

# Staff Report 29

## **APPLICANT:**

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Denice A. DeRicco and Gail B. DeRicco, Trustees of the DeRicco Family Revocable Trust

## **PROPOSED ACTION:**

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Issuance of a General Lease – Recreational and Protective Structure Use

## **AREA, LAND TYPE, AND LOCATION:**

Sovereign land in the Sacramento River, adjacent to 4075 Garden Highway, near Sacramento, Sacramento County.

## **AUTHORIZED USE:**

Use and maintenance of an existing covered floating boat dock with slip and boat lift, gangway, utility conduit, water line, two pilings, and one 2-pile dolphin previously authorized by the Commission and existing bank protection not previously authorized by the Commission.

## **TERM:**

10 years, beginning June 23, 2021.

## **CONSIDERATION:**

**Covered boat dock with slip and boat lift, gangway, utility conduit, water line, two pilings, and one 2-pile dolphin:** \$215 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:**

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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 June 29, 2015, the Commission authorized a 10-year General Lease – Recreational Use to the Denice A. DeRicco Revocable Trust, for an existing covered floating boat dock with slip and boat lift, gangway, utility conduit, water line, two pilings, and one 2-pile dolphin ([Item C60, June 29, 2015](#)). The lease will expire on June 22, 2021. At some point, bank protection was added to the lease area without an amendment of lease or notification to Commission staff. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use, for the use and maintenance of an existing covered boat dock with slip and boat lift, gangway, utility conduit, water line, two pilings, and one 2-pile dolphin previously authorized by the Commission and existing bank protection not previously authorized by the Commission.

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 the docking and mooring of boats. 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 land (Pub. Resources Code, § 6503.5). The bank protection has existed at this location for several years. The bank protection will maintain and improve the integrity of the river channel, which helps 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 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. The lease also requires the payment of annual rent to compensate 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 lease area is located on the Sacramento River, which at this location is a tidally influenced site vulnerable to flooding at current sea levels; therefore, this area would be at a higher risk of flood exposure given future projection 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 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.

Climate change could have a number of impacts for this region. The amount and timing of snowmelt runoff will likely change such that runoff pulses are earlier in the season and stronger precipitation events will occur over a shorter period of time. This potential outcome is because warming temperatures will result in more water falling as rain rather than snow, earlier spring snowmelt, and less snowpack overall. In rivers and tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris. In addition, there will be greater amounts of runoff because less water will be trapped at higher altitudes in snowpack. 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 coastal and riverine areas by changing erosion and sedimentation rates. In rivers and tidally influenced waterways, flooding and storm flow will likely increase scour, decreasing bank stability.

The covered floating boat dock with slip, boat lift, dolphin, and gangway with utility conduit 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 pilings may need reinforcement and possibly replacement to withstand higher levels of flood exposure and more frequent storm events. The bank is protected, but may need reinforcement and possibly replacement to withstand higher levels of flood exposure and more frequent storm 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 as authorized by law. If the Commission denies the application, the Applicant may be required to remove the existing covered boat dock with slip and boat lift, gangway, utility conduit, water line, two pilings, one 2-pile dolphin, and bank protection and to 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 the "Meeting Evolving Public Trust Needs" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
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:**

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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 Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the Public Trust Doctrine; and is in the best interests of the State.

**AUTHORIZATION:**

Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning June 23, 2021, for a term of 10 years, for the use and maintenance of an existing covered floating boat dock with slip and boat lift, gangway, utility conduit, water line, two pilings, and one 2-pile dolphin previously authorized by the Commission and existing bank protection not 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 existing covered floating boat dock with slip and boat lift, gangway, utility conduit, water line, two pilings, and one 2-pile dolphin: \$215 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 5126**

**LAND DESCRIPTION**

A parcel of tide and submerged land situate in the bed of the Sacramento River, lying adjacent to Swamp and Overflowed Land Survey 905 patented June 10, 1869, County of Sacramento, State of California and more particularly described as follows:

All those lands underlying an existing covered floating boat dock with slip and boat lift, gangway, utility conduit, water line, two pilings and one 2-pile dolphin lying adjacent to that parcel as described in Grant Deed, recorded July 31, 2006 in Book 20060731 Page 0814 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 left bank of said River.

