

Staff Report 19

Termination and Issuance of General Lease – Recreational and Protective Structure Use

LESSEE:

Bert E. Blackwelder and Araminta D. Blackwelder

APPLICANT:

Stephen C. Spencer and Patricia M. Spencer, Trustees of the Spencer Family Trust,
Dated October 22, 2002

PROPOSED ACTION:

AREA, LAND TYPE, AND LOCATION

Sovereign land in the Sacramento River, adjacent to 175 Edgewater Drive, Rio Vista, Solano County.

AUTHORIZED USE:

Continued use and maintenance of three existing wood pilings, three steel pilings, concrete stairs, and bank protection; and proposed construction, use and maintenance of a floating boat dock and gangway.

TERM:

10 years, beginning December 23, 2019.

CONSIDERATION:

Floating boat dock, gangway, pilings, and concrete stairs: \$140 per year, with an annual Consumer Price Index adjustment.

Bank Protection: The public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee agrees and acknowledges hazards associated with sea-level rise may require additional maintenance or protection strategies regarding the improvements on the Lease Premises.
- Within 60 days of completing the construction of authorized improvements, Lessee will provide Lessor with photographs and a set of "as-built" plans that will show where the improvements have been placed. Lessor shall then replace Exhibit A (Land Description) and Exhibit B (Site and Location Map) to the Lease as necessary to accurately reflect the final location of the authorized improvements. Once approved by Lessor's Executive Officer or designee and Lessee, the revised Exhibits shall replace the Exhibits incorporated in the Lease at the time of Lease execution. The revised Exhibits shall be incorporated in this Lease as though fully set forth herein.

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:

On December 17, 2014, the Commission authorized a General Lease – Recreational and Protective Structure Use for three existing wood pilings, three steel pilings, concrete stairs, and bank protection to Bert E. Blackwelder and Araminta D. Blackwelder ([Item C30, December 17, 2014](#)). That lease will expire on September 26, 2024.

On December 23, 2019, upland ownership was transferred to Stephen C. Spencer and Patricia M. Spencer, Trustees of the Spencer Family Trust, Dated October 22, 2002. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use for the continued use and maintenance of the three existing wood pilings, three steel pilings, concrete stairs, and bank protection, and proposed construction of a floating boat dock and gangway.

Staff recommends termination of the existing lease because the Lessee abandoned the lease by selling the upland property without notifying staff and executing a lease quitclaim deed.

The proposed dock and gangway will be constructed on the upland and floated into place using the City of Rio Vista's nearby launch ramp. The existing pilings will be used to secure the dock and gangway in place. The bank protection has existed on-site for many years.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The proposed dock and gangway will be used for the docking and mooring of boats and will 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 lands (Pub. Resources Code, § 6503.5). The bank protection enhances the integrity of the river channel for public navigation purposes.

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, and reserves an easement to the public for Public Trust-consistent uses. Upon termination of the lease, the lessee may be required to remove all improvements from State land.

The proposed lease requires the lessee to ensure the lease premises and indemnify the State for any liability incurred as a result of the lessee's activities thereon. The lease also requires 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 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.

Table 1. Projected Sea-Level Rise for San Francisco¹

Year	Projection (feet)
2030	0.8
2040	1.2
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 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. 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 and bank protection will likely need reinforcement or replacement in the future to withstand higher levels of flood exposure and storm activity. The floating boat dock and gangway 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. Pursuant to the proposed lease, the applicant acknowledges that the lease premises 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 and values at this location, at this time, and for the foreseeable term of the proposed lease; is consistent with the 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 required to remove the pilings, stairs, and bank protection 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.
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 Bank Protection, Stairs, and Pilings:** 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 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).
5. **Proposed Dock and Gangway:** 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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1).

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 Bank Protection, Stairs, and Pilings: 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).

