

Staff Report 12

APPLICANT:

Bryan A. Nick, Trustee, or his successor(s) in trust, under the Bryan A. Nick Revocable Living Trust, dated September 16, 2016

PROPOSED ACTION:

Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Sacramento River, adjacent to 11851 Riverside Avenue, Courtland, Sacramento County.

AUTHORIZED USE:

Continued use and maintenance of an existing boat dock, gangway, and five pilings previously authorized by the Commission; and a watercraft float not previously authorized by the Commission.

TERM:

10 years, beginning October 21, 2021.

CONSIDERATION:

\$341 per year, with an annual Consumer Price Index adjustment, and \$1,430 to compensate for the unauthorized occupation of state sovereign land from May 1, 2015.

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, 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 26, 2006, the Commission authorized a Recreational Pier Lease to Bryan A. Nick, for the continued use and maintenance of an uncovered floating boat dock and walkway ([Item C10, June 26, 2006](#)). That lease expired on May 1, 2015.

Staff made many attempts to bring the facilities back under lease but did not receive a response to notification letters to the upland parcel owner. On January 18, 2017, the upland parcel was transferred to Bryan A. Nick, Trustee, or his successor(s) in trust, under the Bryan A. Nick Revocable Living Trust, dated September 16, 2016. The Applicant is now applying for a General Lease – Recreational Use, for the existing improvements.

The Applicant has agreed to pay compensation for the unauthorized occupation of State lands from May 2, 2015, through October 20, 2021, the day before the October Commission meeting when the new lease would begin. Staff further recommends that the Commission accept compensation from the Applicant in the amount of \$1,430 for the unauthorized occupation of state land prior to the commencement of the proposed lease.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The dock and appurtenant 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 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. 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

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 boat dock, gangway, and watercraft float 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 piles within the lease premises, which may need reinforcement and possibly replacement to withstand higher levels of flood exposure and more frequent storm events, during the term of the lease.

Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland 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 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 may be required to remove the boat dock, watercraft float, gangway, and five pilings 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 "Meeting Evolving Public Trust Needs" and the "Leading Climate Activism" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. Acceptance of compensation is not a project 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 15300.

4. Staff recommends that the Commission find that issuance of the lease 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 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 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 proposed lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of compensation from the Applicant in the amount of \$1,430 for the unauthorized occupation of State lands for the period beginning May 1, 2015 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 continued use and maintenance of an existing boat dock, gangway, and five pilings previously authorized by the Commission; and a watercraft float not previously authorized by the Commission, 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 \$341, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 2952

LAND DESCRIPTION

Two parcels of tide and submerged land situate in the bed of the Sacramento River, lying adjacent to Swamp and Overflowed Land Survey 270 patented January 30, 1873, County of Sacramento, State of California and more particularly described as follows:

PARCEL 1 – Dock

All those lands underlying an existing floating boat dock, walkway, personal watercraft float and four pilings lying adjacent to those parcels described in Trust Transfer Deed, recorded January 18, 2017 in Book 20170118 at Page 0560 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.

PARCEL 2 – Unattached Piling

All those lands underlying an existing unattached piling lying adjacent to those parcels described in Trust Transfer Deed, recorded January 18, 2017 in Book 20170118 at Page 0560 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 09/15/2021 by the California State Lands Commission Boundary Unit



