

STAFF REPORT

29

A 11

06/23/20

S 3

A2546

V. Caldwell

GENERAL LEASE – OTHER

APPLICANT:

Mark E. Morais and Linda S. Morais, Trustees, or their successors in interest, of the Morais Family Trust dated September 15, 2014

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the North Mokelumne River, adjacent to 14743 Walnut Grove-Thornton Road, Walnut Grove, Sacramento County.

AUTHORIZED USE:

Use and maintenance of an existing accommodation dock, ramp, three pilings, and one 2-pile dolphin not previously authorized by the Commission.

LEASE TERM:

20 years, beginning June 23, 2020.

CONSIDERATION:

\$990 per year, with an annual Consumer Price Index adjustment and the State reserving the right to fix a different rent on the 10th anniversary of the lease term, as provided for in the lease.

SPECIFIC LEASE PROVISIONS:

1. Liability insurance in an amount no less than \$1,000,000 per occurrence.
2. Surety bond or other security in the amount of \$5,000.
3. Lessee agrees to indemnify the Commission for any liabilities arising during the period of unauthorized occupation of State lands prior to the start of the lease.
4. 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 REPORT NO. 29 (CONT'D)

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503;
California Code of Regulations, title 2, sections 2000 and 2003.

Public Trust and State's Best Interests Analysis:

Over the last year, staff began a compliance outreach program in the Walnut Grove area and began educating property owners of the requirement to obtain a lease for facilities on State land. The existing accommodation dock and appurtenant facilities have existed at this location for many years but were not previously authorized by the Commission. The Applicant is now applying for a General Lease – Other, for the use and maintenance of an existing accommodation dock, ramp, three pilings, and one 2-pile dolphin. Staff recommends issuance of a new lease beginning June 23, 2020.

According to the Applicant, the dock is a public accommodation dock that provides convenient waterside access for potential customers and recreational enthusiasts frequenting the restaurant (Guisti's) located on the Applicant's adjacent upland property. The dock is open and available to public access as needed on a daily basis.

The subject dock and appurtenant facilities are privately owned and maintained and are for the docking and mooring of recreational boats. Recreational boating is a water-dependent activity and is generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private and public recreational boating facilities as an authorized use of Public Trust lands (Pub. Resources Code, § 6503.5).

The proposed lease includes certain provisions protecting the public use of the proposed lease area, including a limited lease term of 20 years and a non-exclusive use provision. The facilities do not significantly alter the 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

STAFF REPORT NO. 29 (CONT'D)

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 subject facilities are located on the North Mokelumne 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.

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 river's 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. 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

STAFF REPORT NO. 29 (CONT'D)

navigation within the channel. Conversely, climate-change induced droughts could decrease river levels and flow for extended periods of time, exposing previously submerged structures to the elements and potentially leading to increased wear-and-tear on the pier. Lowered water levels could also reduce navigability of the channel, thereby increasing hazards and impacting the function and utility of the lease area structures. 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 to structures within the lease premises during the term of the lease. The fixed pilings will likely need reinforcement or replacement in the future to withstand higher levels of flood exposure and storm activity. The floating boat dock and ramp will 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 require more frequent maintenance or replacement to ensure continued function during and after storm seasons or to avoid dislodgement.

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. 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. 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

STAFF REPORT NO. **29** (CONT'D)

required to remove the existing accommodation dock, ramp, three pilings, and one 2-pile dolphin 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.

2. 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 and Strategy 1.3 to promote, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
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 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
- C. Best Management Practices for Guest Dock Users and Boaters

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 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; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

STAFF REPORT NO. **29** (CONT'D)

AUTHORIZATION:

Authorize issuance of a General Lease – Other to the Applicant beginning June 23, 2020, for a term of 20 years, for the use and maintenance of an accommodation dock, ramp, three pilings, and one 2-pile dolphin not previously authorized by the Commission; as described in Exhibit A, Land Description, and as shown on Exhibit B, Site and Location Map (for reference purposes only), attached and by this reference made a part hereof; annual rent in the amount of \$990 per year, with an annual Consumer Price Index adjustment and the State reserving the right to fix a different rent on the 10th anniversary of the lease term, as provided for in the lease; liability insurance in an amount no less than \$1,000,000 per occurrence; and surety in an amount no less than \$5,000.

