

Staff Report 34

APPLICANT:

The Lost Isle Partners, a California Limited Partnership

PROPOSED ACTION:

Issuance of a General Lease – Recreational, Protective Structure, and Right-of-Way Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the San Joaquin River at Acker Island, adjacent to 11050 Acker Island, near Stockton, San Joaquin County.

AUTHORIZED USE:

Caretaker status and maintenance of derelict boat docks and ramps, 25 pilings, barge and work vessels, and underground power line previously authorized by the Commission; and caretaker status and maintenance of derelict boardwalk structure and decks (covered and uncovered), and Sheriff boat dock and ramp not previously authorized by the Commission.

TERM:

5 years, beginning April 26, 2022.

CONSIDERATION:

\$643 per year, with an annual Consumer Price Index adjustment; and \$3,214 to compensate for the unauthorized occupation of state sovereign land for the period from April 26, 2017 through April 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 sea level rise may require additional maintenance or protection strategies regarding the improvements on the lease premises.

- Surety bond or other security in the amount of \$10,000 with the Lessor reserving the right to increase the bond amount.
- Lessee agrees and acknowledges that modification, alteration, or expansion of the Authorized Improvements without Lessor's prior written consent is prohibited.
- Lessee shall submit a plan for Lessor's review and approval to remediate and resuse the improvements within the Lease premises by April 26, 2024.
- Lessee agrees and acknowledges that the proposed structures (ramp, gangway, two floating stair towers, and bridge between stair towers) and the proposed bank stabilization improvements (terrawall system, sheet pile system, and riprap), as described in Exhibit A and shown on Exhibit B will require Lessor's review and approval.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 6501.1, 6503, 6503.5, and 6505.5; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On May 28, 1987, the Commission authorized a 15-year General Permit – Recreational and Right-of-Way Use to Henry Lawler and Max Seely for maintenance of boat dock facilities, 26 pilings, barge, and underground power line ([Item C08, May 28, 1987](#)). On March 27, 1990, the Commission authorized a rescission of prior authorization and authorization for ejectment and collection of rents ([Item 29, March 27, 1990](#)).

On April 17, 1995, ownership of the upland parcel was deeded to the Applicant. The Applicant is now applying for a short-term General Lease – Recreational, Protective Structure, and Right-of-Way Use for caretaker status and maintenance of the existing derelict facilities. By applying for a lease, the Applicant has asserted ownership of all facilities and vessels on the Lease Premises. Staff recommends issuance of a new lease beginning April 25, 2022. Staff further recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$3,214 for the period of occupation from April 26, 2017, through April 25, 2022.

The boat docks were previously used noncommercially for customer accommodation purposes as part of the restaurant and lounge operations on the upland. The restaurant and lounge have not operated for several years. The Sheriff's dock was a requirement for law enforcement when the restaurant and

lounge were operating. As the restaurant has been closed, the Sheriff's dock has not been utilized over the years. Reuse of the restaurant or lounge may require restoration of the Sheriff's dock. Subsequently, the boat docks and other facilities have become derelict and are in need of repair. The underground power line provides electricity to the facilities owned by the Applicant on the upland island. The power line was replaced several years ago with a new power line in the same location.

The Applicant plans to replace the derelict boat docks and other existing derelict facilities. The Applicant also has plans for proposed structures (ramp, gangway, two floating stair towers, and bridge between stair towers) and proposed bank stabilization improvements (terrawall system, sheet pile system, and riprap). The proposed short-term lease will allow the Applicant the chance to remediate the derelict boat docks, work vessels, and other existing derelict facilities on State-owned sovereign land but does not allow for the addition of new structures.

The subject boat docks (adjacent to Acker Island), once replaced, will directly promote Public Trust uses. The docks will accommodate and promote recreational access, for the Applicant and its sublessees, to the State's waterways. 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 repair of the boat docks and other existing facilities will not substantially interfere with the Public Trust needs at this location because the proposed lease is only five years, the underlying fee remains with the State, and the Commission is receiving fair rental value for the use of the property during the repair process. Additionally, the repair work is necessary to abate a health and safety concern that the derelict boat docks, work vessels, and other existing facilities pose in their current state. Lastly, the underground power line has a minimal, if any, impact to the Public Trust needs at this location as it is located underground.

