

# Staff Report 50

## **APPLICANT:**

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Delta Ferry Authority

## **PROPOSED ACTION:**

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Issuance of a General Lease – Public Agency Use

## **AREA, LAND TYPE, AND LOCATION:**

Sovereign land at the confluence of Piper Slough and False River, adjacent to Jersey Island, Assessor's Parcel Number 027-010-002; the confluence of Fisherman's Cut and False River, adjacent to Bradford Island, Assessor's Parcel Number 026-050-030; and the confluence of Fisherman's Cut and False River, adjacent to Webb Tract, Assessor's Parcel Number 026-060-018, near Oakley, Contra Costa County.

## **AUTHORIZED USE:**

Operation and maintenance of three existing ferry boat landings comprised of wood pilings, wood decking, and wing walls, and a ferry tender dock located on Webb Tract.

## **TERM:**

20 years, beginning September 1, 2022.

## **CONSIDERATION:**

The public use and benefit; with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests.

## **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. Further, Lessee agrees to conduct a structural assessment of the authorized improvements within 180 days of the 10<sup>th</sup>

lease anniversary date, including an assessment of impacts thus far and those reasonably foreseeable over the remainder of the lease term due to sea level rise. The structural assessment shall be submitted to the Commission for review and comment and may require the development of a remedial action plan if the structural integrity of the authorized improvements poses a risk to the public health and safety.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **AUTHORITY:**

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

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

On February 28, 1974, the Commission authorized a 49-year Public Agency Permit to the County of Contra Costa for the operation and maintenance of three existing ferry boat landings located at the confluence of Piper Slough and False River, adjacent to Jersey Island, the confluence of Fisherman's Cut and False River, adjacent to Bradford Island, and the confluence of Fisherman's Cut and False River, adjacent to Webb Tract, near Oakley, Contra Costa County ([Item C03, February 28, 1974](#)). By an agreement dated February 15, 1990, the County discontinued its involvement in the ferry service and transferred the ferry landings located on Jersey Island, Bradford Island, and Webb tract, along with the ferry vessel, to the Delta Ferry Authority. The lease expired on August 31, 2022. The Applicant is now applying for a General Lease – Public Agency Use for the operation and maintenance of the three existing ferry boat landings comprised of wood pilings, wood decking, and wing walls, and a ferry tender dock located on Webb Tract. The Applicant is a joint powers agency comprised of Reclamation District No. 2059 (Bradford Island) and Reclamation District No. 2026 (Webb Tract), which are special districts formed to construct and provide maintenance for levees and internal drainage system within their respective areas.

Bradford Island is comprised of approximately 2,200 acres with a 7.5-mile levee system, and approximately 25 people live on the island. The land uses include wheat farming, cattle grazing, and natural gas extraction. Webb Tract is approximately 5,500 acres in size with a 13-mile levee system, and no one lives on the island. The land uses include corn and wheat farming, and cattle grazing. The levee systems on both islands are important to statewide planning, as they are two of the eight western Delta islands determined by the California Department of Water Resources to be critical to maintaining water quality in the Delta.

The public ferry service has operated between Jersey Island and the two neighboring islands since construction of the Antioch Bridge and the Jersey Island Bridge in the 1930s. The ferry service provides Bradford Island and Webb Tract with their only access to the mainland. The ferry service also provides the only access to both islands for farming and emergency services and is also used by both Reclamation District 2059 and Reclamation District 2026 in their efforts to maintain the levee systems on both islands. Ferry services are a form of waterborne commerce and are consistent with the Public Trust.

The three ferry landings and appurtenances have existed for many years at these locations; they do not alienate the State's fee simple interest in the underlying land or permanently impair public rights. The proposed lease is limited to a 20-year term and does not grant the DFA exclusive rights to the lease premises, which allows the Commission flexibility to determine if the Public Trust needs of the area have changed over time. Furthermore, the proposed lease requires the DFA to insure the lease premises and to indemnify the State for any liability incurred as a result of their activities thereon. Upon termination of the lease, the DFA may be required to remove all improvements from State land and restore the lease premises to its natural state. As such, Commission staff believes this use of public land, by a public agency, for a public benefit is consistent with the common law Public Trust Doctrine (Pub. Resources Code, § 6221).

### **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 areas are located on the False River, Piper Slough, and Fisherman's Cut in Contra Costa County, which are tidally influenced sites 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**

<b>Year</b>	<b>Projection (feet)</b>
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.

Climate change and sea level rise will 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 ferry landings are located in and adjacent to waterways and therefore could be affected by these climate change-related riverine processes.

