

Staff Report 35

APPLICANT:

Jaime Favila Jr. and Kathryn A. Favila

PROPOSED ACTION:

Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Sacramento River, adjacent to 7140 Pocket Road, Sacramento, Sacramento County.

AUTHORIZED USE:

Use and maintenance of an existing boat dock and three pilings with metal bracing.

TERM:

10 years; beginning December 12, 2022.

CONSIDERATION:

\$140 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, 6501.1, 6503, and 6503.5;
California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On April 26, 2013, the Commission authorized issuance of a General Lease – Recreational Use to Jaime Favila Jr. and Kathryn A. Favila for an existing boat dock and three pilings with metal bracing ([Item 34, April 26, 2013](#)). The lease will expire on December 11, 2022. On November 29, 2017, staff performed a rent review as pursuant to the lease terms and conditions ([Item 33, November 29, 2017](#)). This action modified the annual rent from \$76 per year to \$125 per year, effective December 12, 2017. The Applicant is now applying for a General Lease – Recreational Use, for the use and maintenance of an existing boat dock and three pilings with metal bracing in the Sacramento River. The subject facilities have existed at this location for many years, as shown in the Applicant's lease application and Commission records.

The subject facilities are privately owned and maintained by the Applicant. The 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 facilities are located directly waterward of the upland property and occupy a relatively small area of the river. The proposed lease will not interfere with navigation and does not substantially interfere with any Public Trust needs at this time or in the foreseeable future. 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 lease area is in the Sacramento River, which at this location is a tidally influenced site vulnerable to flooding at current sea levels; therefore, this area would be at a higher risk of flood exposure given future projection 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.

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 is adaptable to variable water levels allowing it to rise and fall with increased or decreased water levels. The fixed features like the three pilings with metal bracing may need reinforcement and possibly

replacement to withstand higher levels of flood exposure and more frequent storm events.

The vegetated bank and bank protection (under lease PRC 7203, [Item 11, April 5, 2016](#)) provides additional stability and reduces the amount of erosion and scour pressure experienced during future events because of the vegetation's underground root system but remains at risk of accelerated deterioration from currents and floods.

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 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; is consistent with the 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 and three pilings with metal bracing 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. The existing bank protection adjacent to the upland property is under lease PRC 7203 between the Commission and the Central Valley Flood Protection Board ([Item 11, April 5, 2016](#)).
3. 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.
4. 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 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 Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Recreational Use to the Applicant beginning December 12, 2022, for a term of 10 years, for the use and maintenance of an existing boat dock and three pilings with metal bracing, 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 \$140, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 3590

LAND DESCRIPTION

A parcel of tide and submerged land, situate in the bed of the Sacramento River lying adjacent to Swamp and Overflowed Lands Survey 334 patented September 20, 1865, County of Sacramento, State of California, and more particularly described as follows:

All those lands underlying an existing dock, pilings (3) and appurtenant structures adjacent to that parcel as described in "Exhibit A" of that Grant Deed recorded December 12, 2012 as Book 20121212 Page 0734 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 said river

Accompanying plat is hereby made a part of this description.