Proposed Dock and Gangway: 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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the continuing use and maintenance of the existing pilings, concrete stairs, and bank protection; and the construction, use, and maintenance of the proposed dock and gangway, 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 proposed lease; is consistent with common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize termination, effective December 22, 2019, of Lease Number PRC 5564, a General lease – Recreational and Protective Structure Use, issued to Bert E. Blackwelder and Araminta D. Blackwelder.
2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning December 23, 2019, for a term of 10 years, for the use and maintenance of three existing wood pilings, three steel pilings, concrete stairs,

and bank protection: and proposed construction of a floating boat dock and gangway, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration for the floating boat dock, gangway, pilings, and concrete stairs: \$140 per year, with an annual Consumer Price Index adjustment; consideration for the bank protection: the public use and benefit; with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 5564

LAND DESCRIPTION

Five (5) parcels of tide and submerged land situate in the bed of the Sacramento River, lying adjacent to Rancho Los Ulpinos, patented August 9, 1866, County of Solano, State of California and more particularly described as follows:

PARCEL 1 – Proposed Dock

All those lands underlying a proposed floating boat dock, gangway and three (3) existing wood pilings lying adjacent to that parcel described in Grant Deed, recorded December 23, 2019 in Document No. 201900094717 in Official Records of said County.

TOGETHER WITH any applicable Impact Area(s).

ALSO TOGETHER WITH that land lying immediately beneath any bank protection structure adjacent to said parcels.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the right bank of said river.

PARCEL 2 - Stairs

All those lands underlying an existing concrete stairs lying adjacent to that parcel described in Grant Deed, recorded December 23, 2019 in Document No. 201900094717 in Official Records of said County.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the right bank of said river.

PARCELS 3 through 5 – Steel Pilings

All those lands underlying three (3) existing steel pilings lying adjacent to that parcel described in Grant Deed, recorded December 23, 2019 in Document No. 201900094717 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

This description is based on Applicant provided design plans found in the Application for Lease of State Lands for a proposed dock, 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 05/12/2020 by the California State Lands Commission Boundary Unit



