

Staff Report 37

LESSEE:

Igor R. Vaynberg and Dana M. Vaynberg

APPLICANT:

Caleb Counts

PROPOSED ACTION:

Consider Voiding Invoice Number 55398; Termination and Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Sacramento River, adjacent to 3083 Garden Highway, Sacramento, Sacramento County.

AUTHORIZED USE:

Use and maintenance of two 3-pile wood dolphins and two wood pilings previously authorized and 30 wood pilings not previously authorized.

TERM:

10 years, beginning June 23, 2022.

CONSIDERATION:

\$407 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 climate change 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, 6503.5, and 6505.5; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On February 20, 2015, the Commission authorized a General Lease – Recreational Use to Igor R. Vaynberg and Dana M. Vaynberg ([Item C33, February 20, 2015](#)). The lease expires on June 26, 2024. On October 21, 2020, the associated upland property was sold to the Applicant. The Applicant is applying for a General Lease – Recreational Use for the use and maintenance of two 3-pile wood dolphins and two wood pilings previously authorized and 30 wood pilings not previously authorized.

Staff recommends termination of the existing lease because the Lessee sold the upland property and lease improvements and did not notify the Commission of changes in ownership or seek an assignment of the lease. Upon review, it came to staff's attention that 30 unauthorized wood pilings existed and were submerged during the prior lease. Records indicate that there was a floating home at the location as early as 1977. The floating house no longer exists, but the 30 pilings are still present.

The Lessee paid annual rent through June 26, 2022, beyond the date the upland property and facilities were deeded to the Applicant. The Lessee did not pay invoice number 55389 covering annual rent through June 26, 2023, since they no longer owned the upland adjoining the facilities on state sovereign land. Staff recommends the Commission void invoice number 55389, in the amount of \$197.72 for the annual rent covering 2022-2023. The Applicant will be responsible for maintenance of the improvements and payment of rent as of June 23, 2022.

The subject 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 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, except for the bank protection, which provides a public benefit.

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 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.

Rising sea levels can lead to more frequent flood inundation in low lying areas and larger tidal events and could increase the Sacramento 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 cause damage to the bank protection 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. 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 or dislodgement. 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 that termination of the current lease and issuance of a new 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. 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. Termination of the lease 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 15378, subdivision (b)(5).

4. Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of 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 termination of the lease and 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 common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Void annual rent invoice number 55389 issued to Igor R. Vaynberg and Dana M. Vaynberg for the period of June 26, 2022 through June 25, 2023.

2. Terminate, effective June 22, 2022, Lease Number PRC 5347, a General Lease – Recreational Use, issued to Igor R. Vaynberg and Dana M. Vaynberg.
3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning June 23, 2022, for a term of 10 years, for the use and maintenance of two 3-pile wood dolphins and two wood pilings previously authorized and 30 wood piling not previously authorized 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 \$407, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 5347

LAND DESCRIPTION

Fiver parcels of tide and submerged land situate in the bed of the Sacramento River, lying adjacent to Swamp and Overflowed Land Survey 284, certificate of purchase dated March 12, 1860, County of Sacramento, State of California and more particularly described as follows:

PARCELS 1 & 2 - Dolphins

All those lands underlying two existing 3-pile wood dolphins lying adjacent to that parcel described in Grant Deed, recorded October 21, 2020, in Document Number 202010211679 in Official Records of said County.

PARCELS 3 & 4 - Pilings

All those lands underlying two existing wood pilings lying adjacent to that parcel described in Grant Deed, recorded October 21, 2020, in Document Number 202010211679 in Official Records of said County.

PARCEL 5- Field of Pilings (30 Remaining)

All those lands underlying remaining of thirty pilings lying adjacent to that parcel described in Grant Deed, recorded October 21, 2020, in Document Number 202010211679 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 04/29/2022 by the California
State Lands Commission Boundary Unit