END OF DESCRIPTION

PREPARED 2/09/2022 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



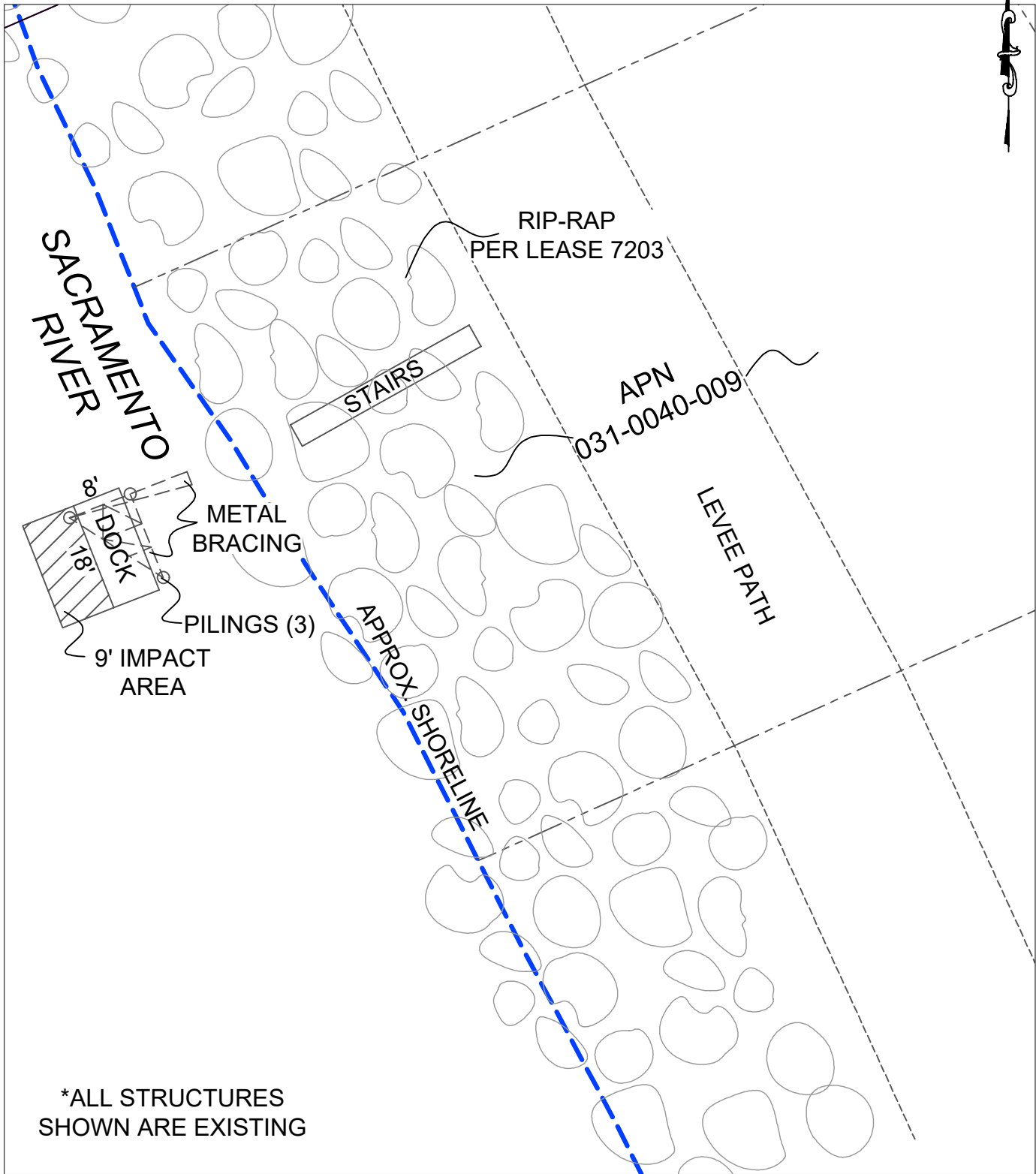


EXHIBIT A

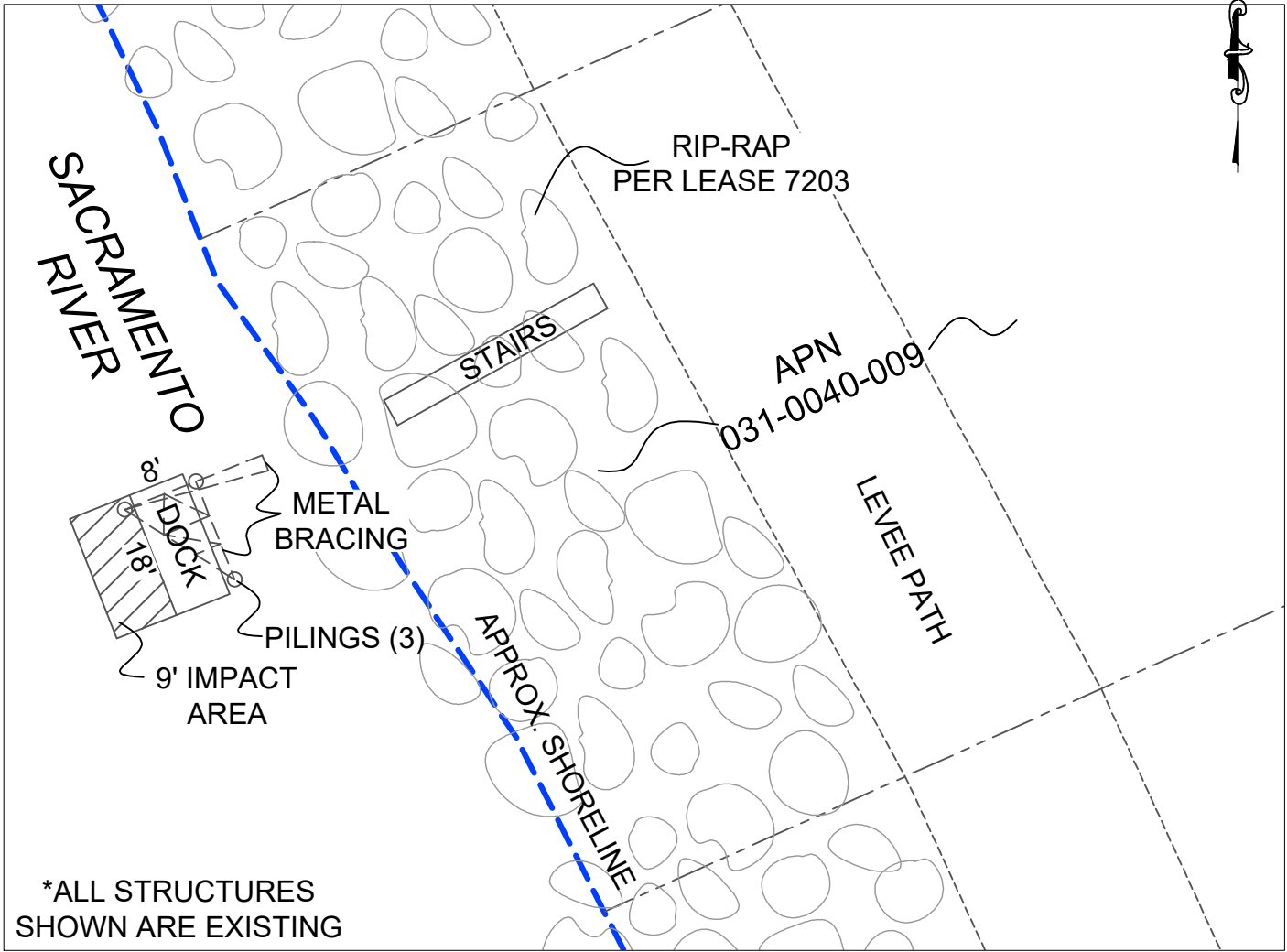
LAND DESCRIPTION PLAT
 LEASE 3590 - FAVILA
 SACRAMENTO COUNTY

CALIFORNIA STATE LANDS
 COMMISSION



