

Staff Report 24

LESSEE:

Michael S. Tinker

APPLICANT:

David Hoang

PROPOSED ACTION:

Consider Waiver of Rent, Penalty, and Interest and Termination and Issuance of a General Lease – Recreational and Protective Structure Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Sacramento River, adjacent to 2375 Garden Highway, near Sacramento, Sacramento County.

AUTHORIZED USE:

Continued use and maintenance of an existing floating boat dock, two deadmen with three winches, galvanized cables, gangway, stairs, and bank protection.

TERM:

10 years, beginning December 18, 2020.

CONSIDERATION:

Boat dock, two deadmen with three winches, galvanized cables, gangway, and stairs:

\$353 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 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 5, 2012, the Commission authorized a General Lease - Recreational and Protective Structure Use for the removal of an existing single-berth floating boat dock and the construction, use, and maintenance of a floating boat dock; and continued use and maintenance of two existing deadmen with three winches, galvanized cables, gangway, stairs, and bank protection to Michael S. Tinker ([Item C12, December 5, 2012](#)). On October 19, 2017, the Commission authorized a revision of rent to revise the annual rent from \$310 to \$334 per year ([Item C51, October 19, 2017](#)). On December 18, 2020, the property was deeded to David Hoang. The lease will expire on December 4, 2022.

The Applicant is now applying for a General Lease – Recreational and Protective Structure Use for the continued use and maintenance of the existing facilities that extend onto sovereign land. Staff recommends termination of the existing lease because the Lessee sold the upland property and lease improvements without notifying staff, failed to execute a lease quitclaim, and defaulted on lease payments. The Lessee paid rent through December 4, 2020, but did not pay invoice number 51190 for the period from December 5, 2020, through December 4, 2021. Staff recommends the proposed lease begin on December 18, 2020, the date the Applicant assumed ownership. This would result in a minimal amount of unpaid rent from December 4 through December 17, 2020, owed by Lessee. Staff believes it is not in the State's best interests to pursue the unpaid rent, penalty, and interest from the Lessee.

The subject facilities are used for the docking and mooring of boats, and 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 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 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 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 existing 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 projected conditions could also increase the likelihood of damage to the fixed features within the lease premises during the term of the lease. The deadmen, stairs, and bank protection may need reinforcement and possibly replacement to withstand higher levels of flood exposure and more frequent storm events. Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation or dislodgement.

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 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, as the owner of the improvements on state land, may be required to remove the floating boat

dock, two deadmen with three winches, galvanized cables, gangway, stairs, and bank protection and 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 "Leading Climate Activism" and "Meeting Evolving Public Trust Needs" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. Waiver of rent, penalty, and interest, and termination of the lease are not projects 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:

Find that the termination of a lease; waiver of rent, penalty, and interest; and 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 proposed lease; are consistent with the common law Public Trust Doctrine; and are in the best interests of the State.

AUTHORIZATION:

1. Waive annual rent, penalty, and interest due for the period from December 5, 2020, through December 4, 2021, and void annual rent invoice #51190 issued to Michael S. Tinker.
2. Terminate, effective December 17, 2020, Lease Number PRC 5840, a General Lease – Recreational and Protective Structure Use, issued to Michael S. Tinker.
3. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant, beginning December 18, 2020, for a term of 10 years, for the use and maintenance of an existing floating boat dock, two deadmen with three winches, galvanized cables, gangway, stairs, and 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 for the floating boat dock, two deadmen with three winches, galvanized cables, gangway, and stairs: \$353 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 interest; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 5840

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 828 patented April 5, 1869, County of Sacramento, State of California and more particularly described as follows:

All those lands underlying an existing floating boat dock, gangway, steps, deadman, deadman with winches and galvanized cables lying adjacent to that parcel described in Grant Deed, recorded December 18, 2020 in Document Number 202012180488 in Official Records of said County.

TOGETHER WITH any applicable Impact Area(s).

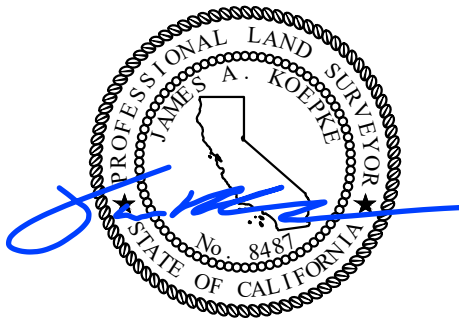
ALSO TOGETHER WITH that land lying immediately beneath any bank protection structure adjacent to said parcel.

