

# Staff Report 25

## APPLICANT:

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Jerry W. Maddern, Trustee of the Jerry W. Maddern 2017 Trust, dated September 26, 2017

## PROPOSED ACTION:

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Issuance of a General Lease – Recreational and Protective Structure Use

## AREA, LAND TYPE, AND LOCATION:

Sovereign land in Georgiana Slough, adjacent to 17151 Terminous Road, near Isleton, Sacramento County.

## AUTHORIZED USE:

Use and maintenance of an existing boat dock with slip and enclosed boathouse with boat lift, walkway, four pilings, five unattached pilings, one 2-pile dolphin, and bank protection.

## TERM:

10 years; beginning February 23, 2021.

## CONSIDERATION:

**Boat dock with slip and enclosed boathouse with boat lift, walkway, four pilings, five unattached pilings, and one 2-pile dolphin:** \$235 per year, with an annual Consumer Price Index adjustment, and \$483 to compensate for the unauthorized occupation of state sovereign land dating back to January 2019.

**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.
- Lessee agrees and acknowledges that modification, alteration, or expansion of the Authorized Improvements without Lessor's prior written consent is prohibited.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **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 April 9, 2009, the Commission authorized a 10-year General Lease – Recreational and Protective Structure Use to Jerry W. Maddern and Dixie Louise Maddern for an existing boat dock with an enclosed boathouse with slip, walkway, 13 pilings, and the retention of an existing boatlift, two breakwater pilings, and bank protection ([Item C16, April 9, 2009](#)). The lease expired on September 21, 2018. On January 30, 2019, Jerry W. Maddern became sole owner of the upland and transferred title to Jerry W. Maddern, Trustee of the Jerry W. Maddern 2017 Trust, dated September 26, 2017. At some point since 2009, a portion of the dock was removed from the lease area, but the pilings were left in place. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use, for the use and maintenance of an existing boat dock with slip and enclosed boathouse with boat lift, walkway, four pilings, five unattached pilings, one 2-pile dolphin, and bank protection previously authorized by the Commission in Georgiana Slough.

Staff is requesting compensation from the Applicant in the amount of \$483 for the unauthorized occupation of State land during the period of January 30, 2019, through February 22, 2021, the day preceding issuance of the proposed new lease.

The Applicant owns the upland adjoining the lease premises. The subject facilities have existed at this location for many years. The facilities are used for recreational boating purposes and bank protection. Recreational boating is a water-dependent activity and 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 existing bank protection will maintain and improve the integrity of the

Georgiana Slough channel, which will help protect the Public Trust resources for recreational and navigational use by the public.

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 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.

### **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 Georgiana Slough, 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**

<b>Year</b>	<b>Projection (feet)</b>
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 Georgiana Slough'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 and pilings. 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 boat dock with slip and enclosed boathouse with lift and walkway 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. The fixed features, such as the 2-pile dolphin, four pilings, five unattached pilings, and bank protection may need reinforcement to withstand higher levels of flood exposure and more frequent storm events.

The vegetation on the bank protection provides stability and reduces the amount of erosion and scour pressure it may experience during future events because of the underground root system created from the vegetation and trees on the bank but remains at risk of accelerated deterioration from currents and floods. Exposed portions of the bank protective structure could be vulnerable to future events.

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 (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 impair the public rights to navigation and fishing or 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 common law Public Trust Doctrine; and is in the best interests of the State.

## **OTHER PERTINENT INFORMATION:**

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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. An Applicant has no right to a new lease or to renewal of any previous lease. If the Commission denies the application, the Applicant may be required to remove the existing boat dock with slip and enclosed boathouse with boat lift, walkway, four pilings, five unattached pilings, one 2-pile dolphin and bank protection, and restore the premises to their original condition.
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. Staff recommends that the Commission find that this activity is exempt from the requirements of 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:**

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- A. Land Description
- B. Site and Location Map

## **RECOMMENDED ACTION:**

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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 issuance of 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.