NO SCALE

SITE

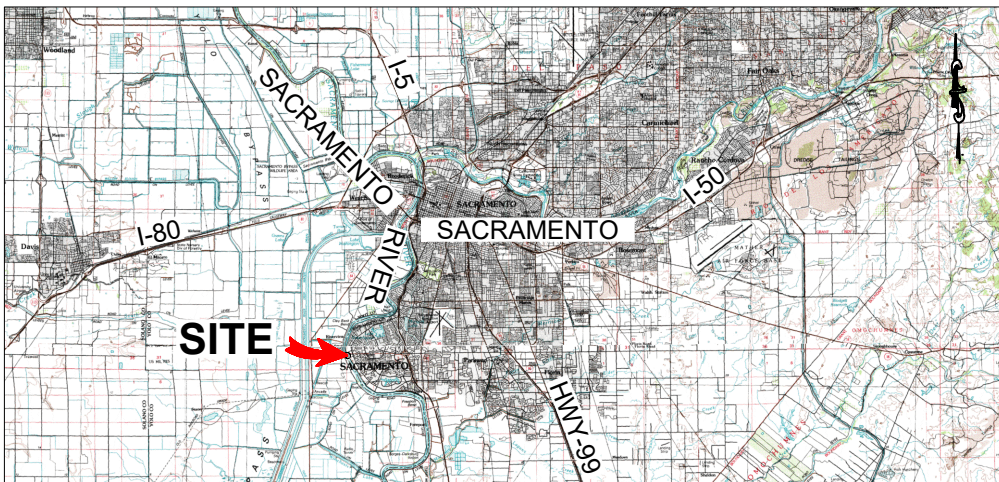


*ALL STRUCTURES SHOWN ARE EXISTING

7140 Pocket Rd., Sacramento

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

LEASE 3590

FAVILA

APN 031-0040-009

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.

MJF 2/09/2022