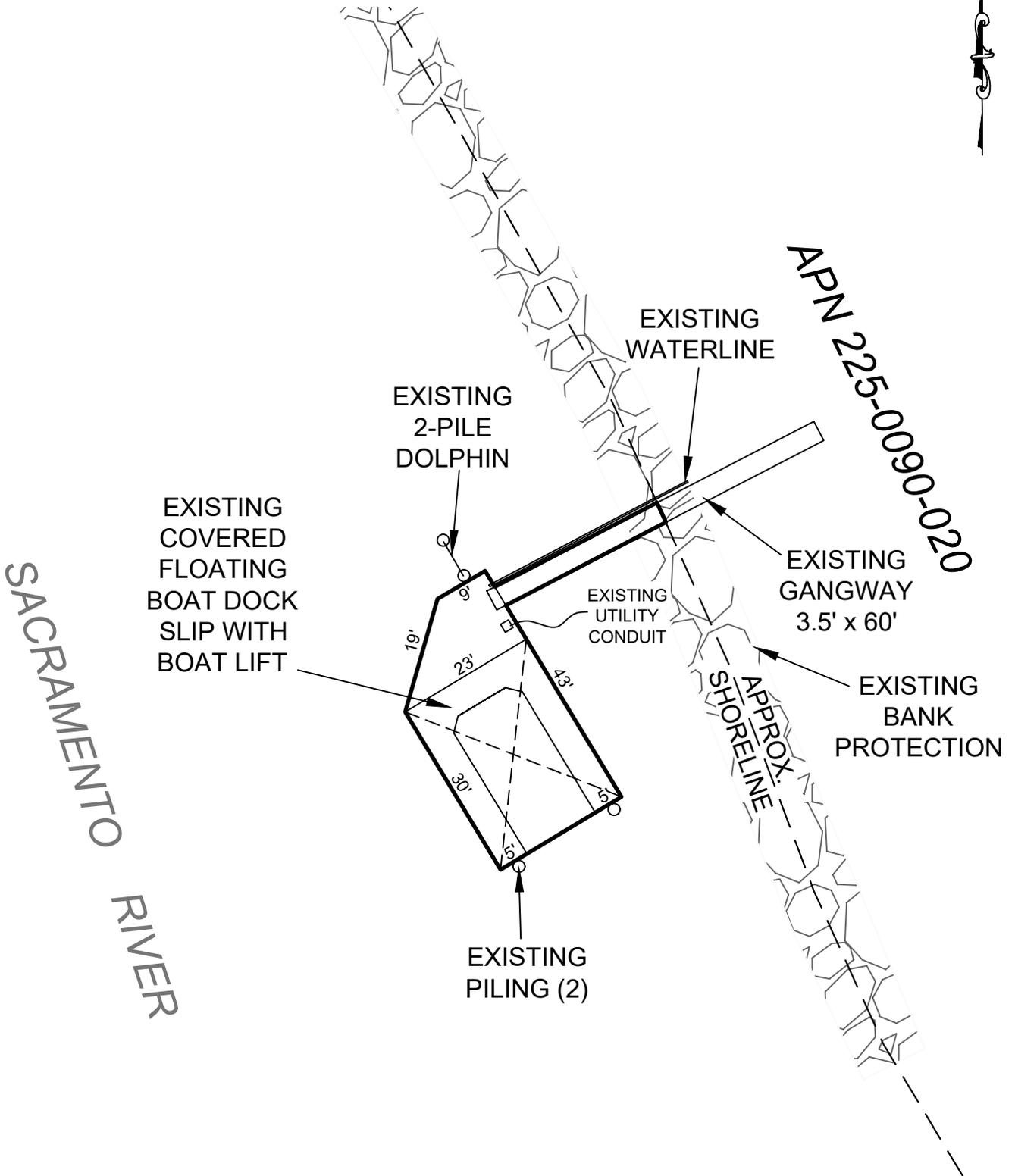
Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

