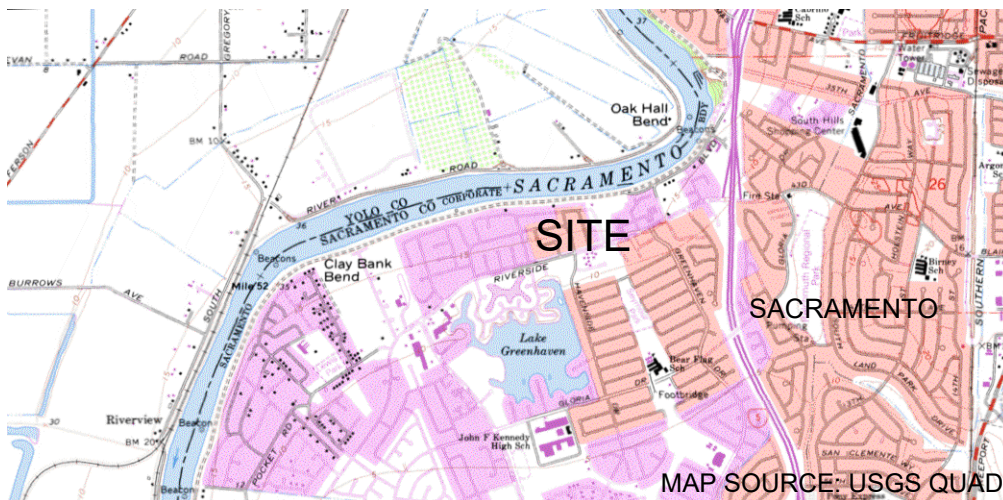
SACRAMENTO RIVER



639 BRICKYARD DRIVE, SACRAMENTO

NO SCALE

LOCATION



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.

EXHIBIT B

LEASE 7463.1
BOGLE BUTLER
APN 030-0490-038
GENERAL LEASE -
RECREATIONAL USE
SACRAMENTO COUNTY



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