NO SCALE

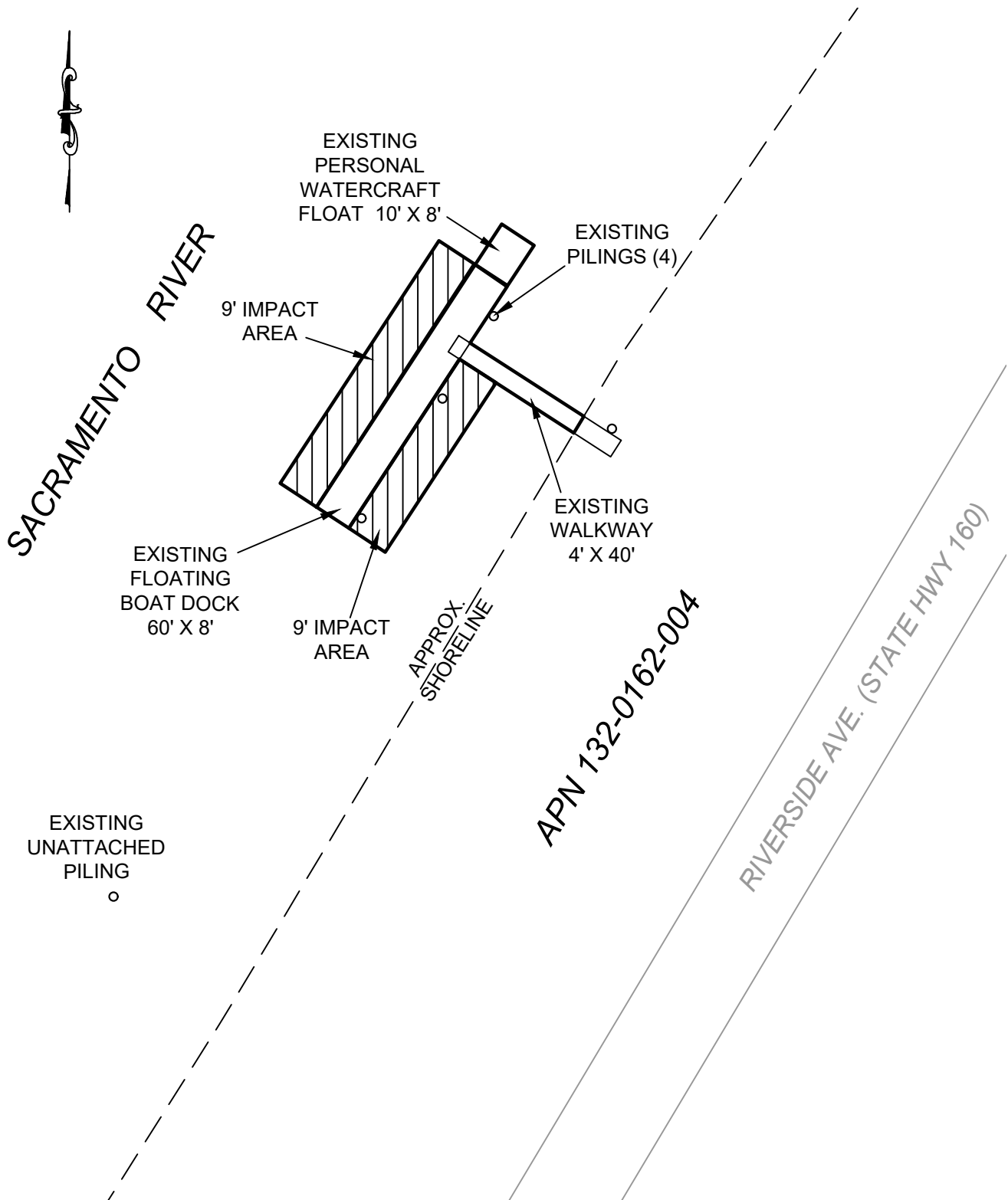


EXHIBIT A

Page 2 of 2

TS 09/15/2021

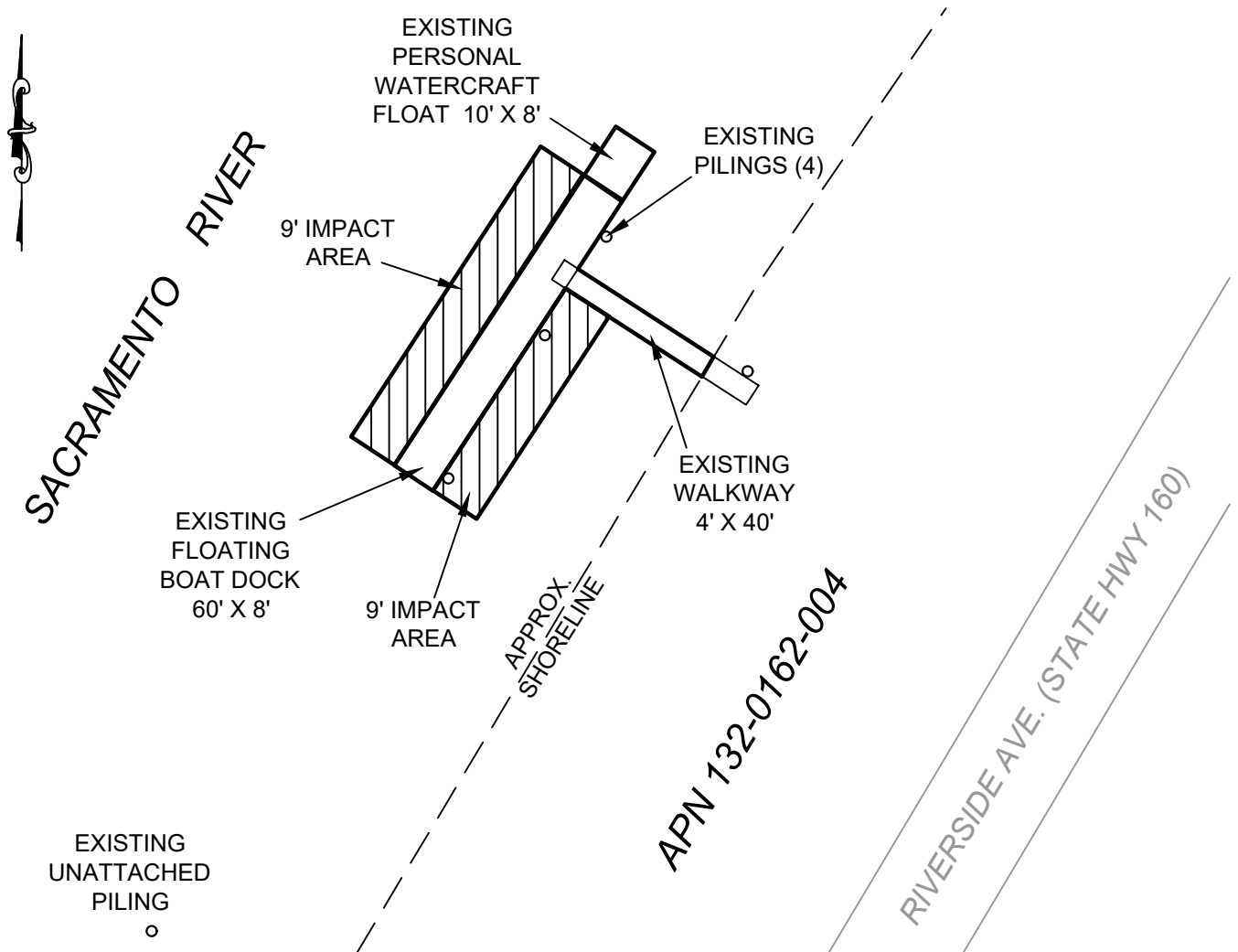
LAND DESCRIPTION PLAT
LEASE 2952, NICK REVOCABLE TRUST
SACRAMENTO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

