

Staff Report 10

APPLICANT:

KHA Bradford Ranch LLC, a California Limited Liability Company

PROPOSED ACTION:

Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the False River, adjacent to 5700 Bradford Island Road, near Oakley, Contra Costa County.

AUTHORIZED USE:

Use and maintenance of an existing boat dock, walkway, two pilings, and wood breakwater with eleven pilings.

TERM:

10 years, beginning October 21, 2021.

CONSIDERATION:

\$140 per year, with an annual Consumer Price Index adjustment, and \$683 to compensate for the unauthorized occupation of state sovereign land for the period of November 18, 2016 through October 20, 2021.

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 November 27, 2000, the Commission authorized a 10-year Recreational Pier Lease to Robert C. Benson and Jean M. Benson as Trustees of the Robert C. Benson and Jean M. Benson Revocable Trust dated July 19, 1991, for an existing boat dock, walkway, and wood breakwater in False River ([Item C29, November 27, 2000](#)). That lease expired on September 23, 2010. On March 25, 2005, the upland title was transferred to Bradford Island Livestock LLC. On April 6, 2005, the upland title was transferred to Paul Sosnowski & Associates. On March 29, 2006, the upland title was transferred to Sosnowski & Associates Inc, with multiple recording document numbers. On October 1, 2007, the upland title was transferred to J. Paul Sosnowski. During 2011, Staff mailed three letters to the upland owner, requesting a new lease application. Regretfully, there was no response from the owner of record. On November 18, 2016, the upland was transferred to the Applicant. The Applicant is applying for a new General Lease – Recreational Use, for the use and maintenance of an existing boat dock, walkway, two pilings, and wood breakwater with eleven pilings as previously authorized by the Commission. The subject improvements have existed at this location for many years, as shown on prior lease exhibits.

Staff is requesting compensation from the Applicant in the amount of \$683, for the unauthorized occupation of State land for the period of November 18, 2016 through October 20, 2021, the day preceding issuance of the proposed new lease. Further, Staff recommends the effective date of the proposed new lease align with the authorization date, October 21, 2021. The proposed lease will require the Applicant to indemnify the State for the entire period of occupation, ensuring the State is protected.

The subject facilities are privately owned and maintained by the Applicant. The boat dock and walkway 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 wood breakwater protects the subject dock from floating debris in the False River.

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 subject facilities are located on the False 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.

Rising sea levels can lead to more frequent flood inundation in low lying areas and larger tidal events and could increase the False River's inundation levels within the lease area over the term of the lease. 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 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 access to structures within the lease premises during the term of the lease. For example, the potential for more frequent and stronger storm events may expose the lease area structures to higher flood risks and cause facilities to be damaged or dislodged, presenting hazards to public safety as well as dangers for navigation within the channel. Conversely, prolonged drought conditions could lower water levels, exposing previously submerged structures to the elements and potentially leading to increased wear and tear on the structure supports. Lowered water levels could also reduce navigability of the channel, thereby increasing hazards and impacting the function and utility of the lease area structures.

Regular 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 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 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. An applicant has no right to a new lease or to

renewal of any previous lease. Denial of the application may result in a determination that the proposed activity on or use of state land is unauthorized and may result in legal action.

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:

1. Accept compensation from the Applicant in the amount of \$683, for the unauthorized occupation of State land for the period of November 18, 2016, through October 20, 2021,
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning October 21, 2021, for a term of 10 years, for the use and maintenance of an existing boat dock, walkway, two pilings, and wood breakwater with eleven pilings, 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 \$140, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 5900

LAND DESCRIPTION

Two parcels of tide and submerged land in the bed of False River lying adjacent to Swamp and Overflow Lands Survey 286 patented June 22, 1871 in Contra Costa County, California, more particularly described as follows:

PARCEL 1 - Dock

All those lands underlying an existing boat dock and two pilings lying adjacent to that parcel described in Grant Deed, recorded November 18, 2016 in Document Number 2016-0250992-00 in Official Records of said County.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the right bank of the False River.

PARCEL 2 - Breakwater

All those lands underlying an existing wood breakwater and eleven pilings lying adjacent to that parcel described in Grant Deed, recorded November 18, 2016 in Document Number 2016-0250992-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared on 08/09/2021 by the California State Lands Commission Boundary Unit.



