

Staff Report 08

APPLICANT:

Janelle M. Hopps, as Trustee of the Vitznau Trust Under Trust Instrument Dated January 19, 1999 as to an undivided 50% interest; and Ryan A. Baily, a single man, as to an undivided 50% interest

PROPOSED ACTION:

Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Sacramento River, adjacent to 3505 Garden Highway, near Sacramento, Sacramento County.

AUTHORIZED USE:

Use and maintenance of an existing boat dock, gangway, three pilings, and two-pile dolphin.

TERM:

10 years, beginning August 5, 2021.

CONSIDERATION:

\$339 per year, with an annual Consumer Price Index adjustment.

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:

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, 2020, the Commission authorized the assignment of Lease No. PRC 5720.1, a General Lease – Recreational Use, from Darren William Brock, as Trustee of the DAWB Trust, dated May 17, 2004, to Janelle M. Hopps, as Trustee of the Vitznau Trust and Ryan A. Baily, for an existing boat dock, gangway, three pilings, and two-pile dolphin ([Item C22, June 23, 2020](#)). That lease expired on August 4, 2021. The Applicant is applying for a General Lease – Recreational Use, for the use and maintenance of an existing boat dock, gangway, three pilings, and two-pile dolphin in the Sacramento River.

The subject facilities are privately owned and maintained by the Applicant. The boat dock and appurtenant facilities are used for 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 facilities have existed at this location for many years. The facilities 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 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 combination of these projected conditions could also increase the likelihood of damage and affect the fixed features within the lease premises during the term of the lease, such as the

pilings and dolphin, which may need reinforcement and possibly replacement to withstand higher levels of flood exposure and more frequent storm events.

Regular monitoring and maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises are located in an area that may be subject to the effects of climate change, including sea-level rise.

CONCLUSION:

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; is consistent with the 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. If the Commission denies the application, the Applicant may be required to remove the boat dock, gangway, three pilings, and two-pile dolphin and restore the premises to their original condition. An applicant 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 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 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 Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Recreational Use to the Applicant beginning August 5, 2021, for a term of 10 years, for the use and maintenance of an existing boat dock, gangway, three pilings, and two-pile dolphin, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; annual rent in the amount of \$339, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 5720

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 178 patented June 10, 1869, County of Sacramento, State of California and more particularly described as follows:

All those lands underlying an existing boat dock, gangway, three pilings and one 2-pile dolphin lying adjacent to that parcel as described in Deed of Trust, recorded June 12, 2019 in Document Number 201906121958 in Official Records of said County.

TOGETHER WITH any applicable Impact Area(s).

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

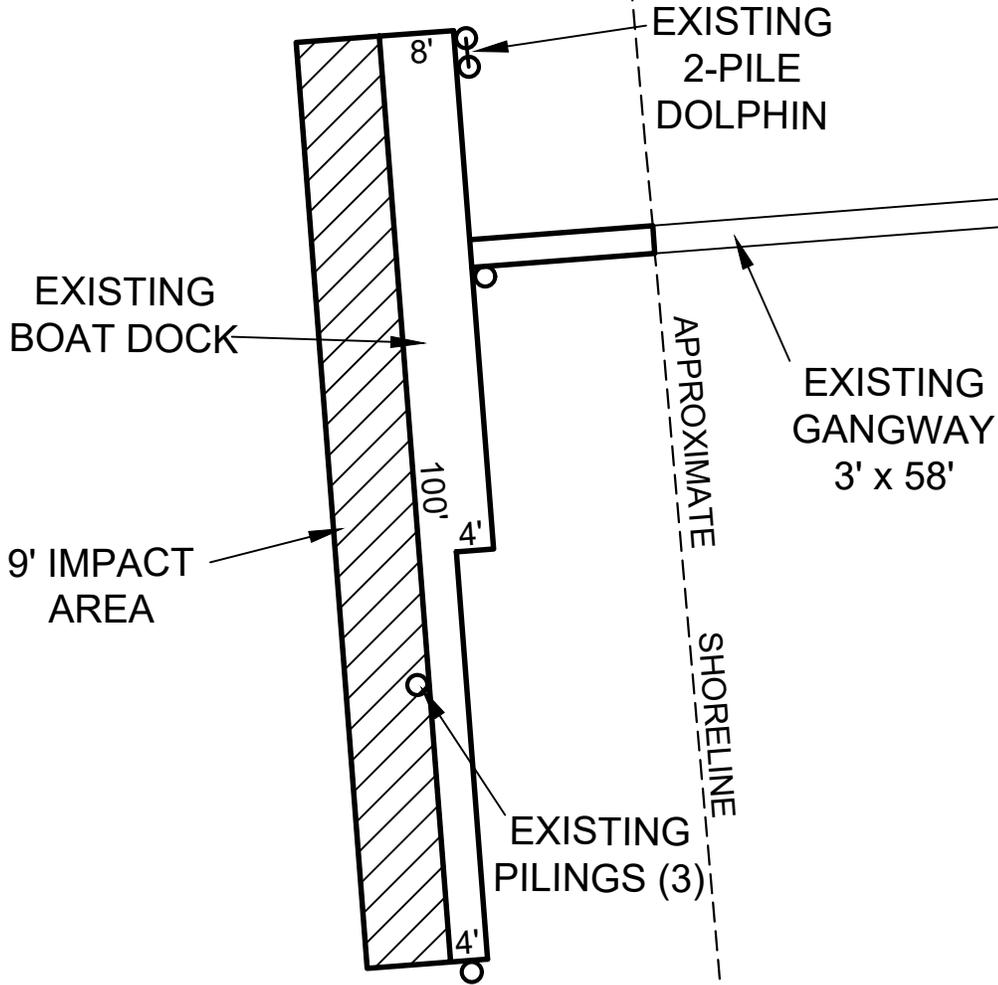
Prepared 09/16/2021 by the California State Lands Commission Boundary Unit



