

Staff Report 43

APPLICANT:

Jun Kai Zheng and Ying Fu Zheng; Nelson Zheng; and Suhan Zheng

PROPOSED ACTION:

Rescission of previous Lease Authorization and Issuance of a new General Lease – Recreational and Protective Structure Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Sacramento River, adjacent to 105 Edgewater Drive, near Rio Vista, Solano County.

AUTHORIZED USE:

Use and maintenance of an existing wooden deck, boat dock, gangway, three steel pilings, one unattached piling, and bank protection consisting of a bulkhead, riprap, and eight pilings.

TERM:

10 years, beginning December 17, 2020.

CONSIDERATION:

Wooden deck, boat dock, gangway, three steel pilings, and one unattached piling: \$693 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 that the 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, 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 18, 2015, the Commission authorized a General Lease – Recreational and Protective Structure Use to Eileen S. Mortimore ([Item C36, December 18, 2015](#)). That lease authorization was for a 10-year term. However, the lease was never executed. On September 16, 2019, interest in the upland parcel including lease improvements was deeded to the Applicant. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use for the use and maintenance of a wooden deck, boat dock, gangway, three steel pilings, one unattached piling, and bank protection consisting of a bulkhead, riprap, and eight pilings.

Staff recommends rescission of the previous lease authorization, and issuance of a new lease beginning December 17, 2020. Staff also recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$870 for the period beginning September 16, 2019, the day ownership of the upland parcel was deeded to the Applicant, through December 16, 2020, the day preceding issuance of the proposed new lease.

The subject facilities are privately owned and maintained. The existing 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 boat dock, gangway, and pilings are water-dependent facilities used for the docking and mooring of boats to aid in navigation of the Sacramento River and other navigable waterways in the greater region. These particular facilities promote and accommodate recognized Public Trust needs and values consistent with Public Trust Doctrine.

The deck has existed in the Sacramento River for many years and has a relatively small footprint. Although decks are not generally a trust-consistent use, the deck does not substantially interfere with the needs and values of the Public Trust Doctrine at this location and for the foreseeable term of the proposed non-exclusive lease. 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 proposed lease, the lessee may be required to remove all improvements from State land and restore the lease premises to their original condition.

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 Francisco

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: Projections are with respect to a 1991 to 2009 baseline.

This effect could increase the Sacramento River's inundation levels within the lease area. 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, 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 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 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 floating boat dock and gangway are 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 and to avoid dislodgement of dock facilities. The existing wooden deck, pilings, and bank protection may need reinforcement and possibly replacement to withstand higher levels of flood exposure and more frequent storm events. The vegetated bank provides additional stability and reduces the amount of erosion and scour pressure experienced during future events because of the vegetation's underground root system; but remains at risk of accelerated deterioration from currents and floods.

Regular maintenance, as required by the terms of 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 needs and values at this location, at this time, and for the foreseeable term of the proposed lease; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of an 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. An applicant has no right to a new lease or to renewal of any previous lease. Denial of the application may result in a determination that the proposed activity on or use of State land is unauthorized and may result in legal action.
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. Rescission of the previous lease authorization 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. 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 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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

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).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

1. Find that rescission of the authorization for Lease No. PRC 9300.1 is in the best interests of the State.
2. Find that the existing and, for a limited period, continuing use and maintenance of the existing boat dock, gangway, three steel pilings, one unattached piling, and bank protection consisting of a bulkhead, riprap, and eight pilings will not substantially interfere with Public Trust needs and values at this location and are consistent with the common law Public Trust Doctrine; and;
3. Find that the existing and, for a limited period, continuing use and maintenance of the deck is not generally consistent with the Public Trust Doctrine, but the current use does not substantially interfere with the trust; and
4. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

1. Rescind the previous authorization for Lease No. PRC 9300.1, a General Lease – Recreational and Protective Structure Use, approved on December 18, 2015, to Eileen S. Mortimore.
2. Authorize acceptance of compensation from the Applicant in the amount of \$870 for the unauthorized occupation of State land for the period beginning September 16, 2019, through December 16, 2020.

3. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant, beginning December 17, 2020, for a term of 10 years, for the use and maintenance of an existing wooden deck, boat dock, gangway, three steel pilings, one unattached piling, and bank protection consisting of a bulkhead, riprap, and eight wood pilings, 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; consideration for the wooden deck, boat dock, gangway, three steel pilings, and one unattached piling: \$693 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 9300

LAND DESCRIPTION

Two parcels of tide and submerged land situate in the bed of the Sacramento River, lying adjacent to Rancho Los Ulpinos, approved May 19, 1859, County of Solano, State of California and more particularly described as follows:

PARCEL 1 — Dock

All those lands underlying a wooden deck, floating boat dock, gangway and three steel pilings lying adjacent to that parcel described in Grant Deed, recorded September 16, 2019 in Document No. 201900063666 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 — Unattached Piling

All those lands underlying an existing unattached piling lying adjacent to that parcel described in Grant Deed, recorded September 16, 2019 in Document No. 201900063666 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 11/03/2020 by the California State Lands Commission Boundary Unit



NO SCALE

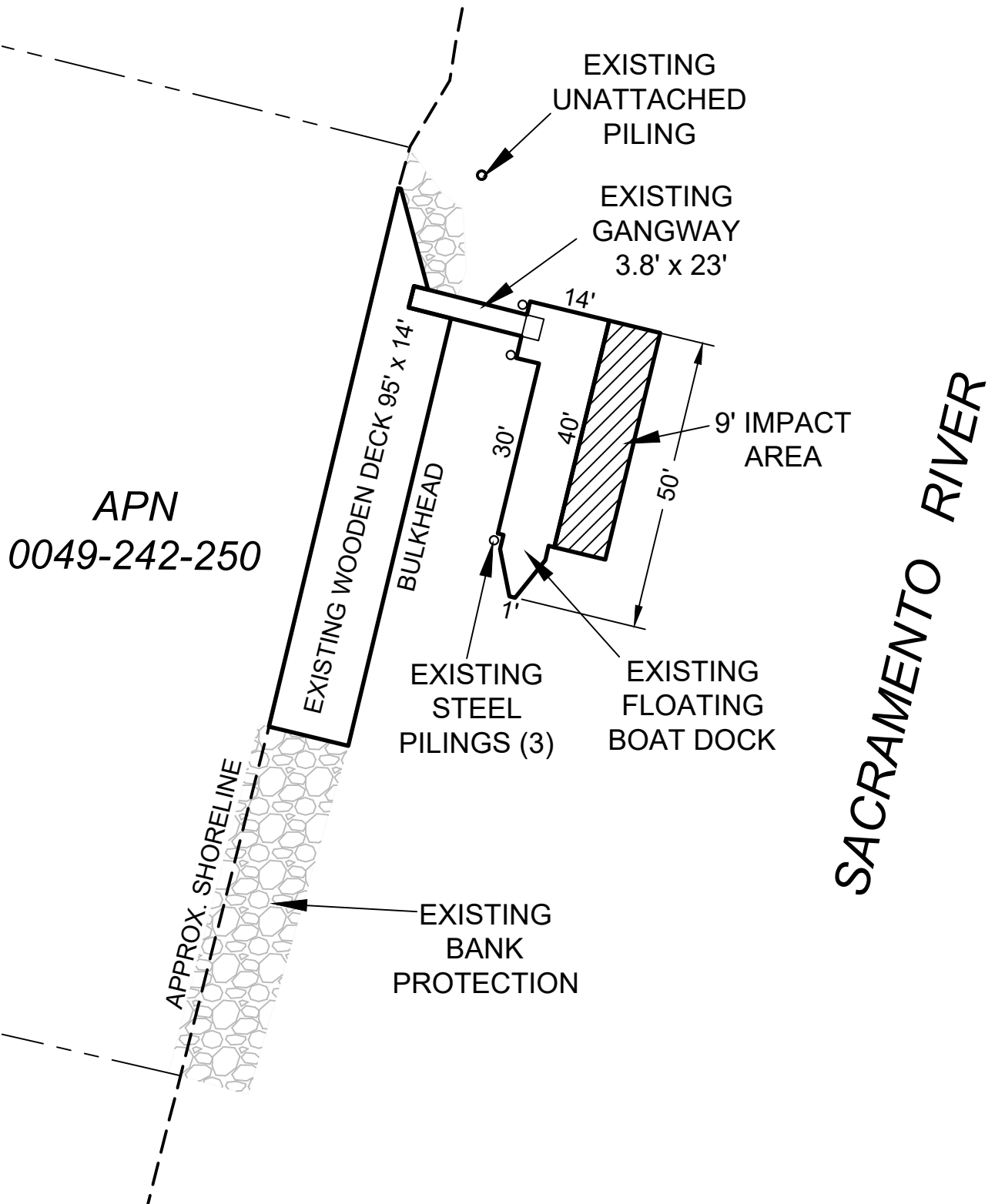


EXHIBIT A

Page 2 of 2

TS 11/03/2020

LAND DESCRIPTION PLAT
LEASE 9300, ZHENG
SOLANO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