NO SCALE

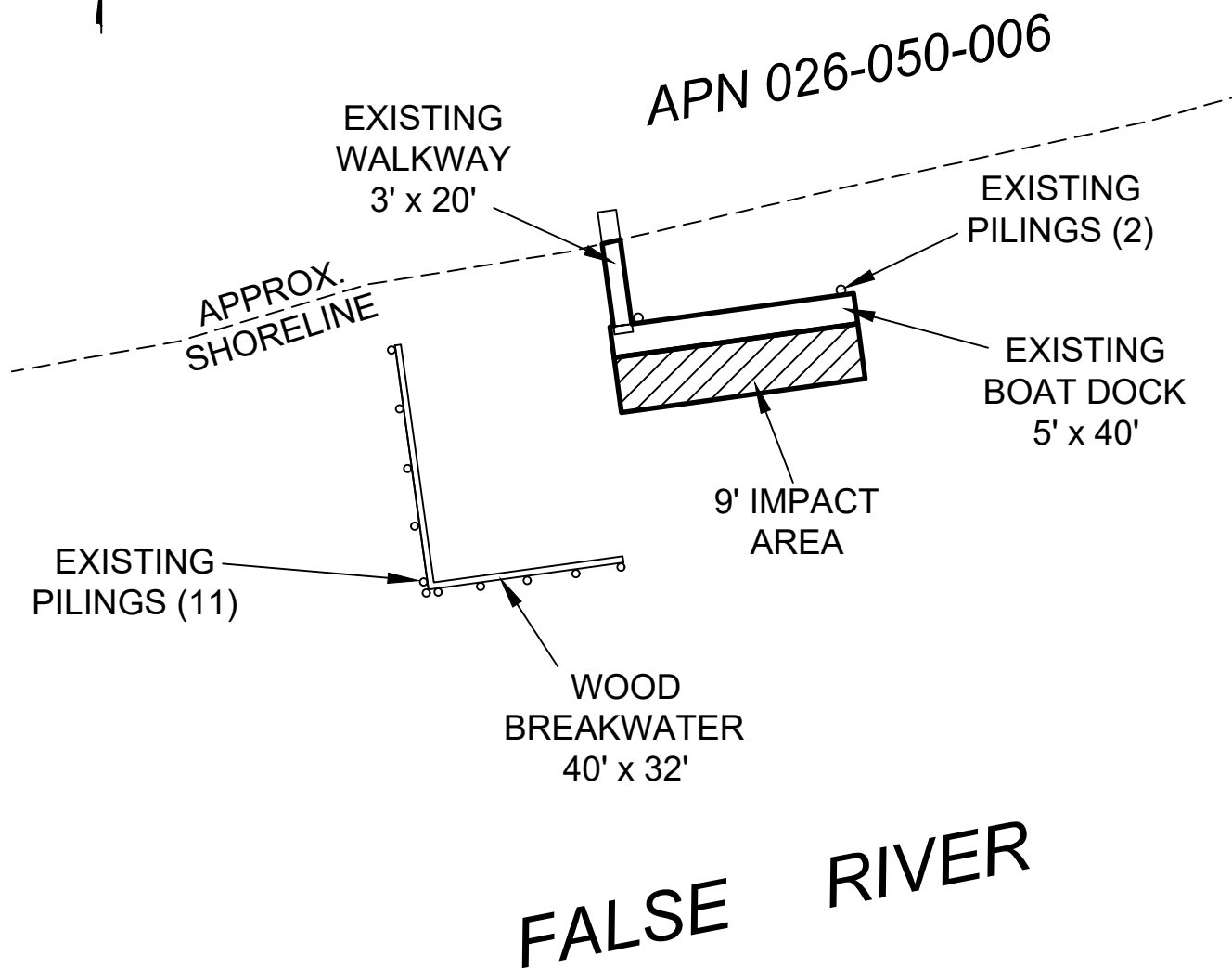


EXHIBIT A

Page 2 of 2

TS 08/09/2021

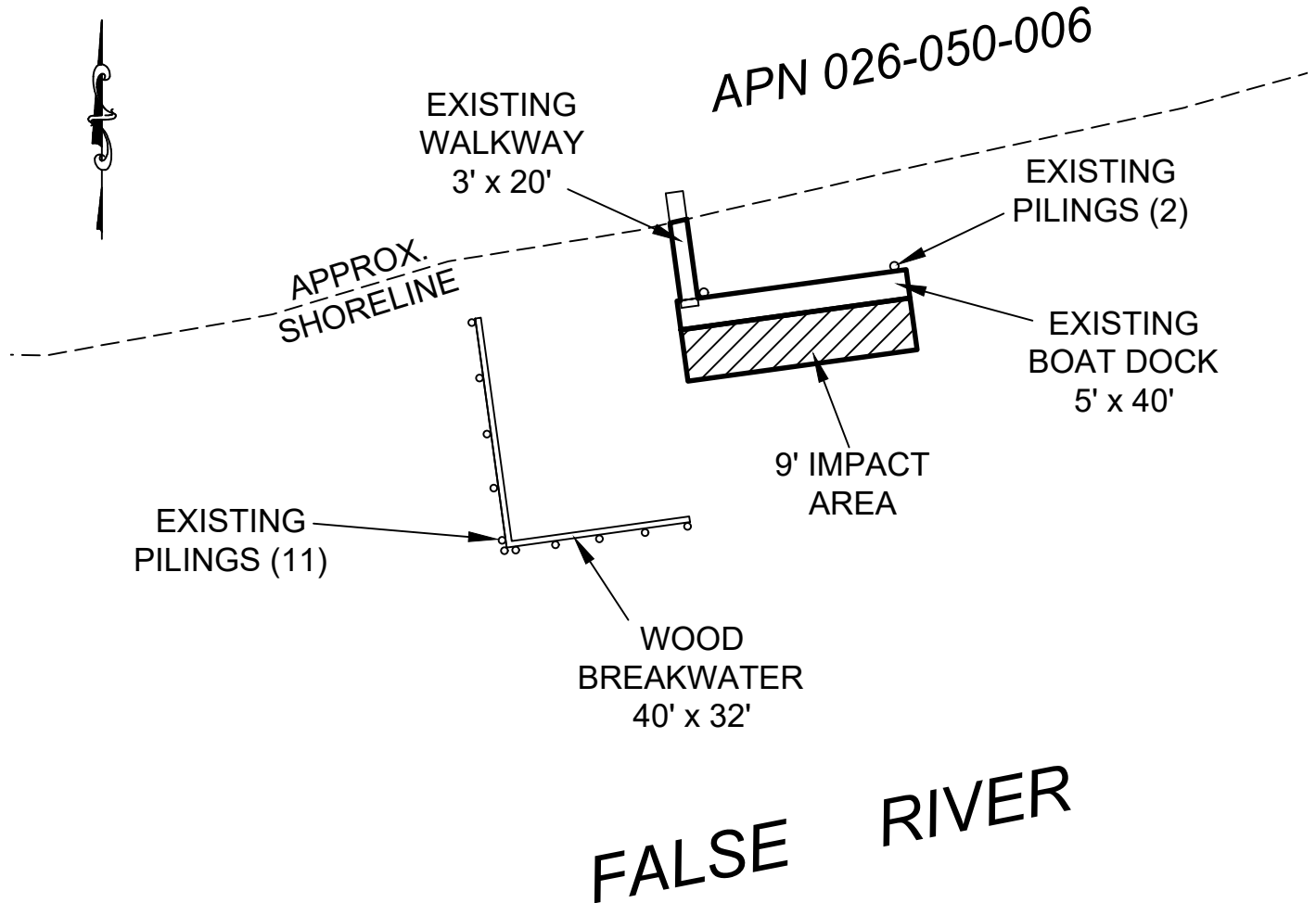
LAND DESCRIPTION PLAT
LEASE 5900, KHA BRADFORD RANCH LLC
CONTRA COSTA COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE



FALSE RIVER, 5700 BRADFORD ISLAND ROAD, NEAR OAKLEY

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 5900
KHA BRADFORD RANCH LLC
APN 026-050-006
GENERAL LEASE -
RECREATIONAL USE
CONTRA COSTA COUNTY



TS 08/09/2021