NO SCALE

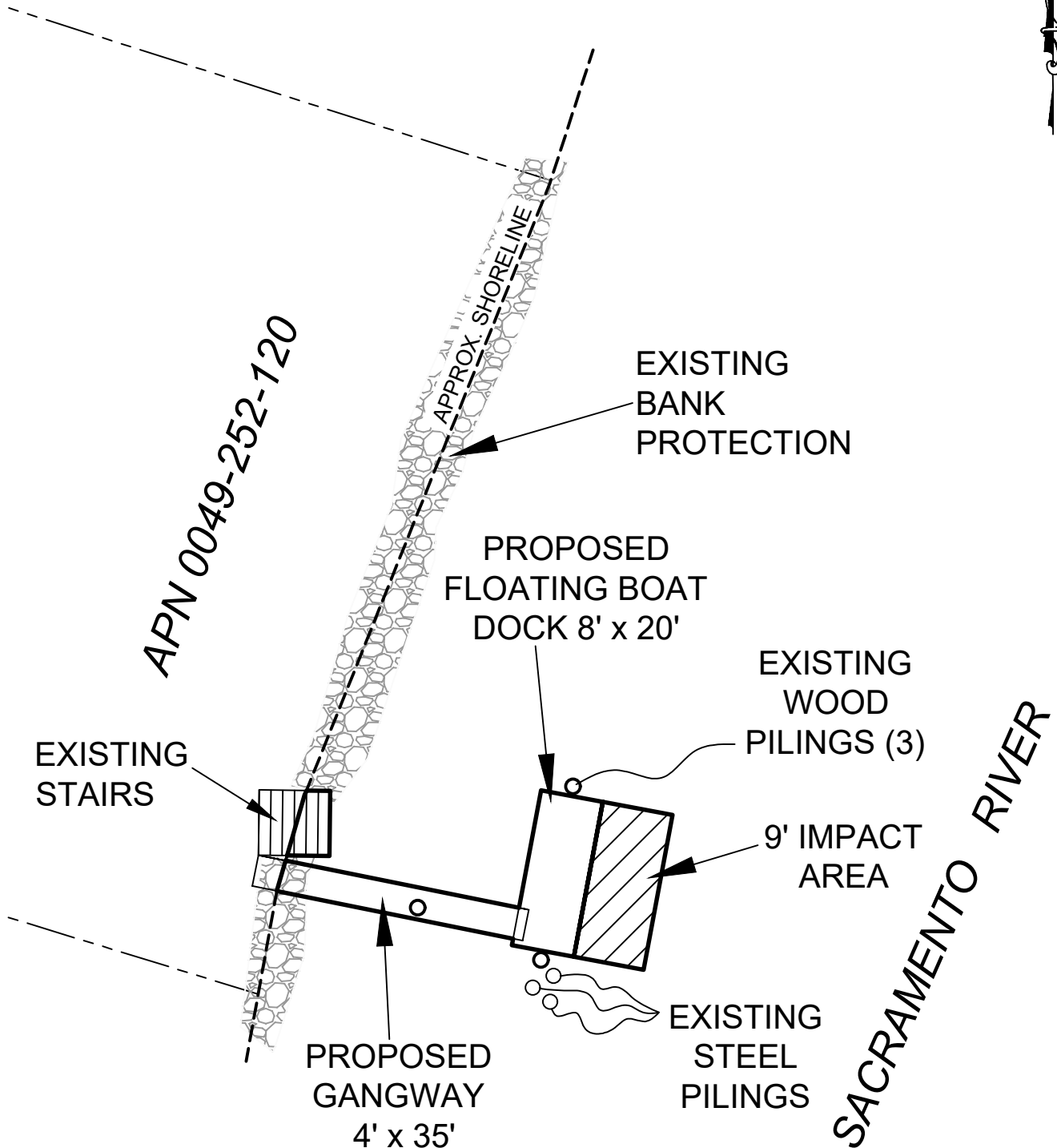


EXHIBIT A

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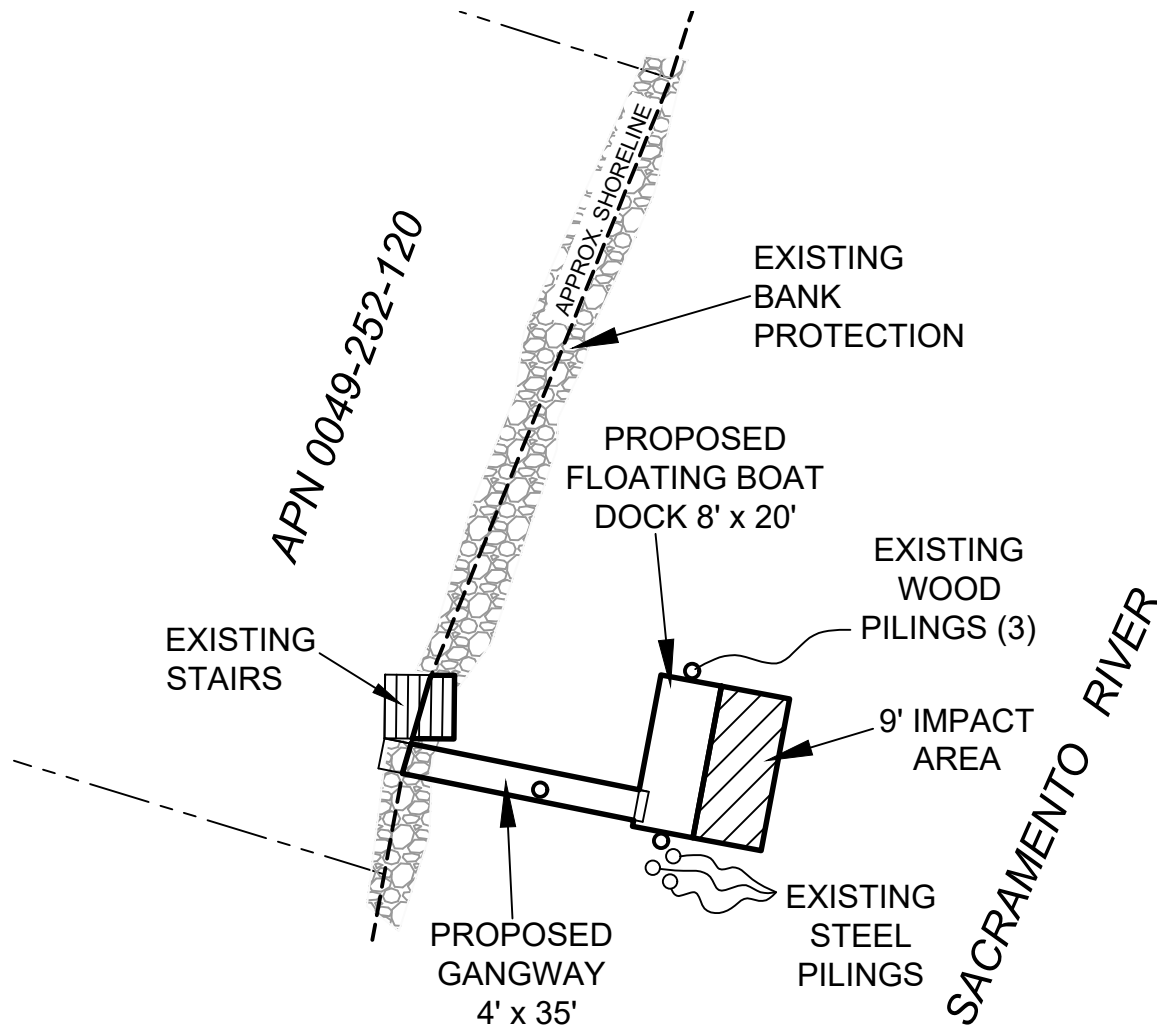
LAND DESCRIPTION PLAT
LEASE 5564, SPENCER TRUST
SOLANO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

