

Staff Report 23

APPLICANT:

Te Velde Stan Glenn Properties #2, L.P., a California Limited Partnership

PROPOSED ACTION:

Issuance of a General Lease – Protective Structure Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Stanislaus River, adjacent to 2949 Ladd Road, near Modesto, Stanislaus County.

AUTHORIZED USE:

Continued use and maintenance of existing bank protection.

TERM:

10 years, beginning August 25, 2021.

CONSIDERATION:

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 the indemnity clause shall also extend to the period of Lessee's unauthorized occupation of state-owned lands, from December 22, 2015, through August 24, 2021.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On June 7, 2004, the Commission authorized a General Lease – Protective Structure Use to George Te Velde, Jr. and Margot E. Te Velde, for the use and maintenance of existing riprap ([Item C28, June 7, 2004](#)). That lease expired on October 31, 2014.

On December 22, 2015, ownership of the upland parcel and lease improvements was deeded to the Applicant. The Applicant has assumed ownership and control of the riprap (or bank protection) and is now applying for a General Lease – Protective Structure Use, for the continued use and maintenance of the existing bank protection.

The bank protection will maintain and improve the integrity of the river channel, which will help protect the Public Trust resource of the river for recreational and navigational purposes by the public. The bank protection is maintained by the Applicant with no cost to the public.

The bank protection has existed for several years at this location. 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 and does not grant the lessee exclusive rights to the lease premises. 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 keep and maintain the bank protection in good order and repair. The lease also 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.

CLIMATE CHANGE:

The Stanislaus River at this location is not tidally influenced and would not be subject to sea-level rise. 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, drought, and storms. In rivers, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris. Conversely,

prolonged droughts could dramatically reduce river flow and water levels, leading to loss of public access and navigability. Climate change will further influence riverine areas by changing erosion and sedimentation rates, and flooding and storm flow. Runoff will likely increase scour, decreasing bank stability at a faster rate.

The lease structures could be subject to climate change–related riverine processes, such as storm events of increased intensity and frequency. Regular maintenance, as required by the lease, will reduce the likelihood of structural degradation.

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:

1. Approval or denial of the application for a new lease 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 Lessee may be required to remove the bank protection and to restore the premises to their original condition. Upon expiration or prior termination of the lease, the Lessee 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:

- 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; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Protective Structure Use to the Applicant beginning August 25, 2021, for a term of 10 years, for the use and maintenance of existing bank protection, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration: 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 interest; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 6750

LAND DESCRIPTION

Two parcels of submerged land situate in the bed of the Stanislaus River, northwest of the City of Modesto, lying adjacent to Swamp and Overflowed Lands Survey 208, patented on May 5, 1870, County of Stanislaus, State of California and more particularly described as follows:

PARCELS 1 and 2

All those land in the bed of Stanislaus River, lying immediately beneath riprap placed for bank protection on the left bank of said river, adjacent to that parcel described in the Grant Deed recorded December 22, 2015 in Document Number 2015-0098613-00, Official Records of Stanislaus County.

EXCEPTING THEREFROM any portion lying landward of the low water mark of the left bank of said river.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