### **AUTHORIZATION:**

1. Authorize acceptance of compensation from the Applicant in the amount of \$483, for the unauthorized occupation of State land for the period beginning January 30, 2019, through February 22, 2021.
2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning February 23, 2021, for a term of 10 years, for the use and maintenance of an existing boat dock with slip and enclosed boathouse with boat lift, walkway, four pilings, five unattached pilings, one 2-pile dolphin and bank protection 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; consideration for the boat dock with slip and enclosed boathouse with boat lift, walkway, four pilings, five unattached pilings, and one 2-pile dolphin: \$235 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 5273**

**LAND DESCRIPTION**

Six parcels of tide and submerged land situate in the bed of the Georgiana Slough, lying adjacent to Swamp and Overflowed Land Survey 849 patented April 2, 1873, County of Sacramento, State of California and more particularly described as follows:

**PARCEL 1 – Dock**

All those lands underlying an existing boat dock with slip and enclosed boathouse with boat lift, walkway, four pilings and one 2-pile dolphin lying adjacent to that parcel described in Trust Transfer Deed, recorded January 30, 2019 in Document Number 201901301123 in Official Records of said County.

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

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

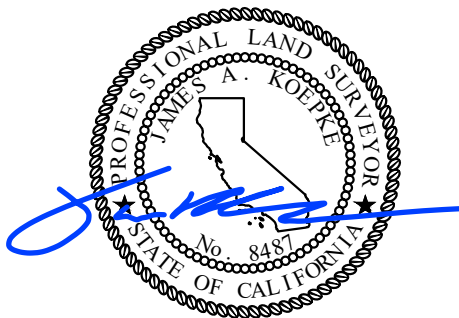
**PARCELS 2 thru 6 – Unattached Pilings**

All those lands underlying five existing unattached pilings lying adjacent to that parcel described in Trust Transfer Deed, recorded January 30, 2019 in Document Number 201901301123 in Official Records of said County.

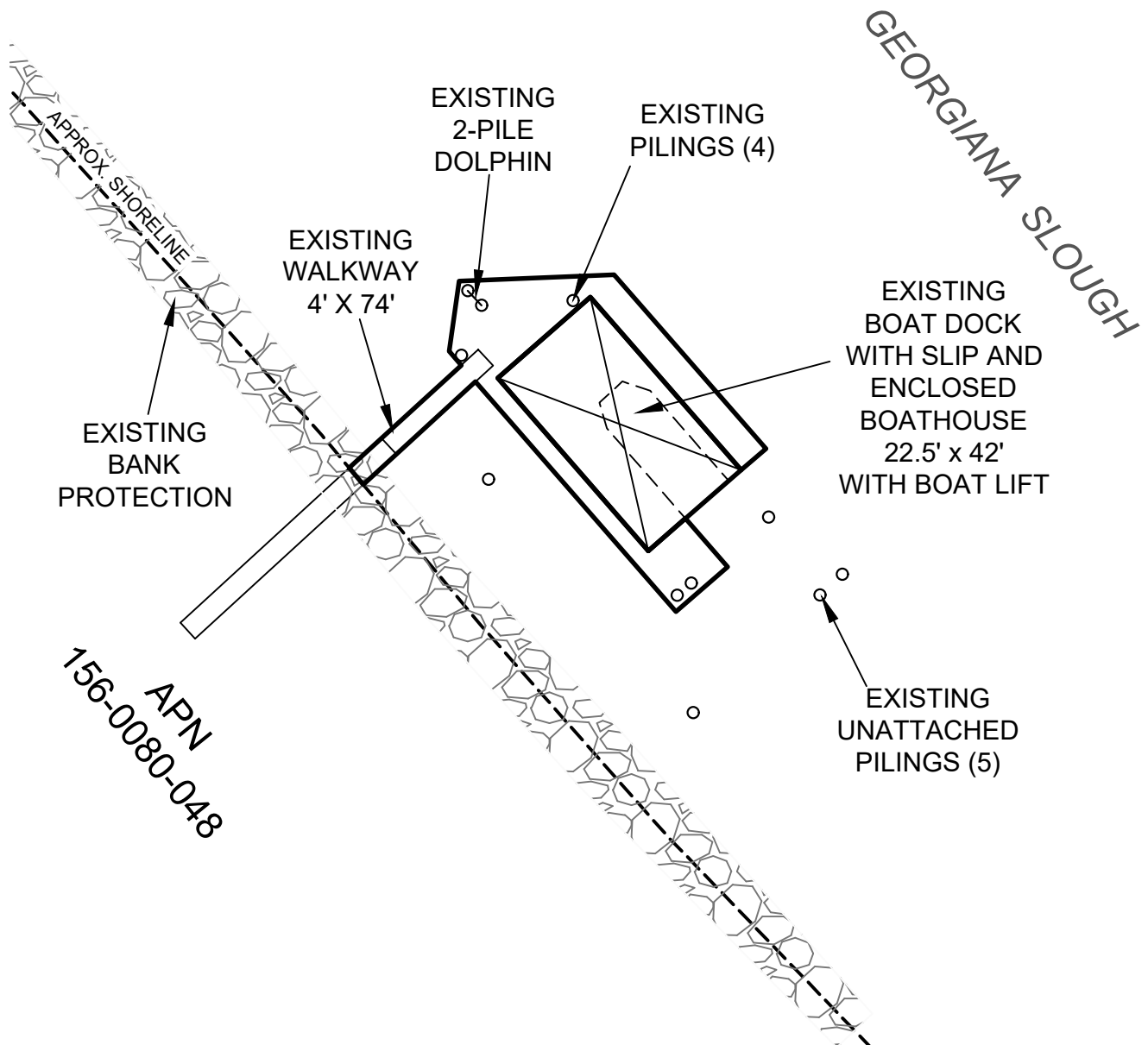
Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

