

# Staff Report 32

## APPLICANT:

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Marcine Friedman and Mark Friedman, Co-Trustees of the Marcine Friedman Survivor's Trust established under the Morton L. Friedman and Marcine Friedman Family Trust

## PROPOSED ACTION:

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Issuance of a General Lease – Protective Structure Use

## AREA, LAND TYPE, AND LOCATION:

Sovereign land in the American River, adjacent to 1620 McClaren Drive, Carmichael, Sacramento County.

## AUTHORIZED USE:

Reconstruction, use, and maintenance of existing bank protection not previously authorized by the Commission.

## TERM:

10 years, beginning February 25, 2022.

## CONSIDERATION:

\$140 per year, with an annual Consumer Price Index adjustment, and \$700 to compensate for the unauthorized occupation of state sovereign land for the period prior to February 25, 2022.

## 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 climate change 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, 6321, 6321.2, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

### PUBLIC TRUST AND STATE'S BEST INTERESTS:

The Applicant is one of two single-family homeowners on McLaren Drive in Carmichael, Sacramento County, whose upland parcels are located directly adjacent to the Lower American River. The proposed lease is for a strip of land located at the bank of the Lower American River near River Mile 13.8 that has been subject to scouring and erosion due to heavy rains and periodic high river flows.

The Lower American River Watershed originates from Folsom Lake, which was created by Folsom Dam. The dam was originally authorized by Congress in 1944 as a flood control unit but was reauthorized in 1949 as a multipurpose facility to also store water for multiple public uses, and for maintenance of flows stipulated to protect fish. During a 24-hour period, the releases of water from Folsom Dam can vary greatly to meet changing demands for water and power. Nimbus Dam, 7 miles downstream from Folsom Dam and 9 miles upstream of the Applicant's location, stores these releases and re-regulates them to a steady flow downstream in the Lower American River. The Lower American River is leveed on both sides for approximately 13.5 miles from Carmichael to the Sacramento River. There is no levee protection at this location which is located on the west side of River Bend Park.

The existing gunite bank protection, which was installed in the 1960s, is now failing and needs to be replaced with a more robust design. The gunite extends approximately 250 lineal feet along the bank line of the two residential properties, and vertically from the toe of the slope (just below the low summer water levels) to the top of the riverbank. The previously mentioned periodic releases of water from Folsom Dam increases flow velocities at the toe of the bank at this location. This could increase the potential for bank failure by exacerbating ongoing erosion now evident behind the gunite wall. Further erosion of the gunite and subsequent bank failure would likely lead to structural damage of the upland improvements.

The proposed project would replace the existing gunite bank protection with permanent erosion control to arrest erosion and stabilize the bank slope. The erosion control product to be installed is a permanent erosion control mat commonly utilized to stabilize levee slopes, channels, low water crossings, inlets/outlets, and shorelines. The mat consists of 6.5-inch square concrete blocks

(with a 2.25-inch profile) locked together and embedded into a high-strength geogrid. The 1.5-inch spaces between the blocks provide flexibility and allow vegetation growth.

The existing gunite structure would be removed, and the mat would be laid over the slope. Before mat placement, the subgrade would be prepared to ensure it is smooth and free of debris of any kind. To secure the toe, launchable rock would be placed between an existing in-channel concrete anchor block and along the slope, up to 6 feet from the existing ground surface. The anchor block is anticipated to remain in its current location. However, if it is determined to be necessary to shift the anchor block to accommodate placement of the angular launchable rock revetment at the toe, the block would be pushed up to 2 to 3 feet away from the bank with a long excavator extension.

All heavy equipment, including the excavator, would remain on the bank throughout construction activities and would not enter the water, with the potential exception of the excavator bucket to move the anchor block (if necessary). Manual laborers may work in the water for 3 to 5 days during mat and/or rock revetment placement. Before moving the anchor block or placing materials in the wetted portion of the channel, a silt curtain would be installed to minimize potential turbidity impacts.

