

# Staff Report 50

## **APPLICANT:**

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Merrill Two LLC, a California Limited Liability Company

## **PROPOSED ACTION:**

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Issuance of a General Lease – Recreational Use

## **AREA, LAND TYPE, AND LOCATION:**

Sovereign land in the Sacramento River, adjacent to 11779 State Highway 160, near Courtland, Sacramento County.

## **AUTHORIZED USE:**

Use and maintenance of an existing boat dock, two dolphins, two pilings, gangway, and deck previously authorized by the Commission; and a boat lift not previously authorized by the Commission.

## **TERM:**

10 years, beginning March 29, 2022.

## **CONSIDERATION:**

\$693 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:**

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### **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 March 29, 2012, the Commission authorized issuance of a General Lease – Recreational Use to Eric Stuart Merrill and Michele Maguire Merrill, Trustees of the Merrill Trust, dated July 1, 2005, for an existing boat dock, two dolphins, two pilings, gangway, and deck in the Sacramento River ([Item C20, March 29, 2012](#)). That lease will expire on March 28, 2022. On February 9, 2021, the upland parcel was transferred to Merrill Two LLC, a California Limited Liability Company. The Applicant LLC was formed by the Lessee to hold the upland property. This action was performed without an assignment of lease and notification to Commission staff, however no payments were missed and the original lessee still had legal control over the upland. The Applicant is applying for a General Lease – Recreational Use, for the use and maintenance of an existing boat dock, two dolphins, two pilings, gangway, and deck previously authorized by the Commission, and a boat lift not previously authorized by the Commission. Given the relatively short timeframe left in the existing lease and the association between the Lessee and Applicant, staff prepared the application as a new lease, as opposed to an assignment.

Based on Commission records and aerial images, the facilities have existed at this location for many years. The boat lift was placed within the previously authorized impact area. Therefore, staff is not requesting compensation for the existing boat lift. Accounting records show the annual rent is paid current through March 28, 2022. In order to avoid overlapping rent periods, staff are recommending the new lease start the day after the current lease expires.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. 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 existing deck is located slightly landward of the boat dock. Although the subject deck is not associated with traditional Public Trust uses, a recreational deck that has been in place for several years may be permitted if, as in this case, the improvement does not significantly interfere with Trust activities. The deck is slightly

elevated and therefore does not impair public use of State land. Further, the lease contains provisions that the deck may not be expanded or rebuilt, if significantly destroyed. The deck has been in place for many years and occupies a small area of State land. The deck does not substantially interfere with the needs and values of the Public Trust at this location, at this time, and for the foreseeable term of the proposed lease.

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**

<b>Year</b>	<b>Projection (feet)</b>
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 dolphins, 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; and is in the best interests of the State.

### **OTHER PERTINENT INFORMATION:**

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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 boat dock, boat lift, two dolphins, two pilings, gangway, and deck 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.

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:**

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- A. Land Description
- B. Site and Location Map

## **RECOMMENDED ACTION:**

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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:**

1. Find that the existing and, for a limited period, continuing use and maintenance of the existing boat dock, boat lift, two dolphins, two pilings, and gangway will not substantially interfere with Public Trust needs and values at this location and are consistent with the common law Public Trust Doctrine;
2. Find that the existing and, for a limited period, continuing use and maintenance of the existing deck is not generally consistent with the Public Trust Doctrine, but

the current use does not substantially interfere with the trust at this location and time;

3. Find that issuing the proposed lease is in the best interests of the State.

**AUTHORIZATION:**

Authorize issuance of a General Lease – Recreational Use to the Applicant beginning March 29, 2022, for a term of 10 years, for the use and maintenance of an existing boat dock, two dolphins, two pilings, gangway, and deck previously authorized by the Commission, and an existing boat lift 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 \$693, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**PRC 6382.1**

**LAND DESCRIPTION**

Four parcels of tide and submerged land situate in the bed of the Sacramento River, lying adjacent to Section 32, T6N, R4E, MDM., as shown on Official Government Township Plat approved June 18, 1859, County of Sacramento, State of California, and more particularly described as follows:

**Parcel 1 - Deck**

COMMENCING at NGS monument Courtland (PID JS4311); thence S 39° 58' 00' W 4669.08 feet more or less, to the intersection of the ordinary high water mark of the Sacramento river with the northeasterly line of an existing deck, said intersection also being the POINT OF BEGINNING of the herein described parcel; thence leaving said ordinary high water mark along said existing deck N 57°01'15" W 5.17 feet; thence S 33°05'18" W 32.04 feet; thence S 56°15'20" E 10.18 feet to said ordinary high water mark; thence N 24°14'18" E 32.55 feet along said ordinary high water mark to the POINT OF BEGINNING.