EXHIBIT A

A 2546

LAND DESCRIPTION

A parcel of tide and submerged land situate in the bed of the North Mokelumne River, lying adjacent to Swamp and Overflowed Survey 135 patented January 9, 1874, County of Sacramento, State of California and more particularly described as follows:

All those lands underlying an existing accommodation dock, ramp, three pilings and one 2-pile dolphin lying adjacent to that parcel described in Grant Deed recorded November 25, 2014 in Book 20141125 at Page 0003 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 05/13/2020 by the California State Lands Commission Boundary Unit



NO SCALE



NORTH MOKELUMNE RIVER

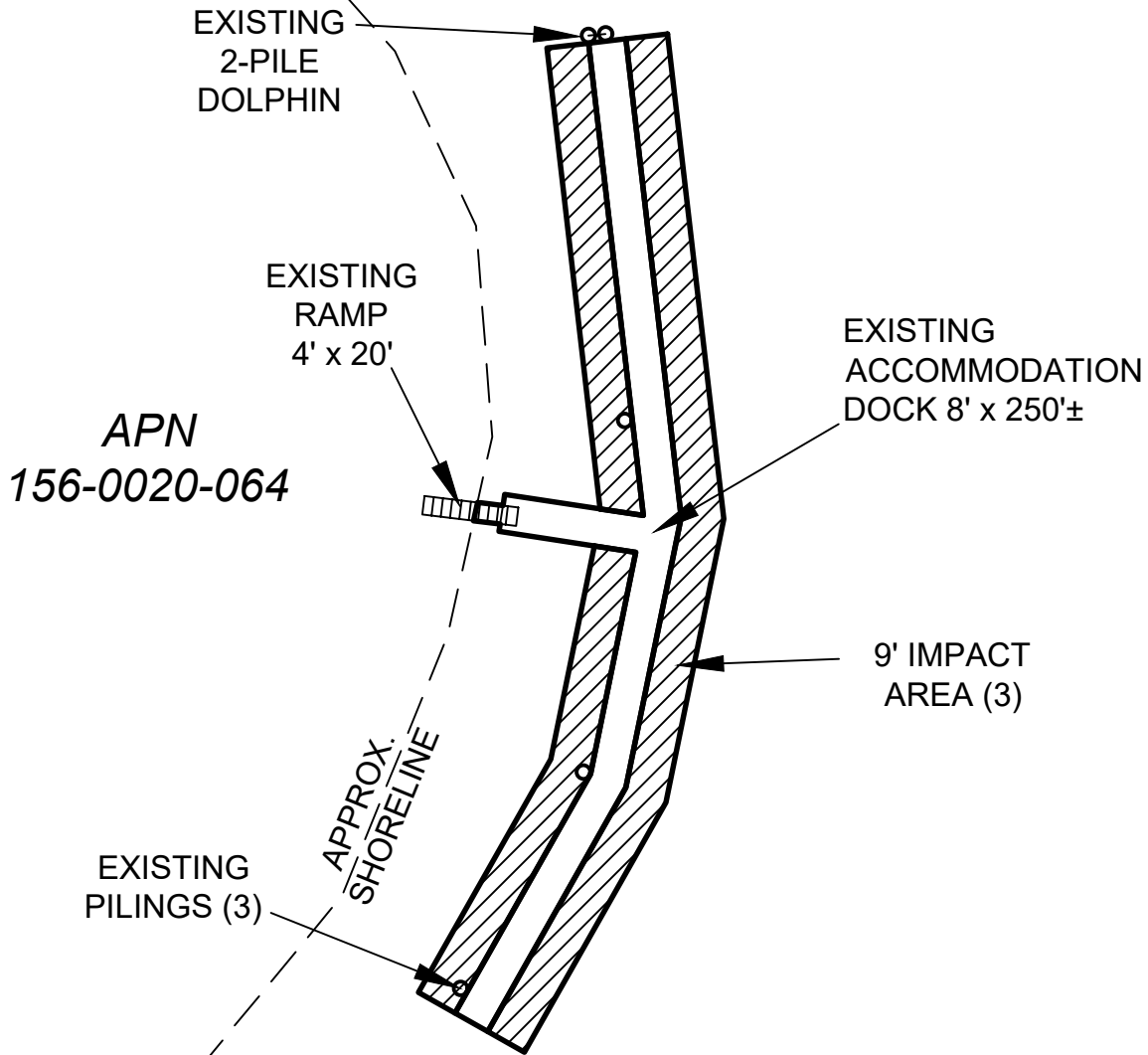


EXHIBIT A

Page 2 of 2

TS 05/13/2020

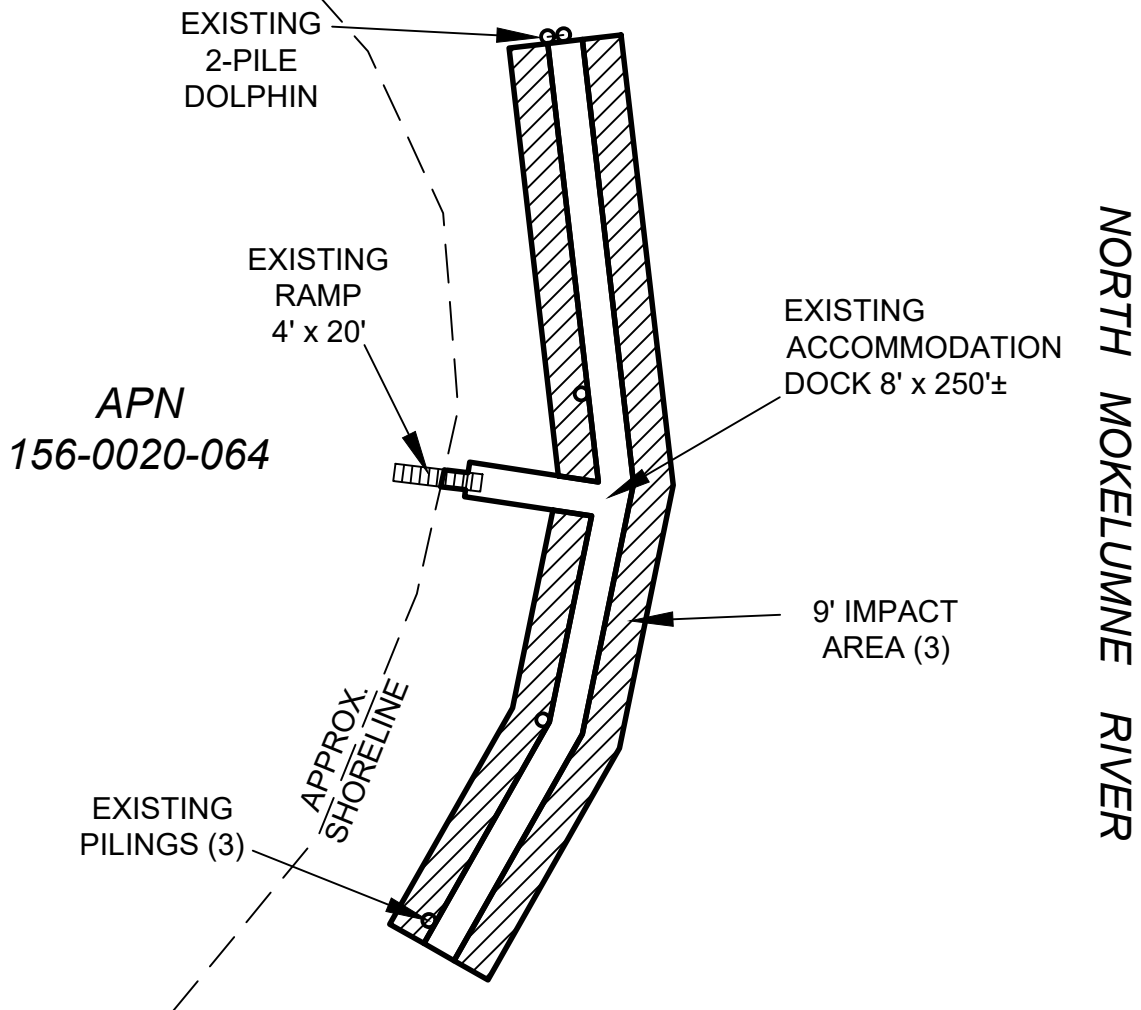
LAND DESCRIPTION PLAT
A 2546, MORAIS TRUST
SACRAMENTO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE



14743 WALNUT GROVE-THORNTON ROAD, WALNUT GROVE

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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

A 2546

MORAIS TRUST

APN 156-0020-064

GENERAL LEASE -

OTHER

SACRAMENTO COUNTY



TS 05/13/2020

EXHIBIT C

BEST MANAGEMENT PRACTICES FOR GUEST DOCK USERS AND BOATERS

I. Bilge Water Management

Keep bilge area as dry as possible

Regularly check fittings, fluid lines, engine seals, and gaskets

Fix all oil and fuel leaks in a timely manner

Do not drain oil into the bilge

Fit a drain pan, if feasible, underneath the engine to collect drips and leaks

Consider the use oil-absorbent pads, even in small boats.

If a bilge contains oil, absorb as much free oil as possible with a pad. Then pump the bilge dry and wipe down the bilge and equipment. If a bilge is severely contaminated, use a pump out service. Never pull the drain plug on a boat with a bilge full of oil, especially if it is on a launch ramp.

Dispose of oil-soaked absorbents at a proper facility. Check with the marina operator for guidance.

Do not use detergents or bilge cleaners unless the bilge can be pumped into an appropriate facility.

II. Petroleum Containment

Fill portable fuel containers on land or on the fuel dock to reduce the chance of fuel spills into the water.

Avoid overfilling fuel tanks and attend the fuel nozzle at all times.