Construction activities are anticipated to occur from June through September 2022, with in-water activities not beginning before July 1. The Applicant will comply with all local, State, and Federal regulations and environmental requirements regarding turbidity reduction measures, including measures specified in the California Department of Fish and Wildlife (CDFW) Lake and Streambed Alteration Agreement, Central Valley Regional Water Quality Control Board Certification of U.S. Army Corps of Engineers Nationwide Permit #13 under Section 401 of the Clean Water Act (CWA), and CWA Section 404 permit.

The project site is accessible through a gate near the top of the slope and concrete steps constructed into the gunite protection on the downstream property. The adjacent upstream property has a small boat ramp that connects to **the property's driveway and** extends to the gunite bank protection and provides a feasible location for construction workers and equipment to access the bottom of the slope for work done on both parcels simultaneously. Typical deliveries and hauling for the project include rock for launchable toe protection, mat rolls, and bedding material needed to reconstruct the bank slope. The project would require approximately 150 cubic yards (approximately 300 tons) of rock for toe protection and approximately 11,400 square feet of mat rolls. Approximately 115 tons of

existing gunite bank protection and concrete would be demolished and hauled to the nearest appropriate disposal site.

The riverbank on the project site currently consists of primarily nonnative vegetation. The proposed project includes removing the nonnative vegetation and installing native plantings. No large trees that provide shaded riverine aquatic (SRA) habitat would be removed. After the mat has been installed, pole cuttings of native shrubby species would be installed near the mid to lower slope; potential species to be planted include sandbar willow, common buttonbush, and mulefat. Native grass plugs, such as creeping wild rye would be established within the spaces between the mat blocks. This native vegetation would enhance aquatic habitat values by creating a softer and more complex edgewater environment to benefit rearing juvenile fish.

The riverbank in this area slopes toward the river sharply, with intermittent rock shelves and deep gaps along the river's edge. Although there is a public access point nearby, the configuration of the riverbank in this area is not conducive to safe lateral access or public recreational opportunities. The proposed project to replace the erosion control in this area will not detract from public access at this location, nor will it add limitations beyond the currently existing topography.

To decrease risk of a harmful erosion event or bank failure, the proposed project would stabilize the riverbank and provide support to existing riparian habitat. Native grasses and pole cuttings would help rejuvenate the riparian area, augment slope stability and erosion protection benefits, and improve aesthetic appearance. Failure of the unauthorized gunite bank protection and subsequent erosion could have deleterious effects to special status fish and habitat.

The Applicant has agreed to pay compensation for the unauthorized occupation of state land for the period prior to February 25, 2022. Staff recommends that the Commission accept compensation from the Applicant in the amount of \$700 for the unauthorized occupation of state land prior to the commencement of the proposed lease.

The proposed lease does not alienate the State's fee simple interest, nor does it permanently impair public rights. The proposed lease also includes certain provisions protecting the public use of the proposed lease area, including a limited lease term of 10 years and a non-exclusive use provision. Upon termination of the lease, the lessee may be required to remove any improvements and restore the lease premises to their original condition. The proposed lease requires the Lessee to keep and maintain the protective structure in good order and repair, insure the lease premises, and indemnify the State for any liability incurred as a result of the lessee's activities thereon.

CLIMATE CHANGE:

The American River at this location is not tidally influenced and would not be subject to sea level rise. 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, drought, and storms. In rivers, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris. Conversely, prolonged droughts could dramatically reduce river flow and water levels, leading to loss of public access and navigability. Climate change will further influence riverine areas by changing erosion and sedimentation rates, and flooding and storm flow. Runoff will likely increase scour, decreasing bank stability at a faster rate.

The lease structures could be subject to climate change related riverine processes, such as storm events of increased intensity and frequency. Regular maintenance, as referenced in the lease, may reduce the likelihood of structural degradation.

CONCLUSION:

For the reasons stated above, staff believes the approval of the proposed lease will not substantially impair the public rights to navigation, fishing, or other Public Trust needs and values at this location, at this time, and for the foreseeable term of the 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, as the owner of the improvements on state land, may be required to remove the existing 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 prior lease.
2. This action is consistent with the "Meeting Evolving Public Trust Needs" and "Leading Climate Activism" Strategic Focus Area 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 2, Replacement

or Reconstruction; California Code of Regulations, title 2, section 2905, subdivision (b).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

## APPROVALS OBTAINED:

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Central Valley Flood Protection Board  
U.S. Army Corps of Engineers  
California Department of Fish and Wildlife  
National Marine Fisheries Service

## 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 2, Replacement or Reconstruction; California Code of Regulations, title 2, section 2905, subdivision (b).

### PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease will not substantially impair the public rights to navigation, fishing, and commerce; or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

### AUTHORIZATION:

1. Authorize the Executive Officer or designee to replace Exhibits in lease upon submission, review, and approval of as-built plans detailing the final location of the new improvements following construction.

2. Authorize acceptance of compensation from the Applicant in the amount of \$700 for the unauthorized occupation of State land for the period prior to the beginning date of the proposed lease.
3. Authorize issuance of a General Lease – Protective Structure Use to the Applicant beginning February 25, 2022, for a term of 10 years, for the reconstruction, use, and maintenance of existing 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; and rent in the amount of \$140 per year with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**A 2957**

**LAND DESCRIPTION**

A parcel of submerged land situate in the bed of the American River, Sacramento County, State of California, and being more particularly described as follows:

COMMENCING at the southwest corner of Lot 16 as shown upon that certain map filed in Book 26 of Maps, Map No. 2, Sacramento County Records; thence along the southerly boundary of said Lot 16 and the easterly prolongation thereof, North 89°36'30" East 300.00 feet; thence leaving said easterly prolongation, South 0°47'39" East 80 feet to the POINT OF BEGINNING, said point being on the easterly prolongation of the southerly boundary of Parcel No. 2, said parcel described in that certain Grant Deed recorded in Book 20120719 at Page 1258, Sacramento County Records; thence along said easterly prolongation and along said southerly boundary, South 89°36'30" West 50.00 feet; thence leaving said southerly boundary, South 0°47'39" East 140.00 feet; thence North 89°36'30" East 50.00 feet; thence North 0°47'39" West 140.00 feet to the point of beginning.

EXCEPTING THEREFROM any portions lying landward of the low water mark on the right bank of the American River.

**END OF DESCRIPTION**

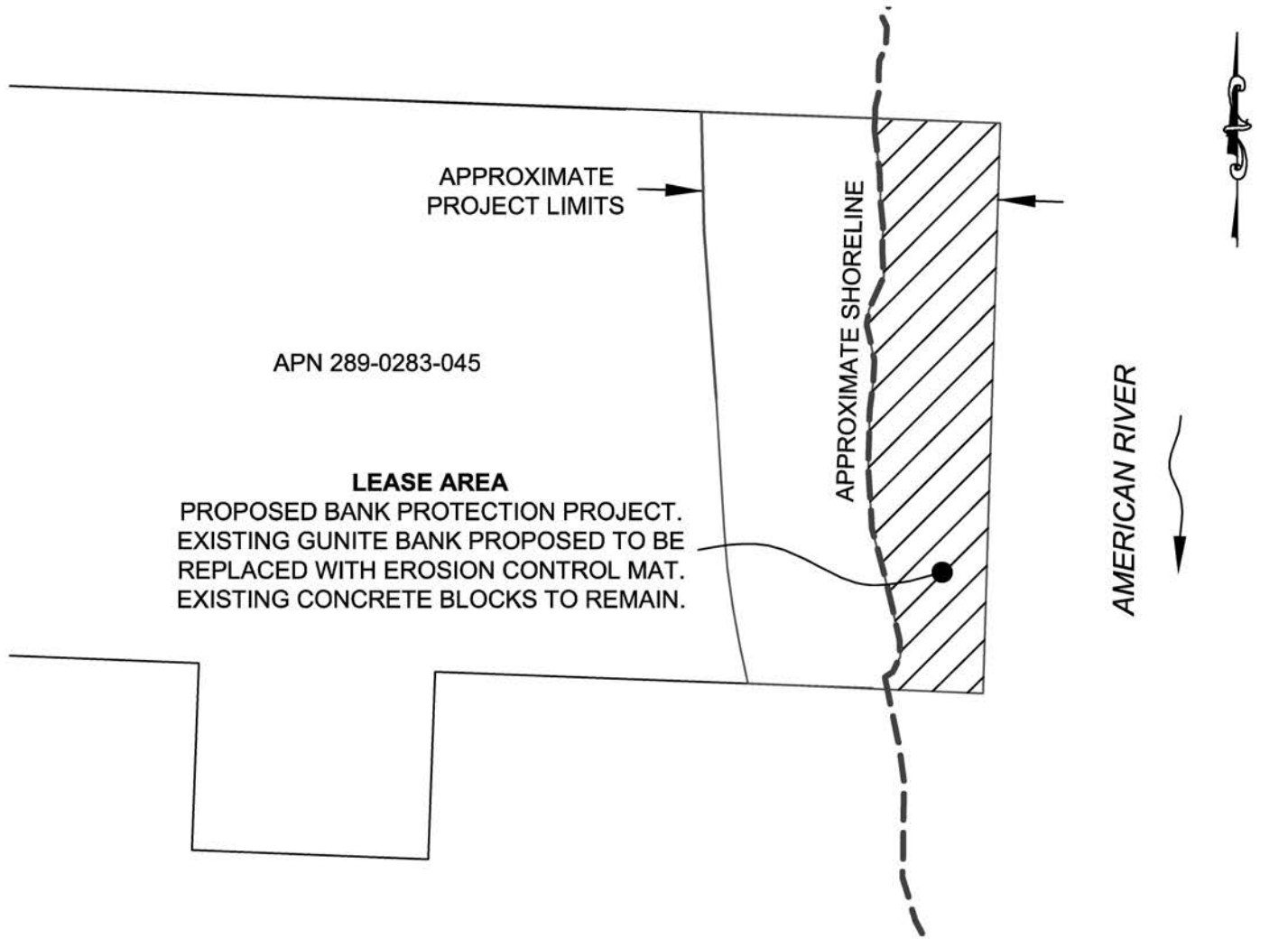
Prepared 10/18/2021 by the California State Lands Commission Boundary Unit