The proposed lease includes certain provisions protecting the public use of the proposed lease area, including a limited lease term of 5 years. The facilities have existed for many years at this location; they do not permanently alienate the State's fee simple interest in the underlying land, and they do not permanently impair public rights. The proposed lease provides a contractual agreement for the Applicant to remove or repair the derelict conditions located on sovereign land.

Furthermore, the lease requires that the lessee 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 Lost Isle Resort on Acker Island is in the San Joaquin 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 lease area 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 the San Joaquin River’s inundation levels within the lease area, and this risk of flood exposure is likely to increase with time. 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, storm flow, and runoff will likely increase scour and decrease bank stability at a faster rate. It is crucial to ensure continued function of the submerged electrical line running 100 yards across the River channel

during and after storm seasons, so it does not become a public safety hazard or a danger for navigation within the channel.

The leased structures are adjacent to a small island in the Sacramento–San Joaquin River Delta with vegetation and palm trees. The vegetation upland on the island (outside of the Commission's leasing jurisdiction) might provide some structural stability and reduce the amount of erosion and scour pressure to be experienced during future events because of the vegetation's underground root system. The floating docks, floating barge and work vessels, and adjustable ramp would be able to move up and down as water levels change. The fixed structures like the boardwalk, covered deck, uncovered decks, and bank stabilization improvements will not be able to move up or down with changed water levels. Therefore, these fixed structures may need reinforcement or to be replaced to withstand higher levels of flood exposure and more frequent storm events after the 5-year lease ends.

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 stated above, staff believes that 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, for the term of the 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 a trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Applicant will not have the opportunity to caretake the existing facilities and replace docks adjacent to Acker Island. 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 "Leading Climate Activism" and "Meeting Evolving Public Trust Needs" 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 proposed lease will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the term of the 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 \$3,214 for the unauthorized occupation of State land from April 26, 2017, through April 25, 2022.

2. Authorize issuance of a General Lease – Recreational, Protective Structure, and Right-of-Way Use to the Applicant, beginning April 26, 2022, for a term of 5 years, for caretaker status and maintenance of non-operational boat docks and ramps, 25 pilings, barge and work vessels, and underground power line previously authorized by the Commission; and caretaker status and maintenance of non-operational boardwalk structure and decks (covered and uncovered), and Sheriff boat dock and ramp not previously authorized by the Commission, as described in Exhibit A, Land Description, and shown on Exhibit B, Site and Location Map (for reference purposes only), attached and by this reference made a part hereof; annual rent in the amount of \$643, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence; and a surety bond in the amount of no less than \$10,000.

EXHIBIT A

LEASE 7080

LAND DESCRIPTION

Six parcels of tide and submerged land, situate in the natural bed of the San Joaquin River, along the northwest shore of Acker Island, lying adjacent to Swamp and Overflowed Land Survey 1276, patented April 10, 1877, County of San Joaquin, State of California and more particularly described as follows:

PARCEL 1 – Dock Facility

All those lands underlying the dock facilities including existing docks (to be replaced) and proposed ramp, gangway, two floating stair towers, bridge between stair towers and pilings lying adjacent to that parcel described in Grant Deed, recorded April 17, 1995 in Document No. 95034499 in Official Records of said County.

TOGETHER WITH any applicable Impact Area(s).

ALSO TOGETHER WITH that land lying immediately beneath any proposed bank protection structure (terrawall system, sheet pile system and rip rap) adjacent to said parcel described in Grant Deed, recorded April 17, 1995 in Document No. 95034499 in Official Records of said County.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the natural bed of said river.

PARCEL 2 – Decks

All those lands underlying an existing covered deck, uncovered deck, and boardwalk structure lying adjacent to that parcel described in Grant Deed, recorded April 17, 1995 in Document No. 95034499 in Official Records of said County.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the natural bed of said river.

PARCEL 3 – Existing Barge

All those lands underlying an existing barge lying adjacent to that parcel described in Grant Deed, recorded April 17, 1995 in Document No. 95034499 in Official Records of said County.