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 04/22/2021 by the California State Lands Commission Boundary Unit



NO SCALE

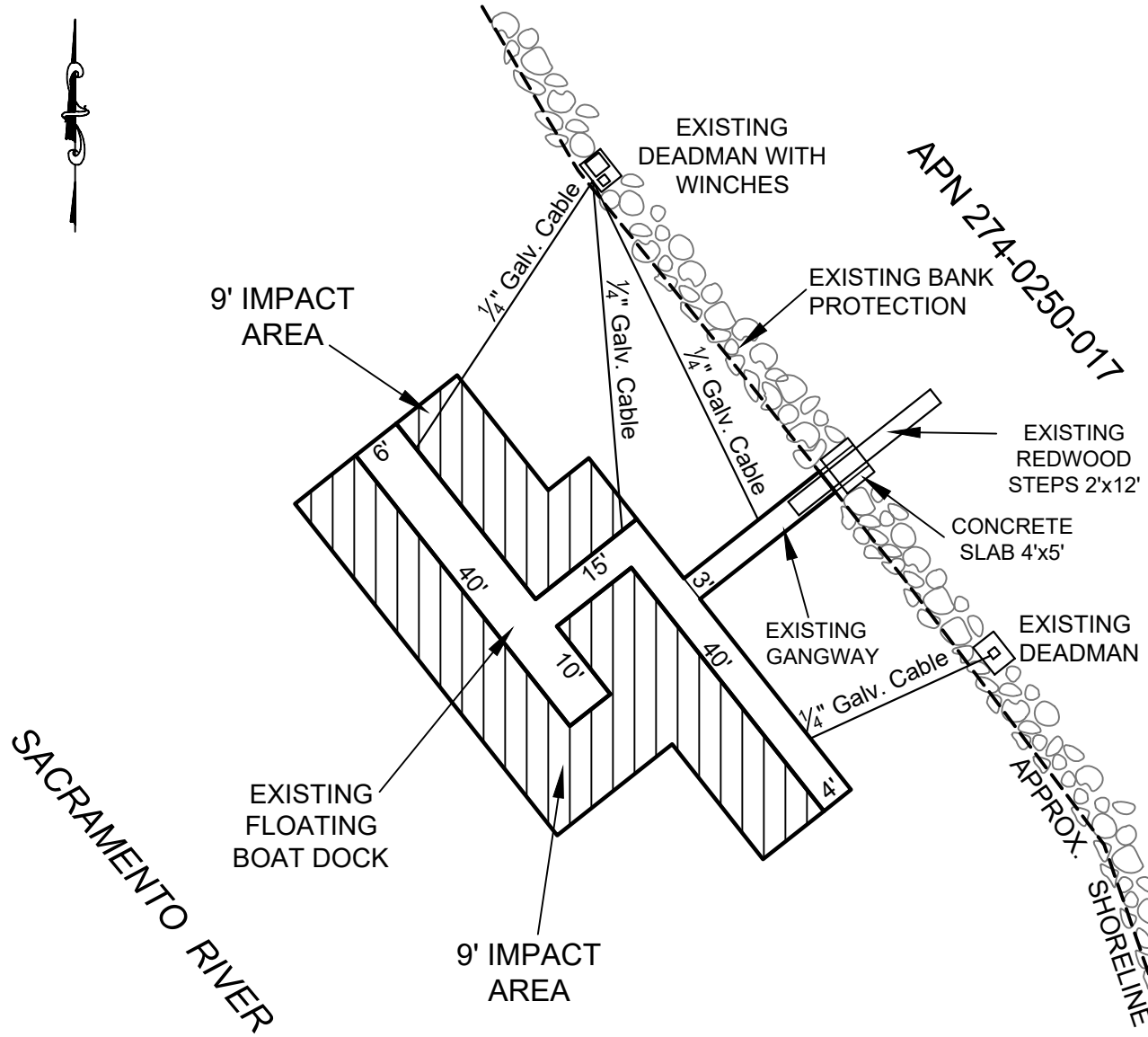


EXHIBIT A

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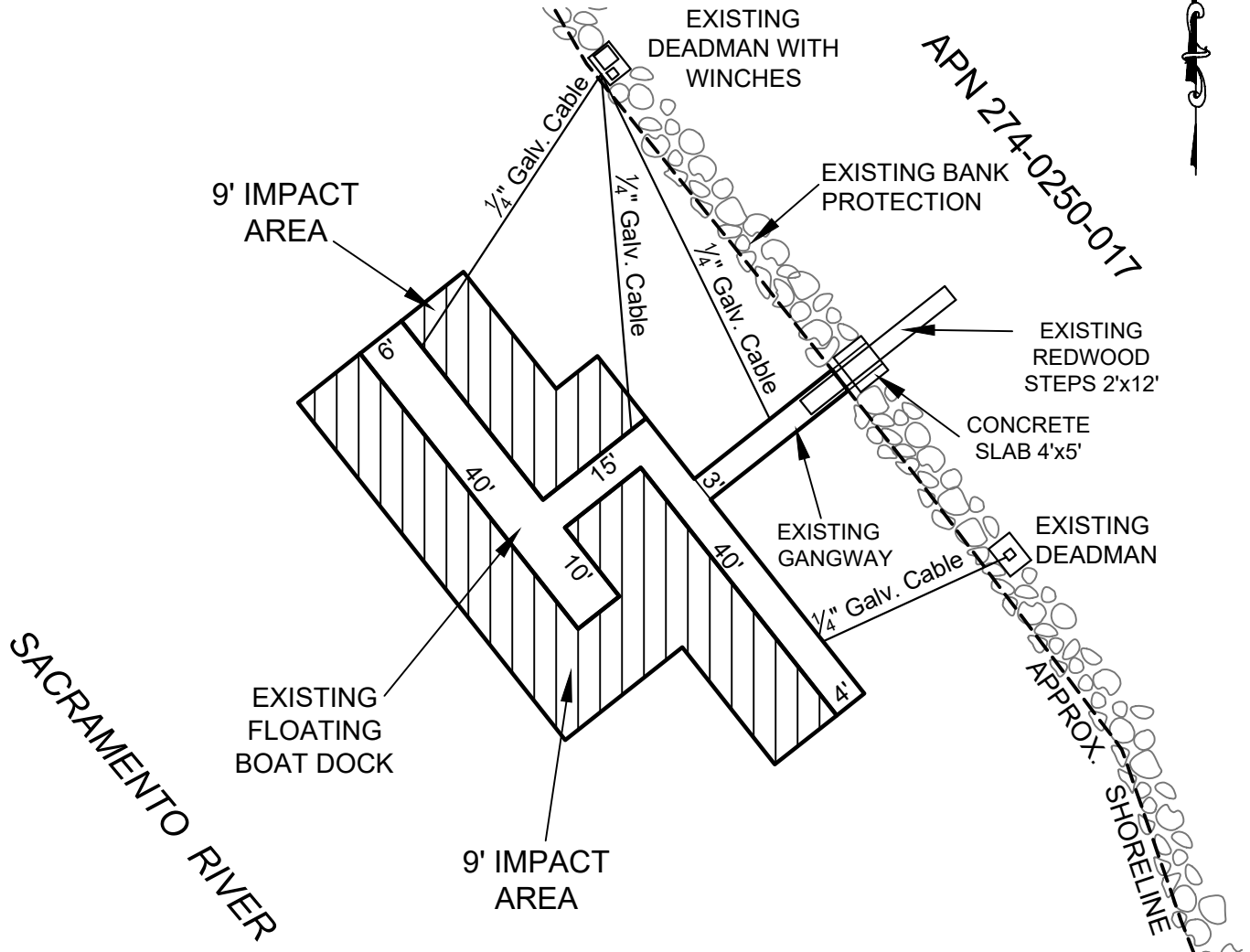
LAND DESCRIPTION PLAT
LEASE 5840, HOANG