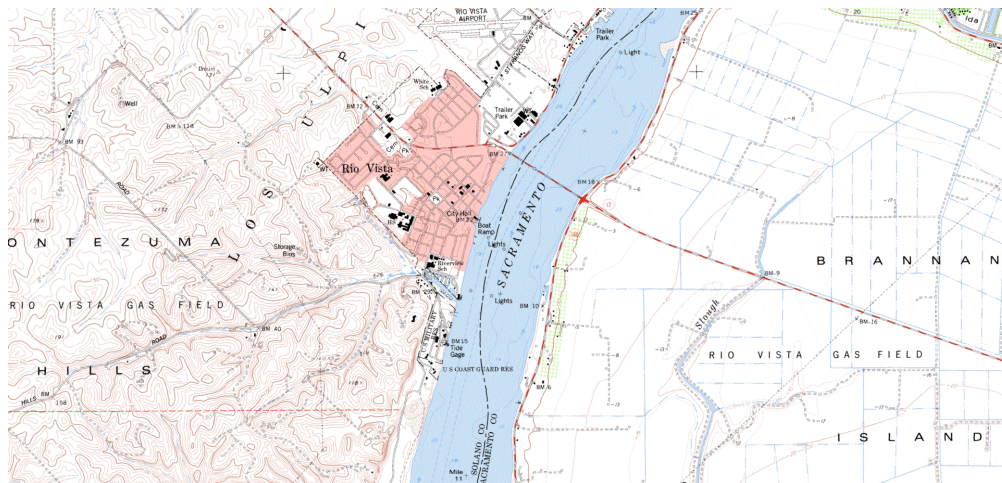
SITE



175 EDGEWATER DRIVE, RIO VISTA

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

LEASE 5564
SPENCER TRUST
APN 0049-252-120
GENERAL LEASE -
RECREATIONAL & PROTECTIVE
STRUCTURE USE
SOLANO COUNTY



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