**Parcel 2 - Gangway**

COMMENCING at NGS monument Courtland (PID JS4311); thence S 39°42'35" W 4744.66 feet more or less, to the intersection of the ordinary high water mark of the Sacramento River with the northeasterly line of an existing gangway, said intersection also being the POINT OF BEGINNING of the herein described parcel; thence leaving said ordinary high water mark along said existing gangway N 50°22'22" W 34.17 feet to a point hereinafter described as "Point A", said point also being the intersection of said existing gangway with the southeasterly line of an existing dock; thence along said existing dock S 36°02'27" W 3.01 feet; thence leaving said dock and continuing along said gangway S 50°22'22" E 34.81 feet to said ordinary high water mark; thence along said ordinary high water mark N 24°14'18" E 3.12 feet to the POINT OF BEGINNING.

**Parcel 3 - Dock**

COMMENCING at above described "Point A", said point also being the POINT OF BEGINNING of the herein described parcel; thence along said existing dock N 36°02'27" E 6.35 feet; thence N 33°19'53" W 7.49 feet; thence N 36°02'27" E 97.74 feet; thence N 53°57'33" W 6.70 feet; thence

S 36°02'27" W 120.17 feet; thence S 53°57'33" E 8.03 feet; thence N 84°21'01" E 7.60 feet; thence N 36°02'27" E 8.39 feet to THE POINT OF BEGINNING.

TOGETHER WITH any applicable impact area(s).

Parcel 4 – Boat Lift

All those lands underlying an existing detachable floating boat dock lying at the southwesterly end of said Parcel 3 Dock.

**END OF DESCRIPTION**

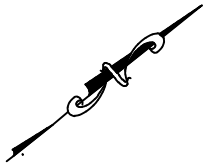
Prepared October 4, 2021 by the California State Lands Commission Boundary Unit.



