

Staff Report 36

APPLICANT:

PACK Series C, LP, a Delaware limited partnership

PROPOSED ACTION:

Issuance of a General Lease – Recreational and Protective Structure Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the historic bed of the San Joaquin River, adjacent to 2013 Cove Court, Atherton Cove, San Joaquin County.

AUTHORIZED USE:

Use and maintenance of an existing boat dock with boat lift, ramp, redwood deck, bulkhead with fill, and bank protection.

TERM:

10 years; beginning May 24, 2022.

CONSIDERATION:

\$1,113 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:

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 24, 2012, the Commission authorized issuance of a 10-year General Lease – Recreational and Protective Structure Use to PACK, LLC – Series B, a Delaware limited liability company, for an existing uncovered floating boat dock with boat lift, ramp, single personal watercraft float, redwood deck, and bank protection previously authorized by the Commission; and bulkhead with fill, a fiberglass dock extension, and a double personal watercraft float not previously authorized by the Commission ([Item 45, May 24, 2012](#)).

On April 20, 2017, the Lessee applied for an assignment of the lease from PACK, LLC – Series B, a Delaware limited liability company to PACK LLC Series C. In conjunction with the assignment, pursuant to the lease terms and provisions, staff recommended to revise the rent from \$2,101 per year to \$1,027 per year, effective May 24, 2017 ([Item 40, April 20, 2017](#)). This action aligned with the fifth anniversary date of the lease.

On April 27, 2022, ownership interest in the upland parcel transferred from PACK LLC Series C, a Delaware limited liability company, to PACK Series C, LP, a Delaware limited partnership. The lease expired on May 23, 2022.

The Applicant is applying for a General Lease – Recreational and Protective Structure Use, for use and maintenance of only the existing boat dock with boat lift, ramp, redwood deck, bulkhead with fill, and bank protection. The Applicant provided evidence of the permanent removal of the single personal watercraft float and the double personal watercraft float which were previously authorized by the Commission.

Based on information provided in the application and the Commission's records, the subject facilities have existed at this location for many years. The existing boat dock with boat lift and ramp are privately owned and maintained 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 redwood deck and bulkhead with fill are not used for the docking and mooring of boats and are generally not consistent with the Public Trust Doctrine. However, the deck and bulkhead with fill have been there for many years and do not substantially interfere with the public’s right of navigation or access. The bank protection will protect the upland property and maintain and improve the integrity of the San Joaquin River, which will help protect the Public Trust resources for recreational and navigational use by the public. The facilities are located directly 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 proposed 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 subject facilities are located on the historic bed of 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 region as listed in Table 1.

Table 1. Projected Sea Level Rise for San Francisco

Year	Projection (feet)
2030	0.8
2040	1.3

Year	Projection (feet)
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 San Joaquin River's inundation levels within the lease area, and this risk 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, creeks, 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. The combination of these projected conditions could increase the likelihood of damage to the structures and affect access to them during the lease term. The uncovered floating boat dock with boat lift, dock extension, and adjustable ramp will be able to rise and fall with storms and droughts and increasing their resiliency to some climate change impacts but may require more frequent maintenance to ensure continued function during and after storm seasons and to avoid dislodgement.

The combination of these projected conditions could increase the likelihood of damage and affect the fixed features like the redwood deck, bulkhead with fill, and bank protection during the lease term. These fixed features may need reinforcement and possibly replacement to withstand higher levels of flood exposure and more frequent storm events.

Regular 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 and adjacent upland are 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 impair the public rights to navigation and fishing or substantially interfere with 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.