NO SCALE

# SITE



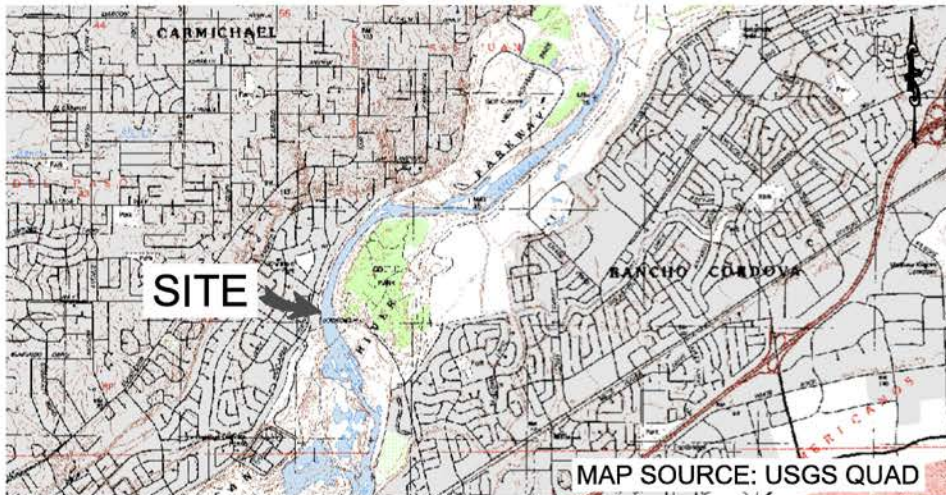
APN 289-0283-045

**LEASE AREA**  
 PROPOSED BANK PROTECTION PROJECT.  
 EXISTING GUNITE BANK PROPOSED TO BE  
 REPLACED WITH EROSION CONTROL MAT.  
 EXISTING CONCRETE BLOCKS TO REMAIN.

1620 MCCLAREN DR., CARMICHAEL

NO SCALE

# LOCATION



# EXHIBIT B

A 2957  
 FRIEDMAN  
 APN 289-0283-045  
 GENERAL LEASE -  
 PROTECTIVE  
 STRUCTURE 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.

JWP 10/18/2021