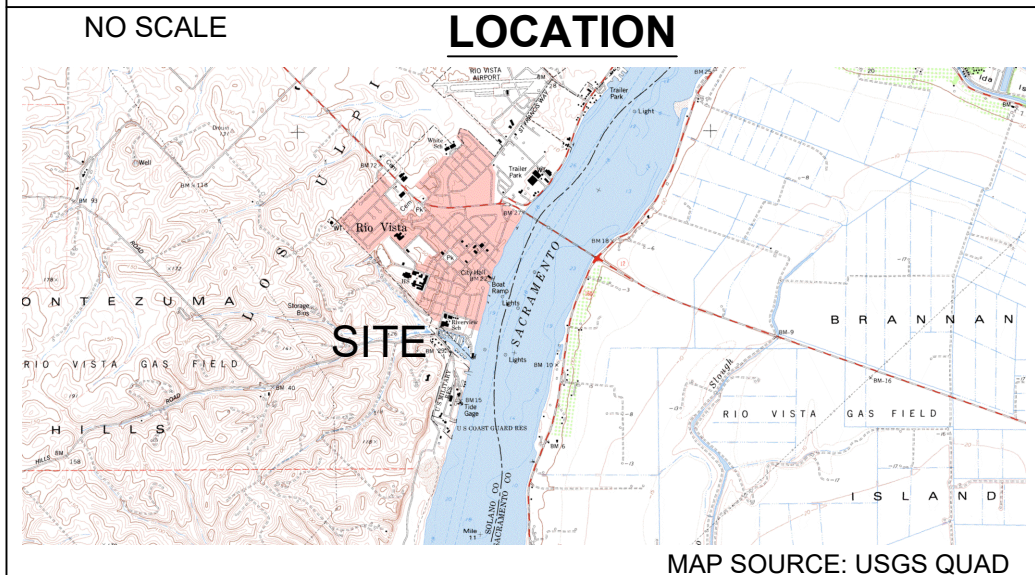
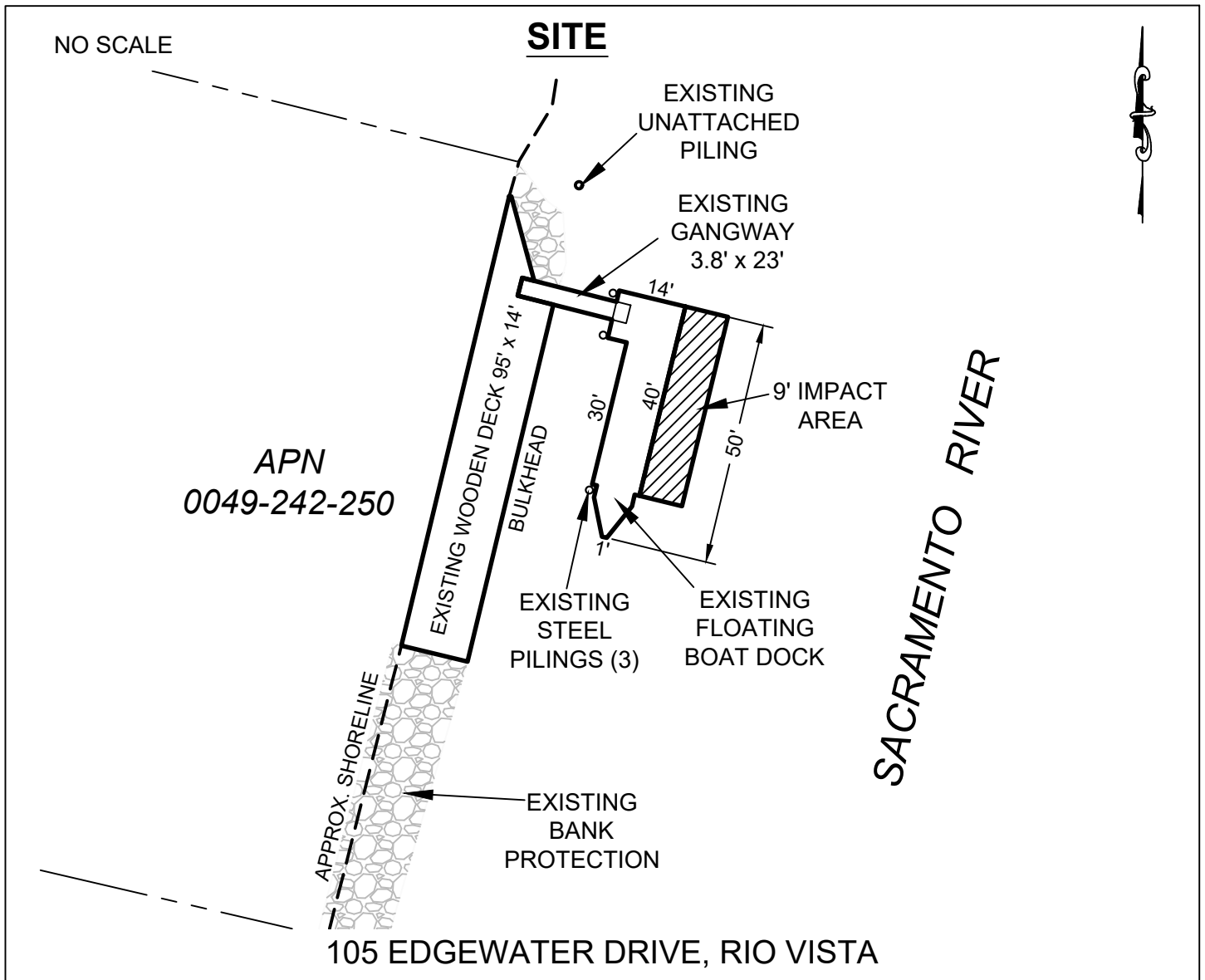
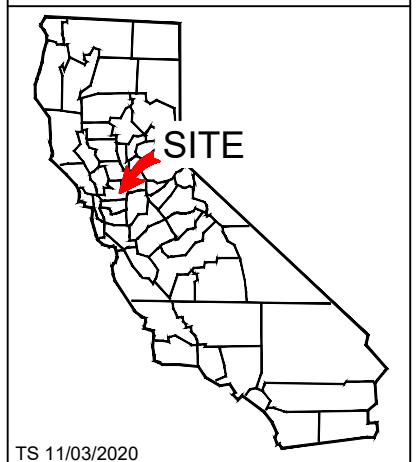


Exhibit B

LEASE 9300
ZHENG
APN 0049-242-250
GENERAL LEASE -
RECREATIONAL & PROTECTIVE
STRUCTURE USE
SOLANO 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.