Prepared 12/01/2020 by the California State Lands Commission Boundary Unit



NO SCALE



## EXHIBIT A

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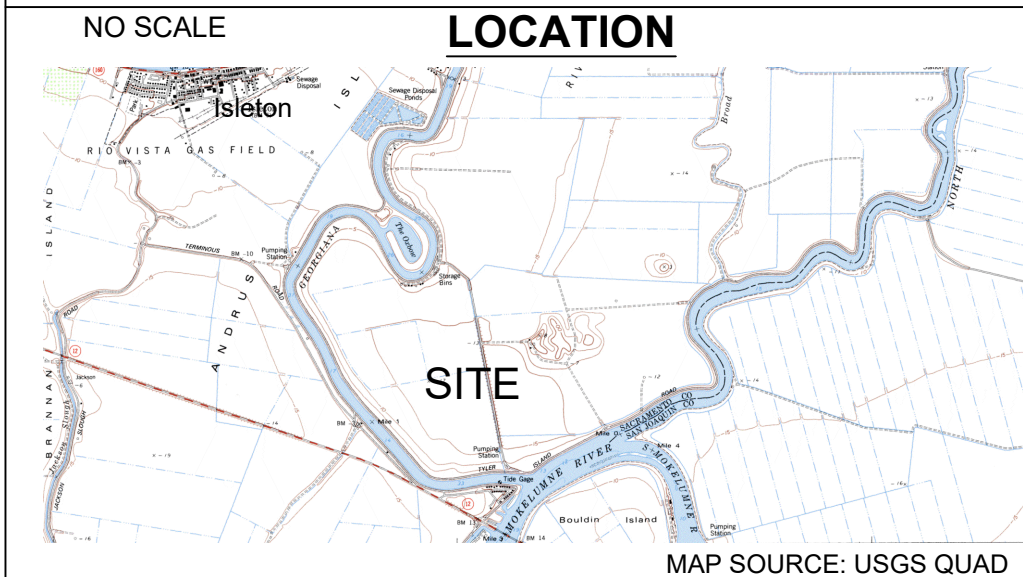
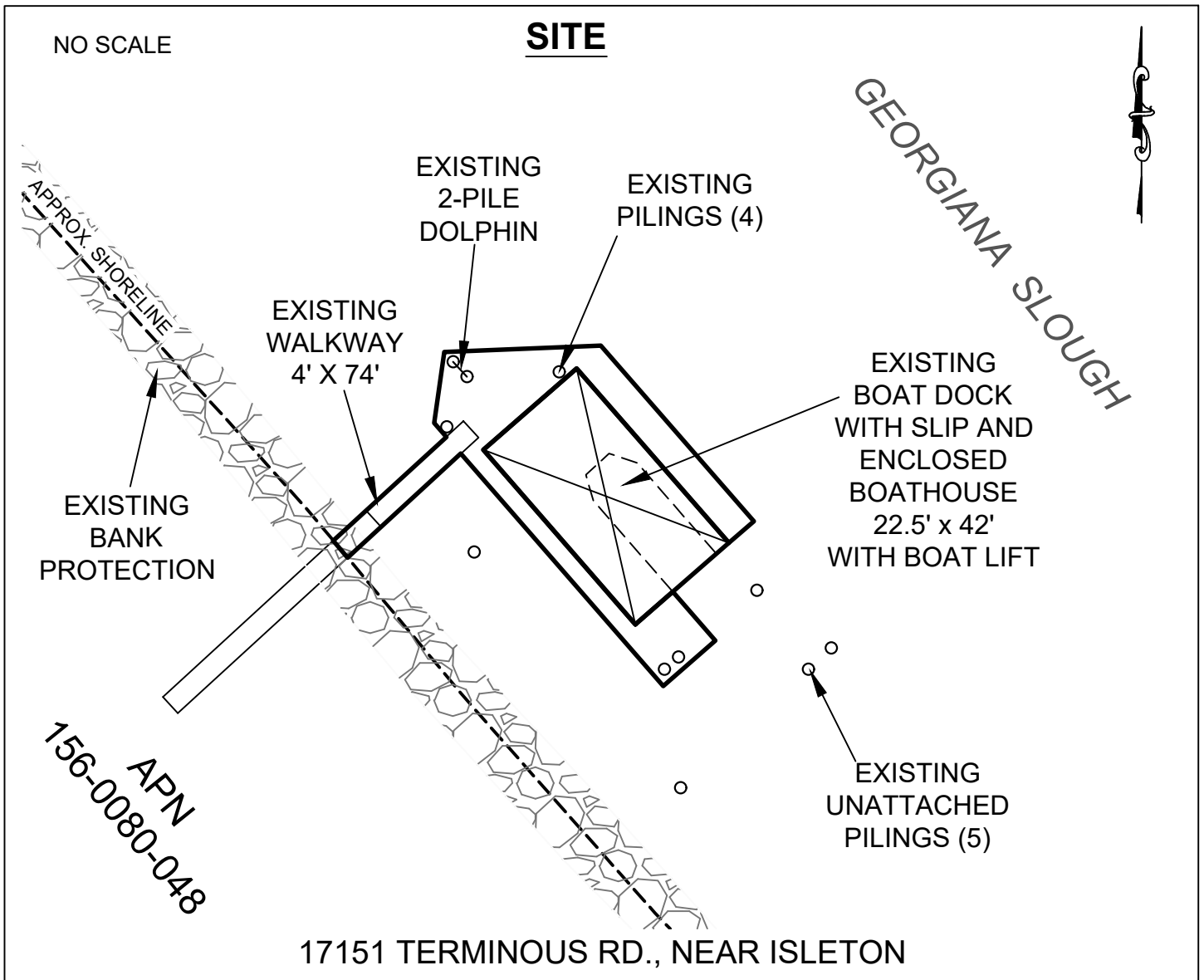
TS 12/01/2020

LAND DESCRIPTION PLAT  
LEASE 5273, MADDERN TRUST  
SACRAMENTO COUNTY

CALIFORNIA STATE  
LANDS COMMISSION







## Exhibit B

LEASE 5273  
MADDERN TRUST  
APN 156-0080-048  
GENERAL LEASE -  
RECREATIONAL & PROTECTIVE  
STRUCTURE USE  
SACRAMENTO COUNTY

**SITE**

TS 12/01/2020

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.