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 with boat lift, ramp, and redwood deck, and restore the premises to their original condition. The lessee 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:

1. Find that the existing, and for a limited period, continuing use and maintenance of the boat dock with boat lift and ramp will not substantially interfere with the Public Trust needs and values at this location, and are consistent with the Public Trust Doctrine; and
2. Find that the existing, and for a limited period, continuing use and maintenance of the redwood deck, bulkhead with fill, and bank protection are not generally consistent with the Public Trust Doctrine, but the current use does not substantially interfere with the trust; and
3. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning May 24, 2022, for a term of 10 years, for the use and maintenance of an existing boat dock with boat lift, ramp, redwood deck, bulkhead with fill, and 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; annual rent in the amount of \$1,113, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 7110

LAND DESCRIPTION

A parcel of tide and submerged land, whether filled or unfilled, situate in the bed of the Atherton Cove (formerly the bed of the San Joaquin River), lying adjacent to Swamp and Overflowed Land Survey 444, patented December 19, 1867, County of San Joaquin County, State of California and more particularly described as follows:

All those lands underlying an existing uncovered floating boat dock, boat lift, ramp, deck, and bulkhead lying adjacent to and southwesterly of those lands as described in "Exhibit A" of that Grant Deed, recorded December 29, 2009 in Document Number 2009-183949 in Official Records of said County.

ALSO TOGETHER any applicable impact area(s).

TOGETHER WITH all those lands underlying existing bank protection lying adjacent to said deed.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the right bank of the historic San Joaquin River.

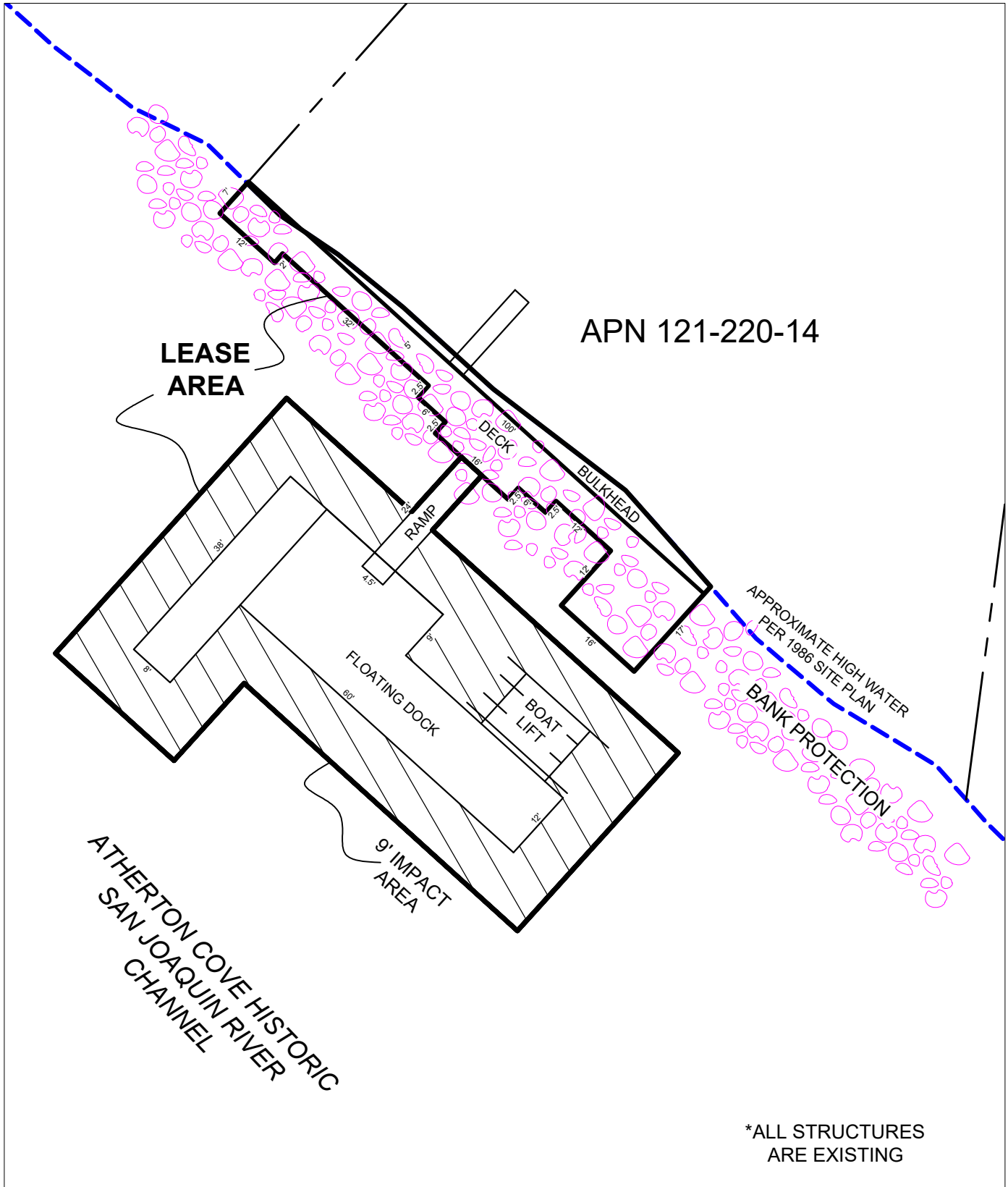
Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