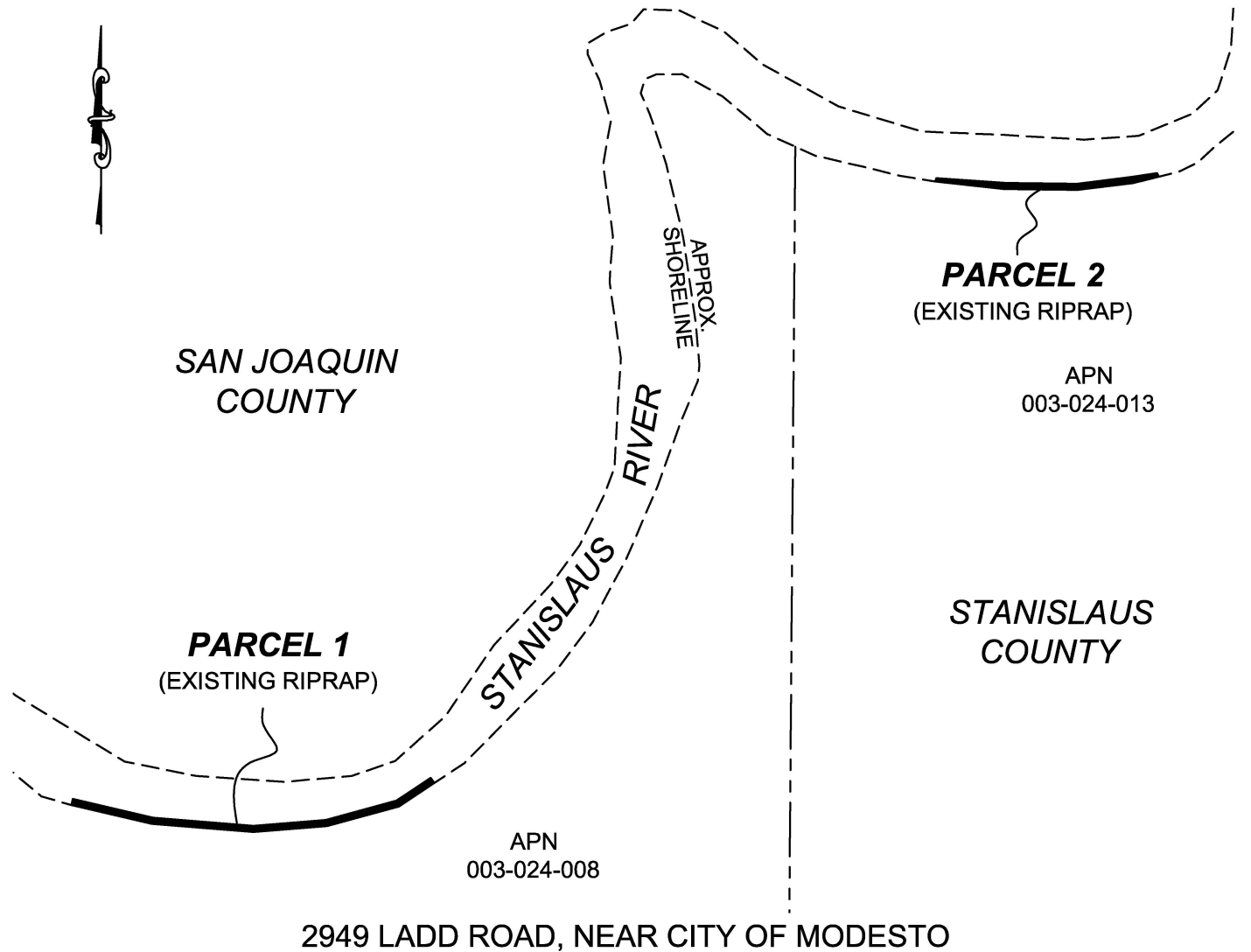
The above description is based on original description prepared by CSLC Boundary and Title Unit on 08/15/1984 as found in Work 23295 (PRC 6750) file, Calendar Item C16.

Revised 02/19/2021 by the California State Lands Commission Boundary Unit.



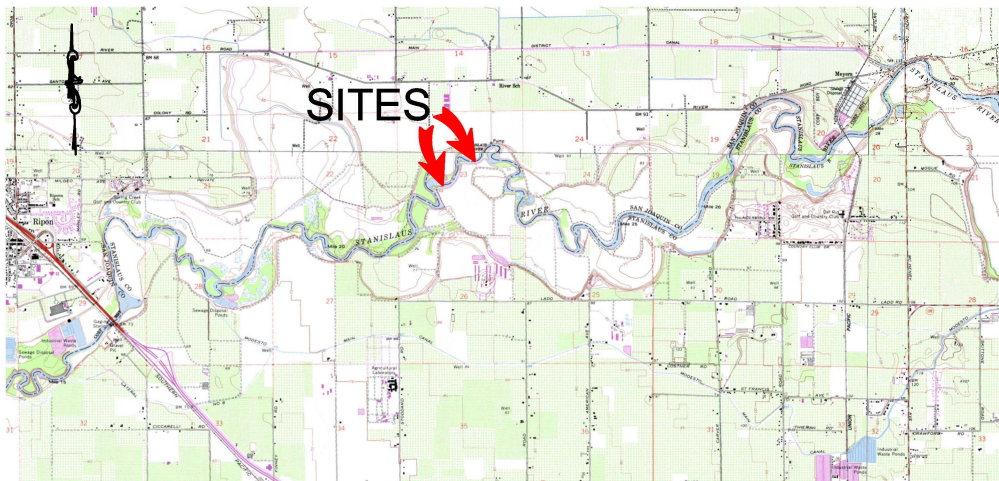
NO SCALE

SITE



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 6750
TE VELDE STAN GLENN
PROPERTIES #2, L.P.
GENERAL LEASE -
PROTECTIVE
STRUCTURE USE
STANISLAUS COUNTY



TS 02/19/2021