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 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:**

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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 prior lessee, may be required to remove the three ferry boat landings 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:**

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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 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 or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the proposed lease; and is in the best interests of the State.

### **AUTHORIZATION:**

Authorize issuance of a General Lease – Public Agency Use to the Applicant beginning September 1, 2022, for a term of 20 years, for the operation and maintenance of three existing ferry boat landings comprised of wood pilings,

wood decking, and wing walls, and a ferry tender dock located on Webb Tract, 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; consideration being the public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests; and liability insurance in an amount no less than \$1,000,000 per occurrence.

## **EXHIBIT A**

**LEASE 4865**

### **LAND DESCRIPTION**

Three parcels of tide and submerged land in the bed of False River at the confluence of Piper Slough and Fisherman's Cut, Contra Costa County, State of California, and more particularly described as follows:

#### **PARCEL 1**

A strip of tide and submerged land 100 feet wide at the confluence of Fisherman's Cut and False River, adjacent to Bradford Island, Contra Costa County, State of California, and lying 50 feet on each side of the following described centerline:

COMMENCING at the State Lands Commission monument "JERSEY C.S.L.C. 1951" having California Coordinate System, of 1927, Zone 3, coordinates of N (y) = 568414.63 feet and E (x) = 1666325.82 feet; thence N 80° 21' 39" E, 3216.179 feet to the POINT OF BEGINNING; thence S 29° 30' 00" E, 100.00 feet to the TERMINUS of the described centerline.

#### **PARCEL 2**

A strip of tide and submerged land 100 feet wide at the confluence of Piper Slough and False River, adjacent to Jersey Island, Contra Costa County, State of California, and lying 50 feet on each side of the following described centerline:

COMMENCING at the State Lands Commission monument "JERSEY C.S.L.C. 1951" having California Coordinate System, of 1927, Zone 3, coordinates of N (y) = 568414.63 feet and E (x) = 1666325.82 feet; thence S 74° 01' 43" E, 756.762 feet to the POINT OF BEGINNING; thence N 46° 50' 00" E, 130.00 feet to the TERMINUS of the described centerline.

#### **PARCEL 3**

A strip of tide and submerged land 100 feet wide at the confluence of Fisherman's Cut and False River, adjacent to Webb Tract, Contra Costa County, State of California, and lying 50 feet on each side of the following described centerline:

COMMENCING at the State Lands Commission monument "JERSEY C.S.L.C. 1951" having California Coordinate System, of 1927, Zone 3, coordinates of N (y) = 568414.63 feet and E (x) = 1666325.82 feet; thence N 81° 59' 32" E, 3849.699 feet to the POINT OF BEGINNING; thence S 19° 10' 00" W, 130.00 feet to the TERMINUS of the described centerline.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water marks of the False River, Piper Slough and Fisherman's Cut.