PARCEL 4 – Existing Sheriff Dock

All those lands underlying an existing sheriff dock with gangway and three pilings lying adjacent to that parcel described in Grant Deed, recorded April 17, 1995 in Document No. 95034499 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 natural bed of said river.

PARCEL 5 – Existing Underground Power Line

All those lands underlying an existing underground power line across the San Joaquin River from Acker Island to McDonald Tract lying adjacent to that parcel described in Grant Deed, recorded April 17, 1995 in Document No. 95034499 in Official Records of said County on Acker Island and that parcel described in Grant Deed, recorded May 17, 1994 in Document No. 1994-061372 in Official Records of said County on McDonald Island.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the natural bed of said river.

PARCEL 6 – Existing Dock (McDonald Island)

All those lands underlying an existing dock with gangway lying adjacent to that parcel described in Grant Deed, recorded May 17, 1994 in Document No. 1994-061372 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 natural bed of said river.

END OF DESCRIPTION

Prepared 03/09/2022 by the California
State Lands Commission Boundary Unit.



NO SCALE



**MCDONALD
ISLAND**

APN
129-080-640

STOCKTON DEEP WATER CHANNEL

SAN JOAQUIN RIVER
(TURNER CUT)

PROPOSED
STRUCTURES
(RAMP, GANGWAY,
BRIDGE & FLOATING
STAIR TOWERS)

BARGE
110' x 30'

EXISTING DOCKS
(TO BE REPLACED)

EXISTING
BOARDWALK
STRUCTURE

EXISTING
DOCK
30' x 6'

9' IMPACT
AREAS

UNDERGROUND
POWER LINE

9' IMPACT
AREA

EXISTING
COVERED
DECK

EXISTING
UNCOVERED
DECK

APN
131-020-010

ACKER ISLAND

PROPOSED
BANK STABILIZATION
IMPROVEMENTS
(TERRAWALL SYSTEM,
SHEET PILE SYSTEM &
RIPRAP)

EXISTING
RAMP

APPROX.
SHORELINE

EXISTING
SHERIFF
DOCK

EXHIBIT A

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LAND DESCRIPTION PLAT
LEASE 7080, THE LOST ISLE PARTNERS, LP
SAN JOAQUIN COUNTY