Perform all major engine maintenance away from surface water. Any maintenance work on an engine must be done in compliance with rules and regulations governing the marina.

Use petroleum absorption pads while fueling to catch splash back and the any drops when the nozzle is transferred back from the boat to the fuel dock.

Keep engines properly maintained for efficient fuel consumption, clean

exhaust, and fuel economy. Follow all manufacturers' specifications.

Immediately report oil and fuel spills to the marina office and the U.S. Coast Guard National Response Center (Phone # 1 (800) 424-8802) and other appropriate agencies.

III. Hazardous Materials

Improper handling of hazardous materials can cause harm to human health and the environment and can result in serious penalties and expensive cleanup costs if contaminations occur.

Hazardous wastes generated by recreational boaters are considered household hazardous waste. Dispose of household hazardous waste in properly marked containers if provided by the marina or at the nearest appropriate site.

IV. Vessel Sewage

Boaters should never pump out any holding tank in waters inside the three nautical mile limit. Always remember that it is illegal to discharge raw sewage from a vessel into U.S. waters.

Pumpout facilities should be used to dispose of stored waste whenever possible. They are fast, clean, and inexpensive.

Marine sanitation devices (MSDs) must be maintained to operate properly. Keep your disinfectant tank full, use biodegradable treatment chemicals, and follow the manufacturer's suggested maintenance program.

Do not dispose of fats, solvents, oils, emulsifiers, disinfectants, paints, poisons, phosphates, diapers, and other similar products in MSDs.

Whenever possible, use land-based rest rooms rather than onboard ones.

V. Vessel Cleaning and Maintenance

Ask your marina manager what types of maintenance projects are allowed in the slip.

Minimize the use of soaps and detergents by washing your vessel more frequently with plain water.

Do not use cleaners that contain ingredients such as ammonia, sodium, chlorinated solvents, or lye.

Use hose nozzles that shut off when released to conserve water and reduce the runoff from boat washing.

Ventilate your space to prevent the accumulation of flammable or noxious fumes.

Use eye protection and a respirator when there is the possibility that dust and debris could damage eyes or lungs.

Remove oil, debris and clutter from your immediate work area and dispose of properly.

Avoid spills in the water of all solvents, paints and varnishes.

Carefully read labels to ensure the products are used in a manner that is safe and won't harm the environment.

Use teak cleaners sparingly and avoid spilling them or fiberglass polishers in the water.

VI. Sanding and Painting

When working in marinas, use designated sanding and painting areas. Check with the marina manager for the location and proper use of these areas.

Work indoors or under cover whenever wind can potentially blow dust and paint into the open air.

Where feasible, use environmentally friendly tools, such as vacuum sanders and grinders, to collect and trap dust. Some marinas have this equipment for rent, check with the manager.

Clean up all debris, trash, sanding dust, and paint chips immediately following any maintenance or repair activity.

Use a drop cloth beneath the hull to catch sanding dust and paint drops when working over unpaved surfaces.

When sanding or grinding hulls over a paved surface, vacuuming or sweeping loose paint particles is the preferred cleanup method. Do not hose the debris away.

Buy paints, varnishes, solvents, and thinners in sizes appropriate for the proposed work to avoid having to dispose of stale products.

When possible, use water-based paints and solvents.

Switch to longer lasting, harder, or non-toxic antifouling paint at your next haul out.

Paints, solvents, and reducers should be mixed far from the water's edge and transferred to work areas in tightly covered containers of 1 gallon or less.

Keep in mind that solvents and thinners may be used more than once by allowing the solids to settle out and draining the clean product off the top.

When in doubt about proper disposal practices, check with your marina and/or appropriate government agency.

Boaters should report any illegal discharge of boat sewage to the marina office or appropriate agency.

Boaters should use environmentally sensitive cleaning supplies that may end up in your gray water.

VII. Boat Hull Cleaning and Maintenance

Ensure hull paint is properly applied and maintained to protect the hull from fouling organisms and thus improve your boat's performance.

Wait 90 days after applying new bottom paint before underwater cleaning.

Schedule regular hull cleaning and maintenance to reduce the build up of hard marine growth and eliminate the need for hard scrubbing.

Regularly scheduled gentle cleaning will also increase the effectiveness of the antifouling hull paint and extend its useful life.

Repair paint bonding problems at haul out to avoid further chipping and flaking of paint in the water.

Use, or ask your diver to use, non-abrasive scrubbing agents, soft sponges or pieces of carpet to reduce the sloughing of paint and debris.

Boaters are encouraged to use boat hull cleaning companies and individuals that practice environmentally friendly methods.

VIII. Solid Waste

Do not dump plastic or any other trash into the water.

Use the dumpsters, trash receptacles and other approved containers to dispose of garbage and other waste.