

Staff Report 26

APPLICANT:

Donald W. Fraulob and Melissa C. Brown

PROPOSED ACTION:

Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Sacramento River, adjacent to 2517 Garden Highway, Sacramento, Sacramento County.

AUTHORIZED USE:

Use and maintenance of two existing unattached pilings.

TERM:

5 years, beginning June 29, 2021.

CONSIDERATION:

\$140 per year, with an annual Consumer Price Index adjustment, and \$322 to compensate for the unauthorized occupation of state sovereign land dating back to March 2019.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Surety bond or other security in an amount no less than \$10,000.
- Lessee agrees and acknowledges that modification, alteration, or expansion of the Authorized Improvements without Lessor's prior written consent is prohibited.
- 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 to submit an application to the Commission for removal of the two existing unattached pilings or for reuse of the pilings, within two years of Lease expiration date.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 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 23, 2011, the Commission authorized a Recreational Pier Lease to Donald W. Fraulob, for an existing boat dock, two pilings, and gangway ([Item C11, June 23, 2011](#)). That lease expired on March 3, 2019. At some point, the existing boat dock and gangway were removed from the lease area, leaving the two unattached pilings on State land. The Applicant has no plans to remove these improvements. On February 21, 2014, Donald W. Fraulob transferred a 50 percent interest in the upland parcel to Melissa C. Brown. The Applicant is applying for a General Lease – Recreational Use, for the use and maintenance of two existing unattached pilings in the Sacramento River.

Staff is requesting compensation from the Applicant in the amount of \$322, for the unauthorized occupation of State land for the period of March 4, 2019, through June 28, 2021, the day preceding issuance of the proposed new lease. Staff recommends the effective date of the proposed new lease align with the authorization date.

The subject improvements are privately owned and maintained facilities which align with mooring a recreational boat. 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 improvements have existed at this location for many years. The pilings are located adjacent to the upland property and occupy a relatively small area of the river. The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 5-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 people of the State for the occupation of the public land involved.

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; and is in the best interests of the State.

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 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 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 the pilings within the lease premises during the term of the lease. The pilings 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 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; 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. 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 two existing unattached pilings and restore the premises to their original condition. Upon expiration or prior termination of a 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" and "Leading Climate Activism" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
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:

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

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; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of compensation from the Applicant in the amount of \$322, for the unauthorized occupation of State land for the period beginning March 4, 2019, through June 28, 2021.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning June 29, 2021, for a term of 5 years, for the use and maintenance of two existing unattached pilings, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration: \$140 per year, with an annual Consumer Price Index adjustment; liability insurance in an amount no less than \$1,000,000 per occurrence; and surety bond or other security in the amount of \$10,000.

EXHIBIT A

LEASE 5178

LAND DESCRIPTION

Two parcels of submerged land situate in the bed of the Sacramento River, lying adjacent to Swamp and Overflowed Land Survey 206, patented August 2, 1869, County of Sacramento, State of California and more particularly described as follows:

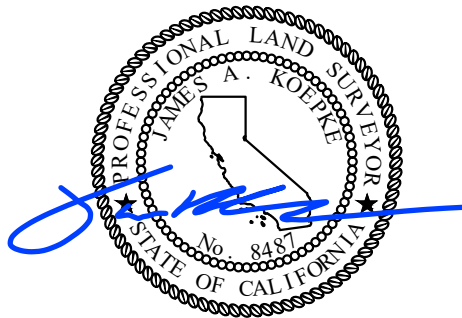
PARCELS 1 and 2 – Unattached Pilings

All those lands underlying two existing unattached steel pilings lying adjacent to that parcel described in Grant Deed, recorded February 21, 2014 in Book 20140221 at Page 1124 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 04/26/2021 by the California State Lands Commission Boundary Unit



NO SCALE



SACRAMENTO RIVER

EXISTING
UNATTACHED
STEEL PILING



EXISTING
UNATTACHED
STEEL PILING



APPROX.
SHORELINE

APN 274-0250-026

EXHIBIT A

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LAND DESCRIPTION PLAT
LEASE 5178, FRAULOB / BROWN
SACRAMENTO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE



SITE

SACRAMENTO
RIVER

EXISTING
UNATTACHED
STEEL PILING

EXISTING
UNATTACHED
STEEL PILING

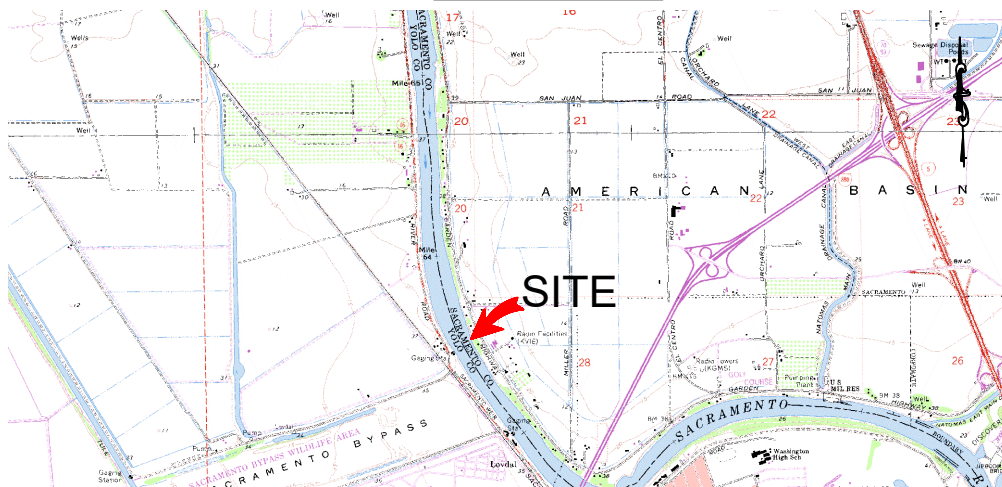
APPROX.
SHORELINE

APN 274-0250-026

2517 GARDEN HIGHWAY, SACRAMENTO

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 5178

FRAULOB / BROWN

APN 274-0250-026

GENERAL LEASE -

RECREATIONAL USE

SACRAMENTO COUNTY



TS 04/26/2021