CALIFORNIA STATE
LANDS COMMISSION



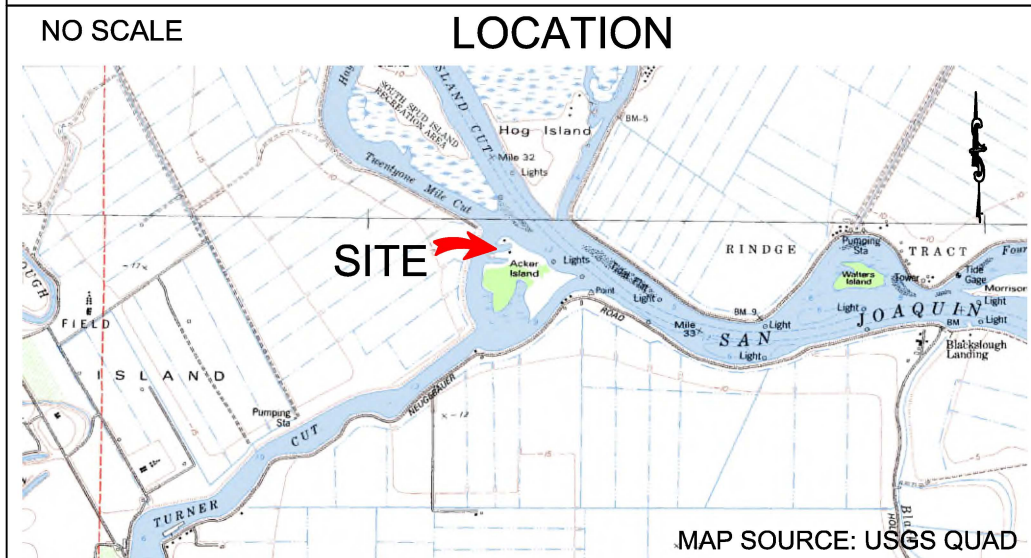
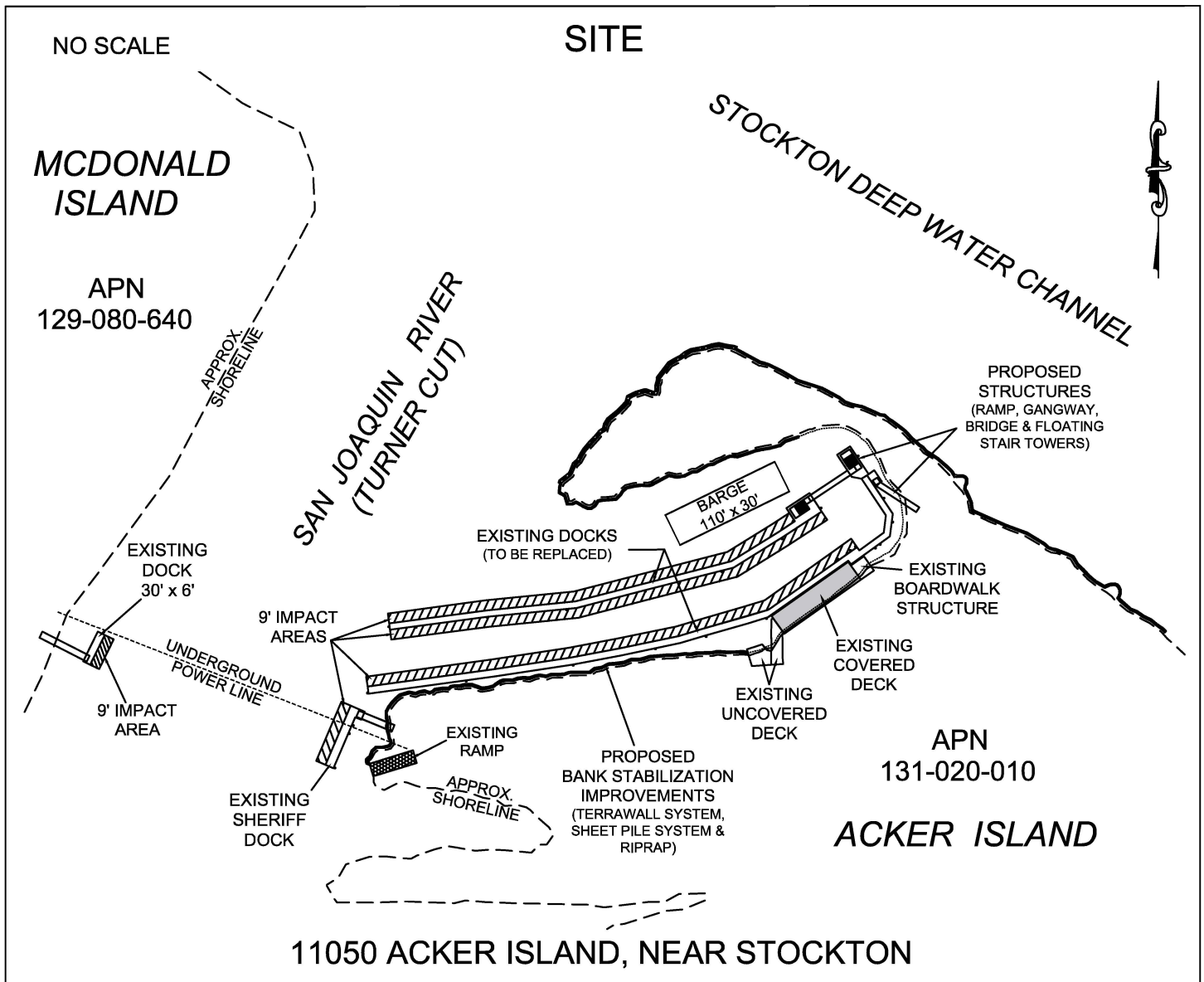


EXHIBIT B

LEASE 7080

THE LOST ISLE PARTNERS, LP

APN 131-020-010

GENERAL LEASE -

RECREATIONAL, PROTECTIVE

STRUCTURE &

RIGHT-OF-WAY USE

SAN JOAQUIN COUNTY



TS 03/09/2022

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.