NO SCALE

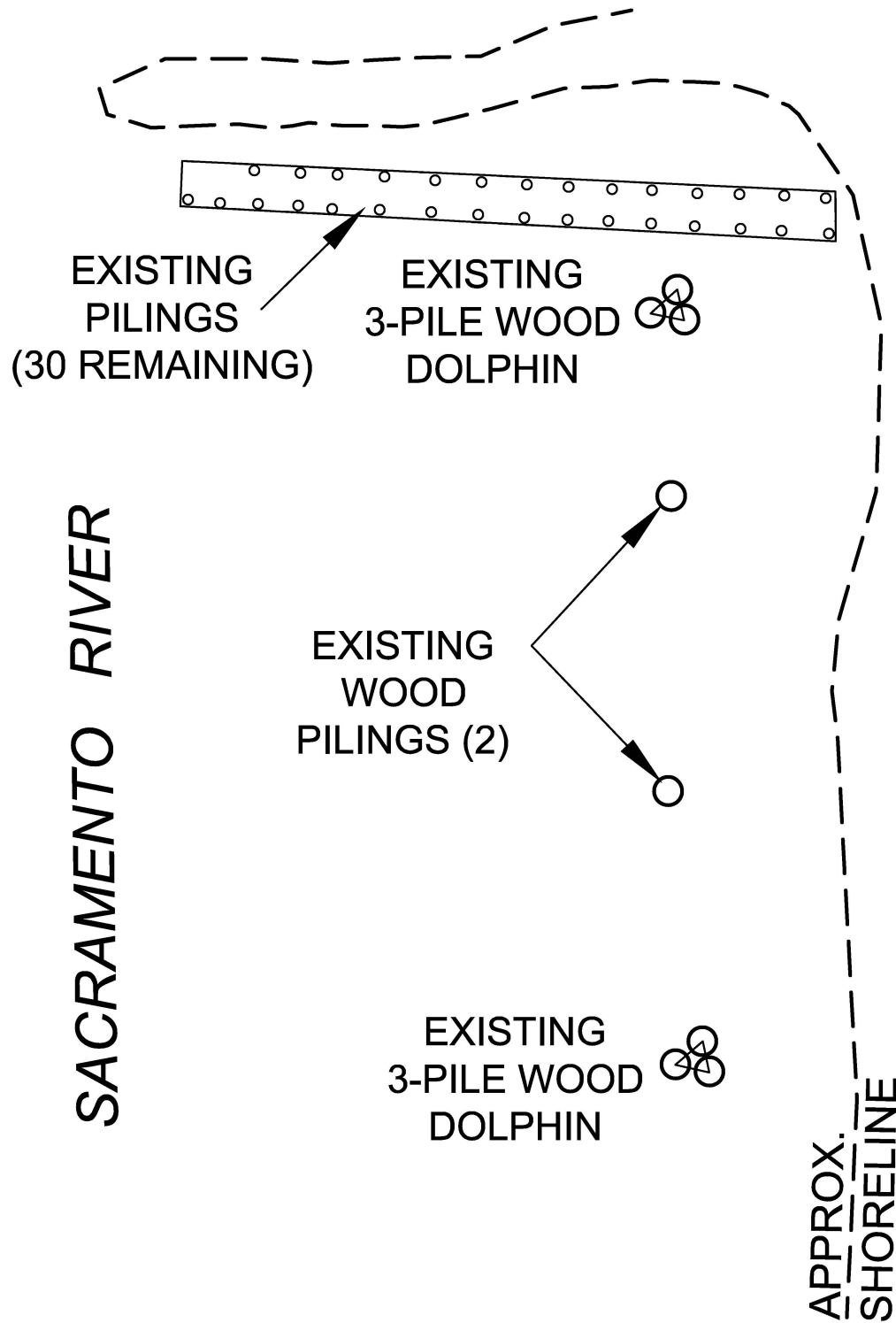


EXHIBIT A

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LAND DESCRIPTION PLAT
LEASE 5347, CALEB COUNTS
SACRAMENTO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE



EXISTING
PILINGS
(30 REMAINING)

EXISTING
3-PILE WOOD
DOLPHIN

EXISTING
WOOD
PILINGS (2)

EXISTING
3-PILE WOOD
DOLPHIN

SACRAMENTO RIVER

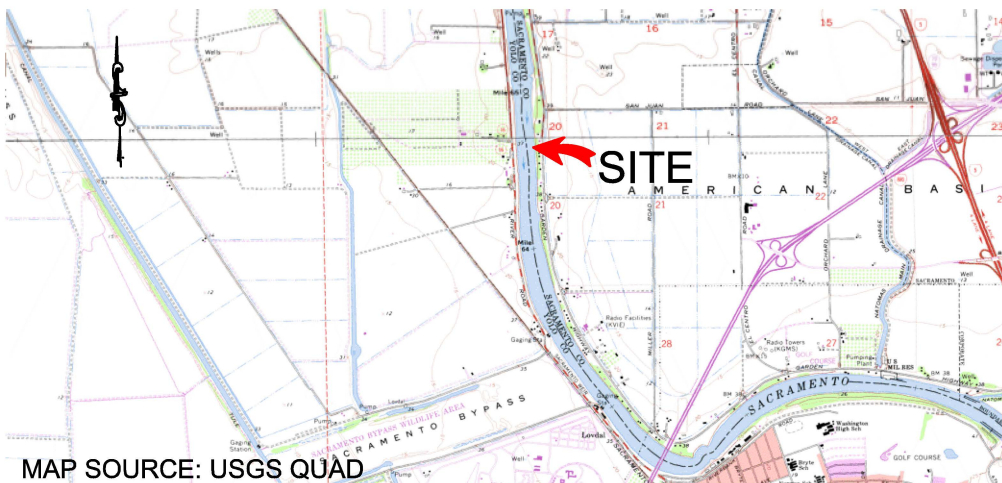
APPROX.
SHORELINE

APN 225-0200-012

3083 GARDEN HIGHWAY, SACRAMENTO

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 5347

CALEB COUNTS

APN 225-0200-012

GENERAL LEASE-

RECREATIONAL USE

SACRAMENTO COUNTY



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