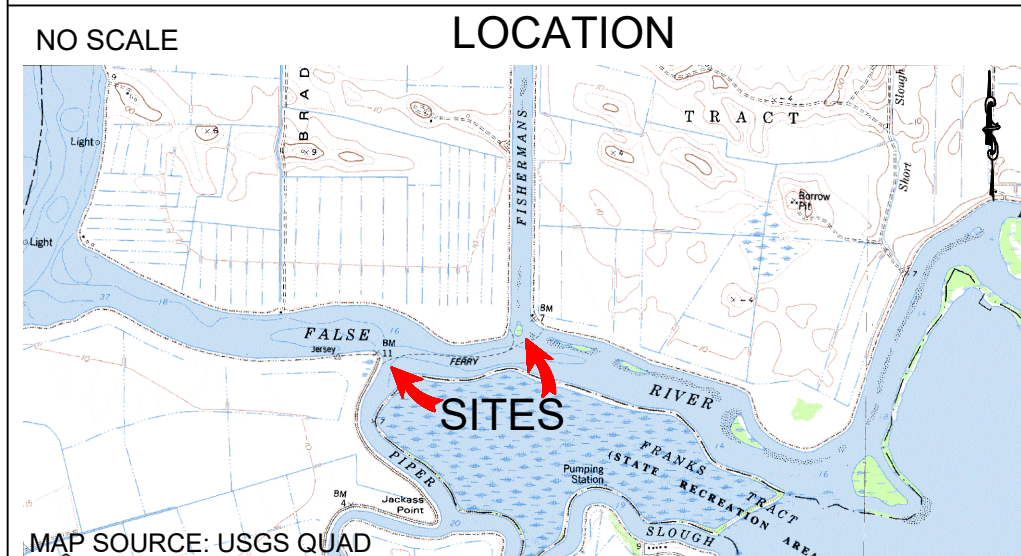
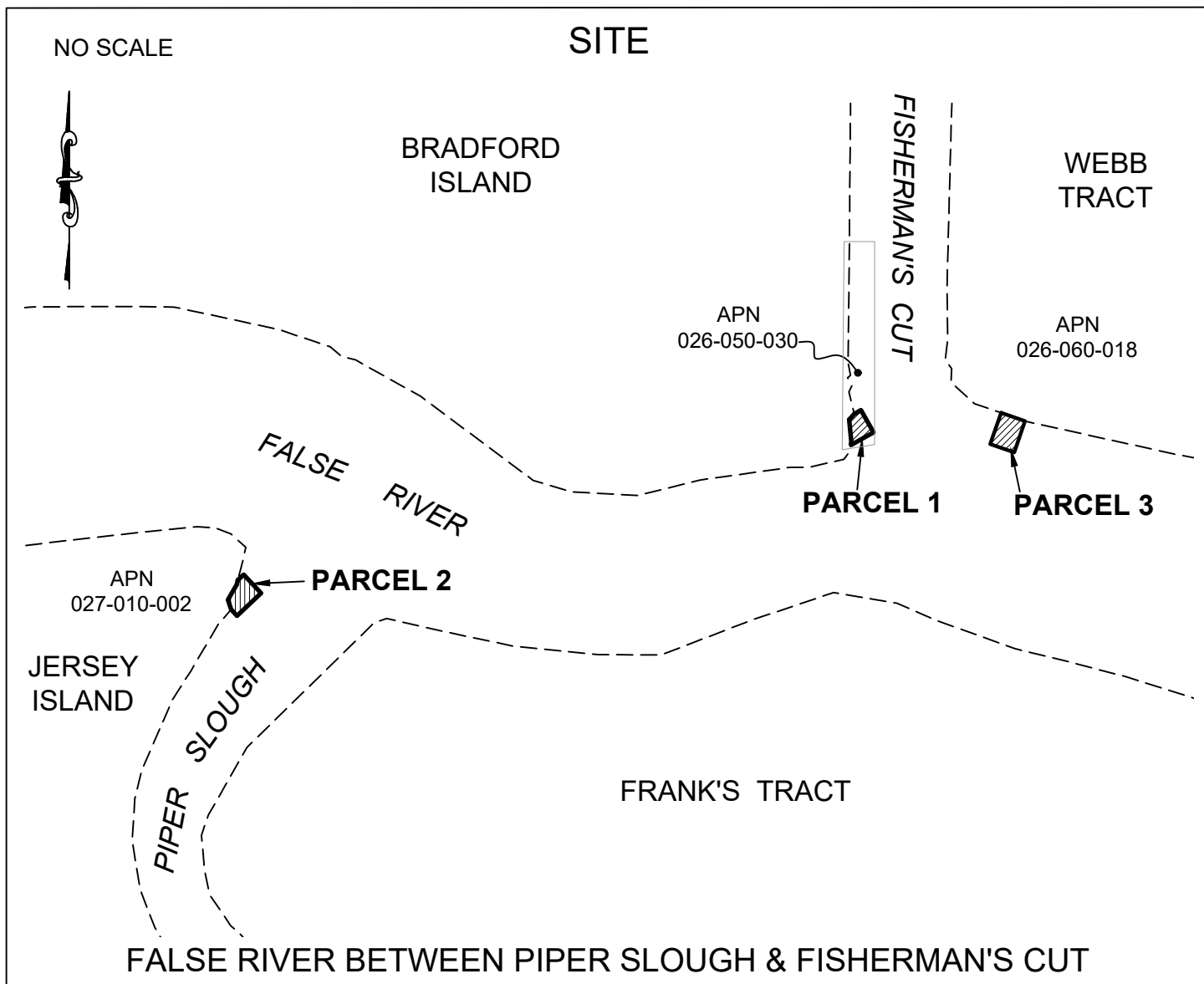
### **END OF DESCRIPTION**

The above description is based on that original description prepared by California State Lands Commission Boundary Unit on September 1, 1973, as found in PRC 4865 (W20222) file, Calendar Item 2.

Revised on 11/09/2022 by the California State Lands Commission Boundary Unit.







**EXHIBIT B**  
 LEASE 4865  
 DELTA FERRY AUTHORITY  
 APNs 026-050-030, 026-060-018  
 & 027-010-002  
 GENERAL LEASE -  
 PUBLIC AGENCY USE  
 CONTRA COSTA COUNTY



TS 11/09/2022

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.