Prepared 10/01/2020 by the California State Lands Commission Boundary Unit



NO SCALE



### EXHIBIT A

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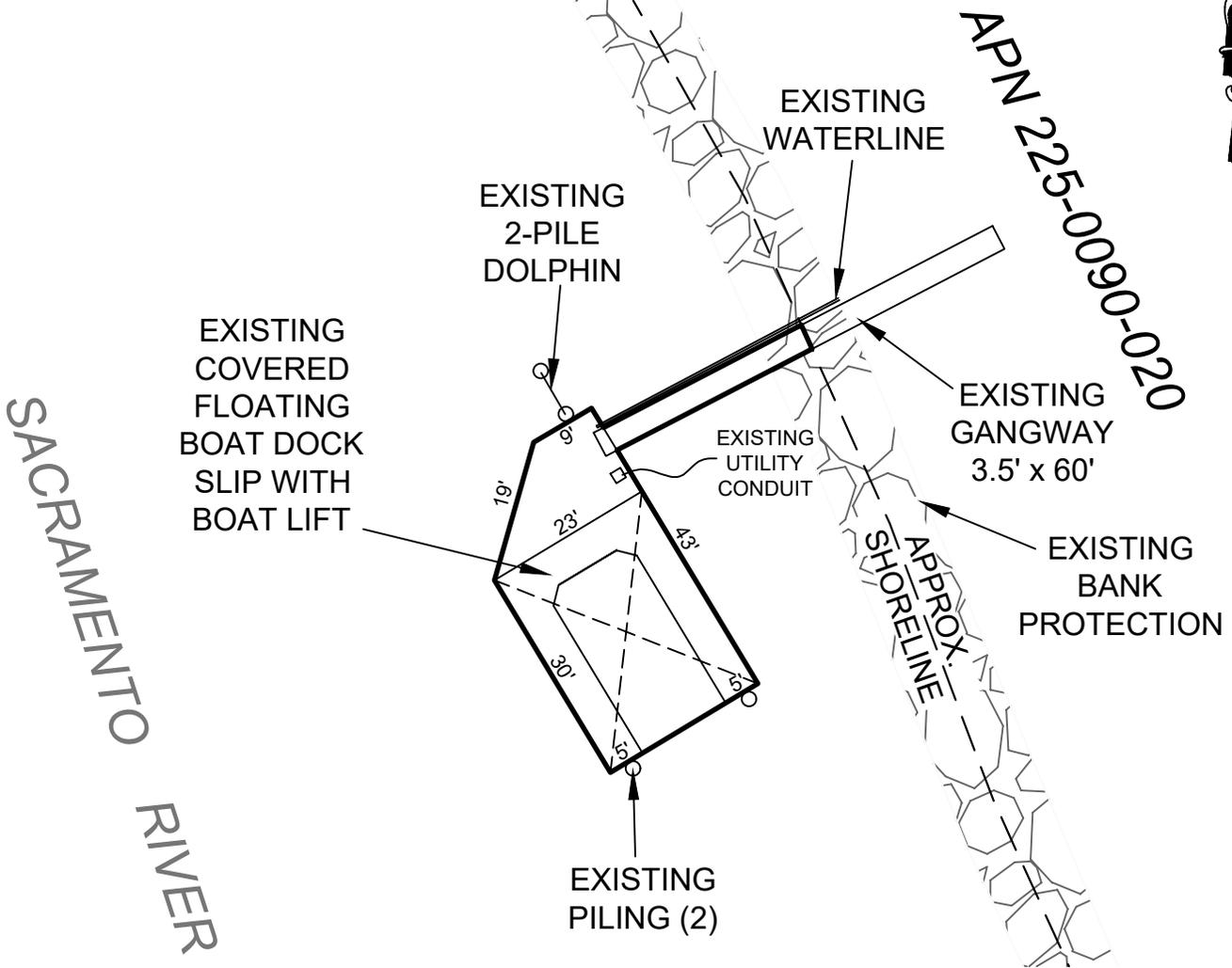
LAND DESCRIPTION PLAT  
 LEASE 5126, DERICCO  
 SACRAMENTO COUNTY

CALIFORNIA STATE  
 LANDS COMMISSION



NO SCALE

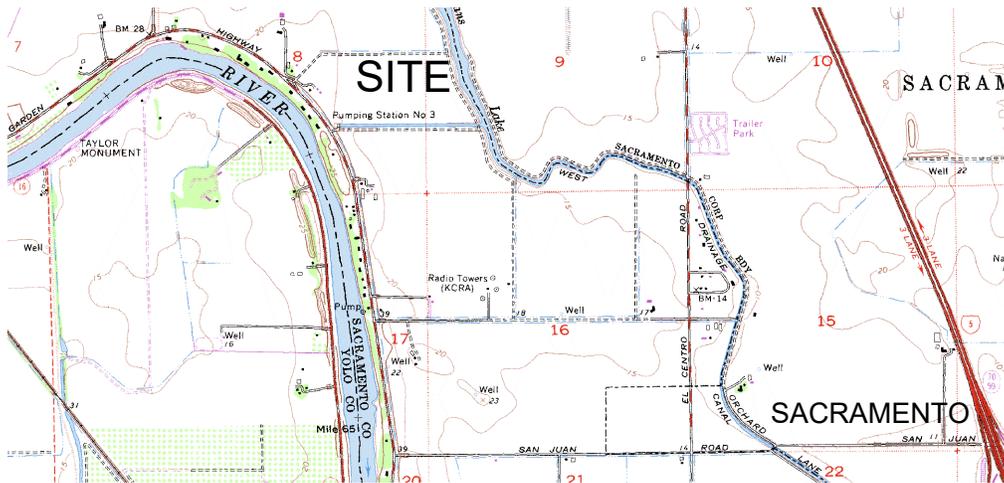
### SITE



4075 GARDEN HIGHWAY, SACRAMENTO

NO SCALE

### LOCATION



MAP SOURCE: USGS QUAD

**Exhibit B**  
 LEASE 5126  
 DERICCO, TRUSTEE  
 APN 225-0090-020  
 GENERAL LEASE-  
 RECREATIONAL AND  
 PROTECTIVE STRUCTURE USE  
 SACRAMENTO COUNTY



TS 10/01/2020

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.