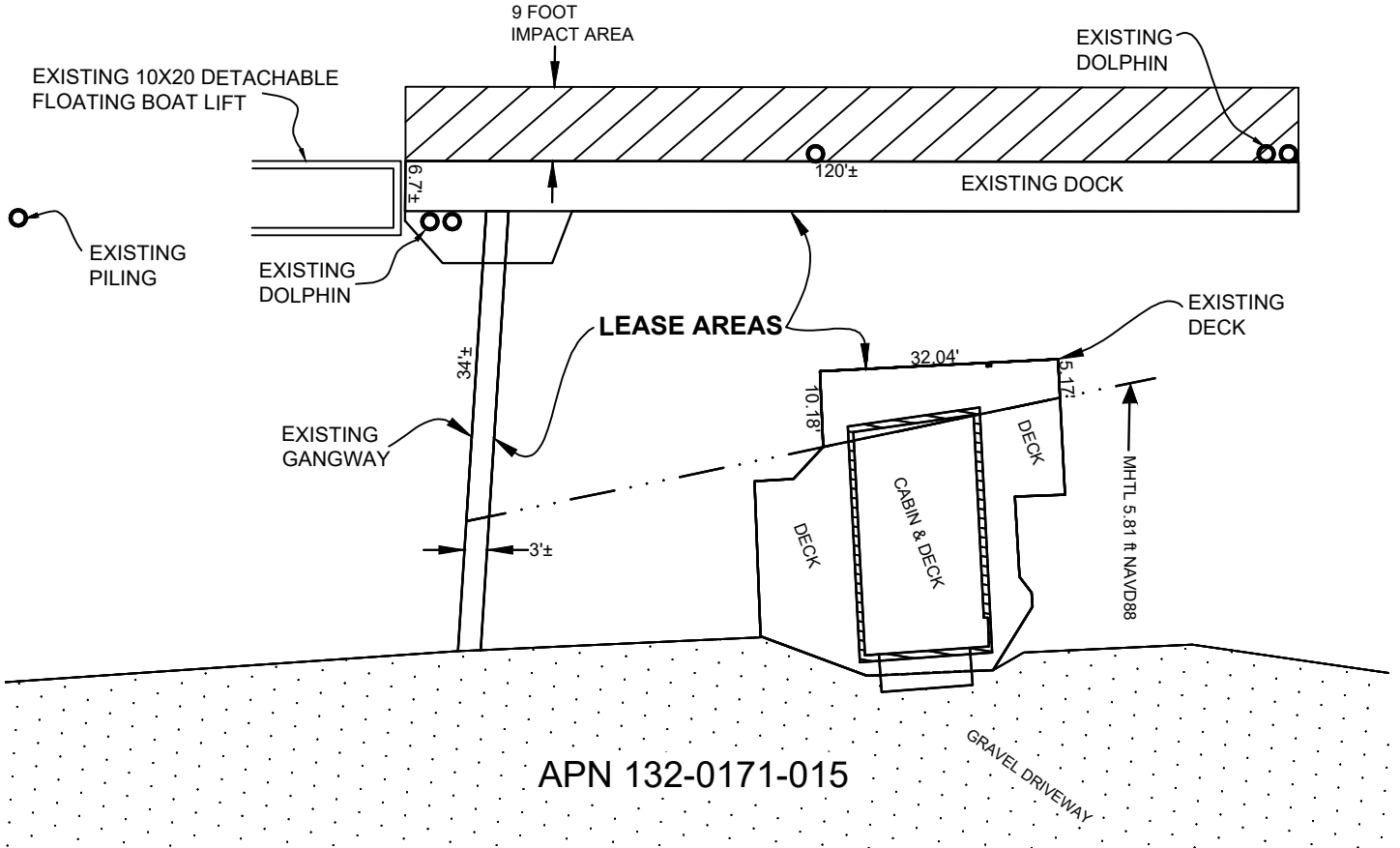


NO SCALE

# SITE



SACRAMENTO RIVER

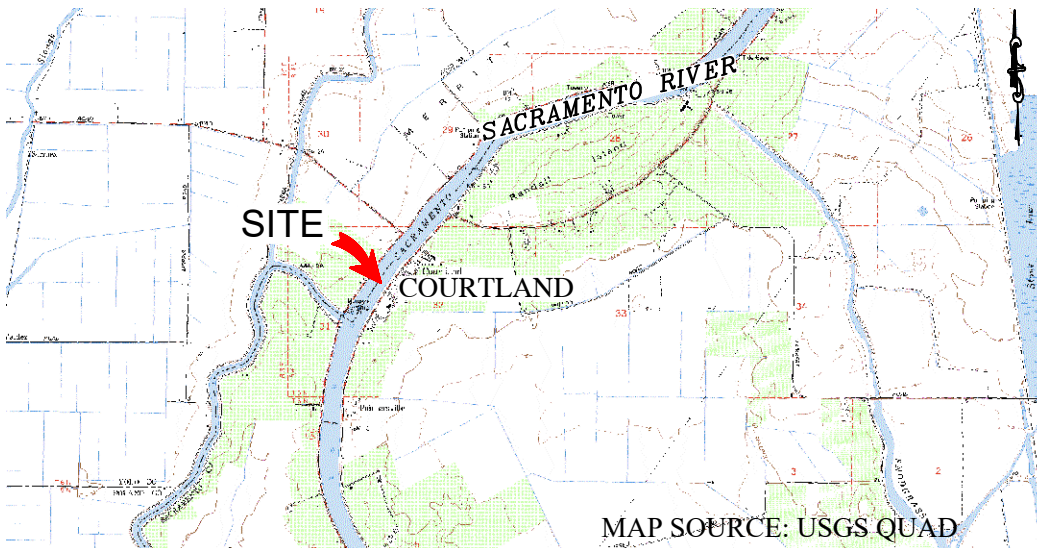


APN 132-0171-015

11779 HIGHWAY 160, NEAR COURTLAND

NO SCALE

# LOCATION



## Exhibit B

LEASE 6382  
 MERRILL  
 APN 132-0171-015  
 GENERAL LEASE -  
 RECREATIONAL USE  
 SACRAMENTO COUNTY



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.