PREPARED 7/11/2022 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



NO SCALE



APN 121-220-14

LEASE AREA

DECK

BULKHEAD

RAMP

FLOATING DOCK

BOAT LIFT

APPROXIMATE HIGH WATER PER 1986 SITE PLAN

BANK PROTECTION

9' IMPACT AREA

ATHERTON COVE HISTORIC SAN JOAQUIN RIVER CHANNEL

*ALL STRUCTURES ARE EXISTING

EXHIBIT A

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MJF 7/11/2022

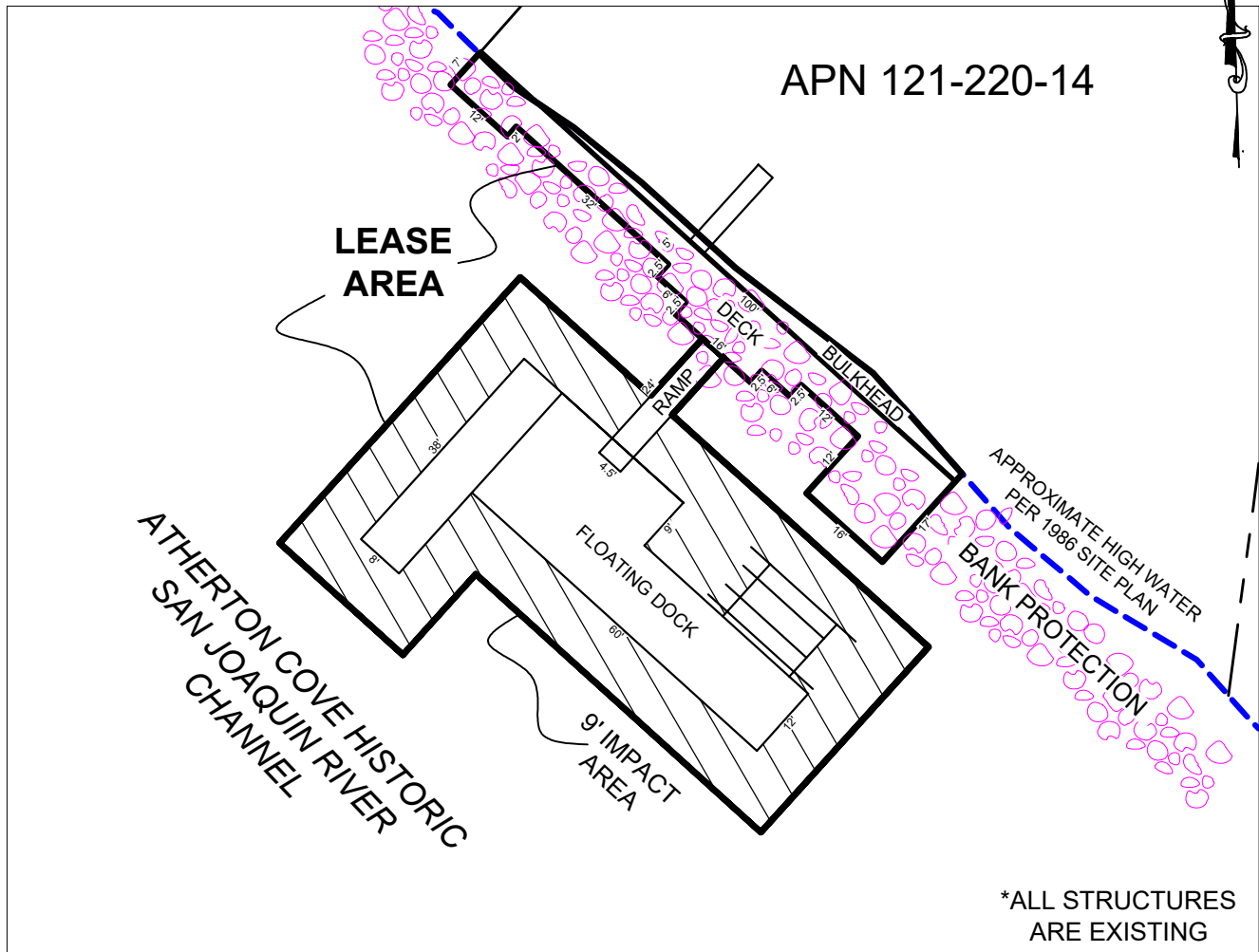
LAND DESCRIPTION PLAT
LEASE 7110 - PACK SERIES C, LP
SAN JOAQUIN COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE



2013 Cove Court, Stockton

NO SCALE

LOCATION

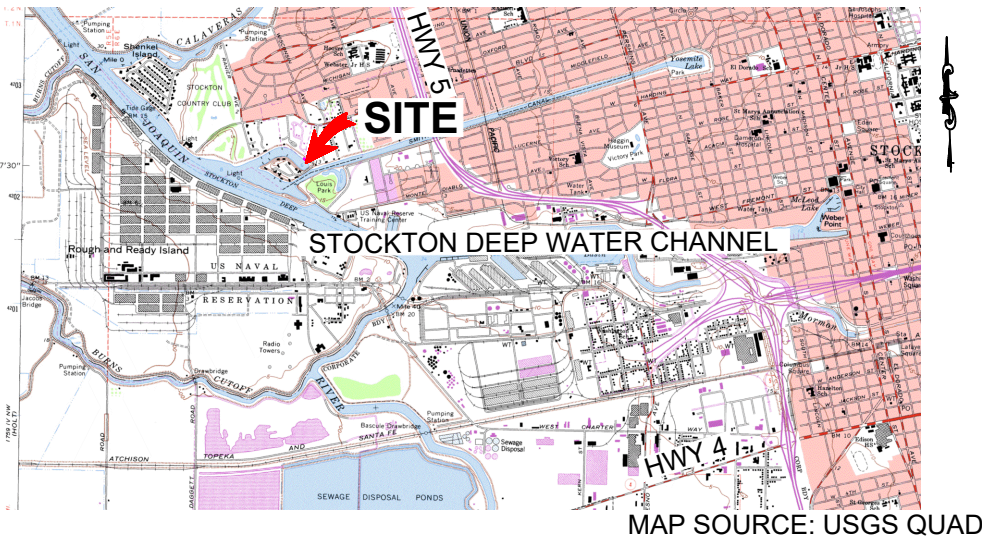


Exhibit B

LEASE 7110
 PACK SERIES C, LP
 APN 121-220-14
 GENERAL LEASE
 RECREATIONAL &
 PROTECTIVE STRUCTURE USE
 SAN JOAQUIN 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.