SACRAMENTO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

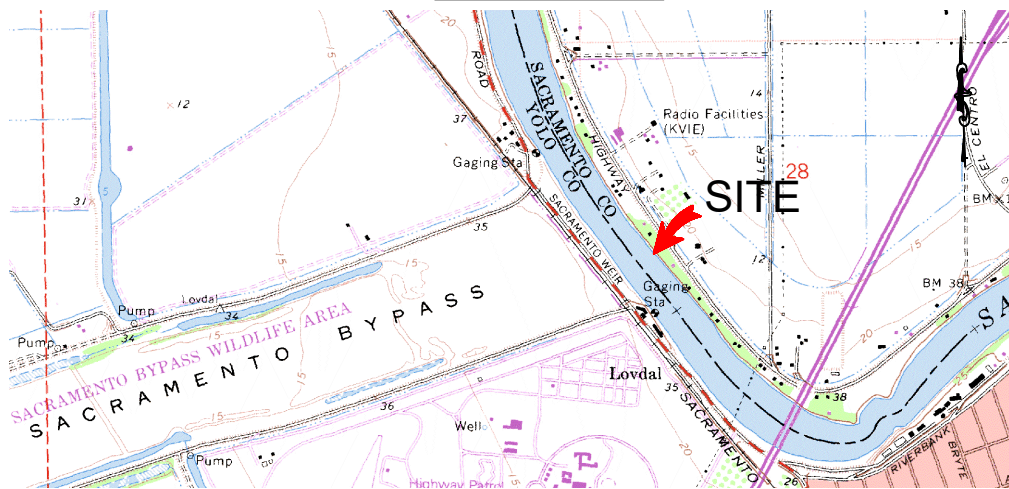
SITE



2375 GARDEN HIGHWAY, SACRAMENTO

NO SCALE

LOCATION



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 5840

HOANG

APN 274-0250-017

GENERAL LEASE-
RECREATIONAL AND
PROTECTIVE
STRUCTURE USE
SACRAMENTO COUNTY



TS 04/21/2021