NO SCALE



SACRAMENTO RIVER



APN 225-0260-006

EXHIBIT A

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LAND DESCRIPTION PLAT
LEASE 5720, VITZNAU TRUST & BAILY
SACRAMENTO COUNTY

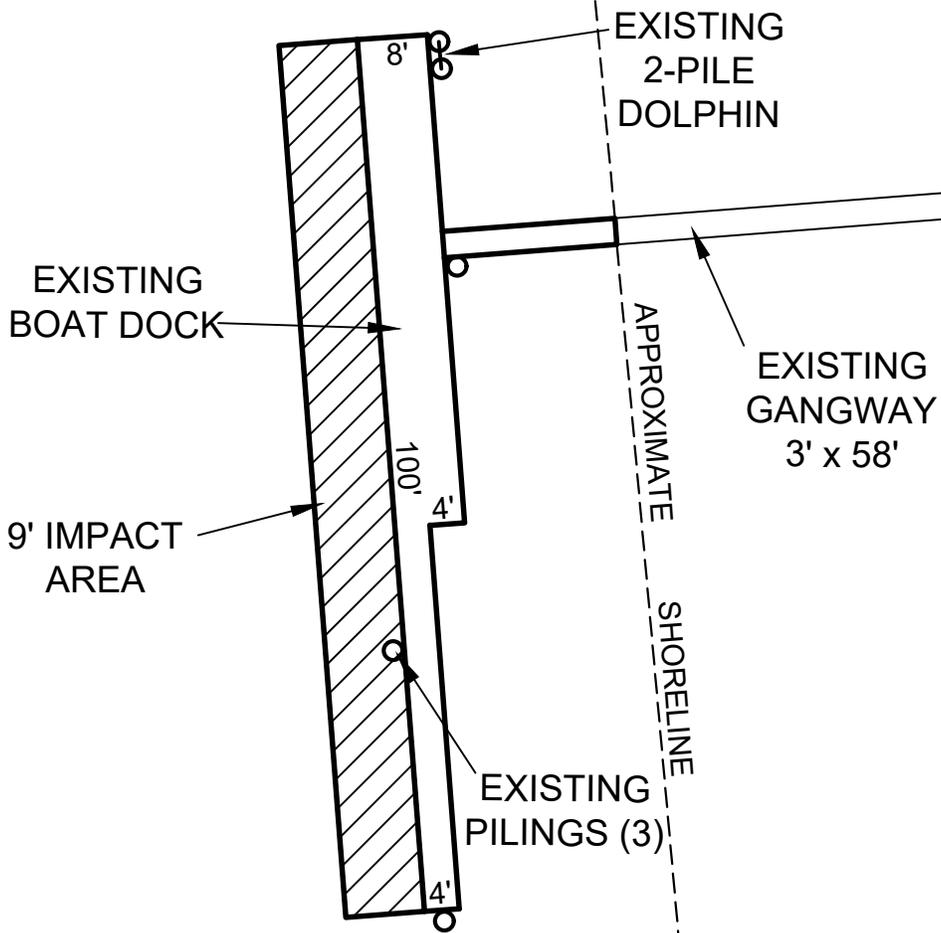
CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE

SACRAMENTO RIVER



APN 225-0260-006



3505 GARDEN HIGHWAY, NEAR SACRAMENTO

NO SCALE

LOCATION

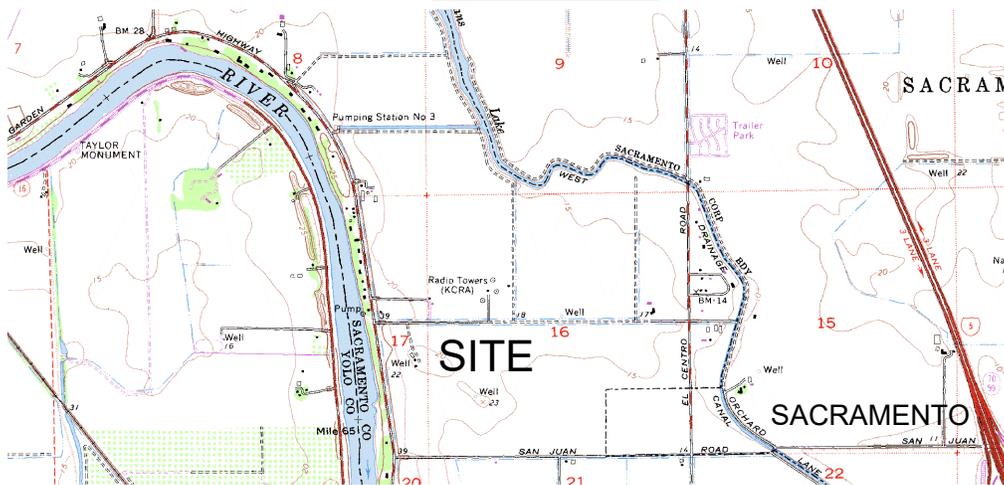


Exhibit B
 LEASE 5720
 VITZNAU TRUST & BAILY
 APN 225-0260-006
 GENERAL LEASE-
 RECREATIONAL USE
 SACRAMENTO COUNTY



TS 09/16/2021

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.