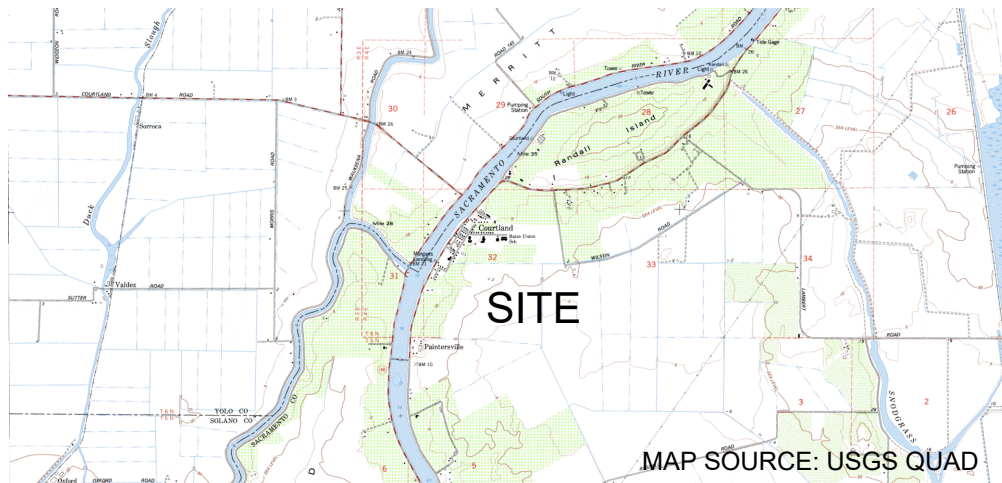
SITE



11851 RIVERSIDE AVE. (STATE HIGHWAY 160), NEAR COURTLAND

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 2952

NICK REVOCABLE TRUST

APN 132-0162-004

GENERAL LEASE -

RECREATIONAL USE

SACRAMENTO COUNTY



SITE

TS 09/15/2021