

Staff Report 53

APPLICANT:

Warren E. Gomes Jr. and Noelle M. Gomes

PROPOSED ACTION:

Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Sacramento River, adjacent to 17781 Grand Island Rd, Walnut Grove, Sacramento County.

AUTHORIZED USE:

Construction of a boat dock with slip and boat lift, gangway, debris diverter; and the use and maintenance of seven existing pilings and seven existing unattached pilings.

TERM:

10 years, beginning March 1, 2023.

CONSIDERATION:

\$514 per year, with an annual Consumer Price Index adjustment; and \$373 for unauthorized occupation of State lands for the period beginning June 23, 2020 through February 28, 2023.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee agrees to submit an application to the Commission for removal of the seven unattached pilings or for reuse of the pilings, within two years of Lease execution date.
- Within 60 days of completing the construction of authorized improvements, Lessee will provide Lessor with photographs and a set of “as-built” plans that will show where the improvements have been placed. Lessor shall then replace

Exhibit A, Land Description, and Exhibit B, Site and Location Map, to the Lease as necessary to accurately reflect the final location of the authorized improvements. Once approved by the Lessor's Executive Officer or designee, and Lessee, the revised Exhibits shall replace the Exhibits incorporated in the Lease at the time of Lease execution. The replaced Exhibits shall be incorporated in the Lease as though fully set forth therein.

- Lessee agrees to obtain permits from all regulatory agencies for the proposed construction activities.
- Lessee agrees and acknowledges that hazards associated with sea level rise may require additional maintenance or protection strategies regarding the improvements on the Lease Premises.
- Within 60 days of completing the construction of authorized improvements, Lessee will provide Lessor with photographs and a set of "as-built" plans that will show where the improvements have been placed. Lessor shall then replace Exhibit A (Land Description) and Exhibit B (Site and Location Map) to this Lease as necessary to accurately reflect the final location of the authorized improvements. Once approved by Lessor's Executive Officer or designee and Lessee, the revised Exhibits shall replace the Exhibits incorporated in the Lease at the time of Lease execution. The revised Exhibits shall be incorporated in this Lease as though fully set forth herein.
- Lessee agrees to submit an application to the Commission for removal of the seven existing unattached pilings or for reuse of the pilings, within two years of Lease execution date.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503.5; California Code of Regulations, title 2, section 2000, subdivision (b).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On May 24, 2012, the Commission authorized a General Lease – Recreational Use to Philicia G. Lund and Mary K. Lund for the continued use and maintenance of existing pilings and construction of a covered floating boat shed, an uncovered floating boat dock, gangway, and debris diverter ([Item C19, May 24, 2012](#)). The Lessee never completed the project and therefore, the pilings are the only improvements currently existing. The lease expiration is May 23, 2022.

Unbeknownst to staff, the upland parcel was transferred to Bruce P. Hanlon and JanNiche P. Hanlon and later sold to Warren E. Gomes Jr, and Noelle M. Gomes on June 23, 2020. The Applicant is now applying for a General Lease – Recreational Use for the construction of a boat dock with slip and boat lift, gangway, debris diverter; and the use and maintenance of existing pilings. The previous lease had rent-free status, pursuant to Public Resources Code section 6503.5 in effect at the time. Therefore, staff recommends starting the new lease on March 1, 2023.

The Applicant will pay \$373 for unauthorized occupation of State lands by the subject pilings for the period beginning June 23, 2020 through February 28, 2023, the day before the beginning date of the proposed lease. Additionally, the proposed lease will require the Applicant to indemnify the State for the entire period of unauthorized occupation, ensuring the State is protected.

The existing pilings have been under lease for several years. Seven of the existing pilings will be utilized by the proposed boat dock with slip and debris diverter, while the other remaining existing pilings will be left in place and unattached. The lease requires the submittal of an application for the reuse or removal of the unattached pilings within two years of execution of the lease.

Construction will be performed by using a crane truck, work boat, and work truck. The dock would be fabricated off site and floated into place. The proposed gangway would be placed from the land using a crane truck or similar equipment. Work will take place within a 2-week time frame and will occur withing approved in-water work windows from August 1 to October 31.

The Applicant owns the upland parcel adjoining the lease premises. The proposed and existing facilities would be 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 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 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.

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 floating boat dock and ramp would be adaptable to higher water levels allowing them to rise and fall with storms and droughts and increasing their resiliency to some climate change impacts but may require more frequent maintenance or replacement to ensure continued function during and after storm seasons and to avoid dislodgement of the facilities. The pilings would be fixed and therefore more vulnerable to sea level rise and more frequent flood events. These structures may need additional fortification or repair and maintenance to ensure they do not become dislodged or degraded, as they could pose risks to public safety and navigation.

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 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 an 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. If the Commission denies the application, the Applicant may not construct the proposed facilities and may be required to remove the existing pilings. 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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

APPROVALS REQUIRED:

Central Valley Flood Protection Board
U.S. Army Corps of Engineers
California Department of Fish and Wildlife
Reclamation District No. 3

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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1).

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 Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; are consistent with the common law Public Trust Doctrine; and are in the best interests of the State.

AUTHORIZATION:

1. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning March 1, 2023 , for a term of 10 years, for the construction of a boat dock with slip and boat lift, gangway, debris diverter; and the use and maintenance of seven existing pilings and seven existing unattached pilings, 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 \$514, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

2. Authorize acceptance of compensation from the Applicant in the amount of \$373 for unauthorized occupation of State land for the period beginning June 23, 2020 through February 28, 2023.
3. Authorize the Executive Officer or designee to replace Exhibits in the lease upon submission, review, and approval of as-built plans detailing the final location of the improvements following construction.

EXHIBIT A

LEASE 7473

LAND DESCRIPTION

Nine parcels of tide and submerged land situate in the bed of the Sacramento River, lying adjacent to Swamp and Overflowed Land Survey 511 and 512, patented November 23, 1874, County of Sacramento, State of California and more particularly described as follows:

PARCEL 1 - Dock

All those lands underlying a proposed boat dock with slip and boat lift, gangway, stairs and five existing pilings lying adjacent to those parcels described in Grant Deed, recorded June 23, 2020 in Document No. 2020062331739 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 right bank of said Sacramento River.

PARCEL 2 – Debris Diverter

All those lands underlying a proposed debris diverter and two existing pilings lying adjacent to those parcels described in Grant Deed, recorded June 23, 2020 in Document No. 2020062331739 in Official Records of said County.

PARCELS 3 through 9 – Pilings

All those lands underlying seven existing pilings lying adjacent to those parcels described in Grant Deed, recorded June 23, 2020 in Document No. 2020062331739 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

This description is based on Applicant provided design plans for a proposed boat dock, together with any and all appurtenances pertaining thereto, to be built at a later date

within the Lease time frame. This description is to be updated once final as-built plans are submitted.

Prepared 09/20/2022 by the California State Lands Commission Boundary Unit



NO SCALE

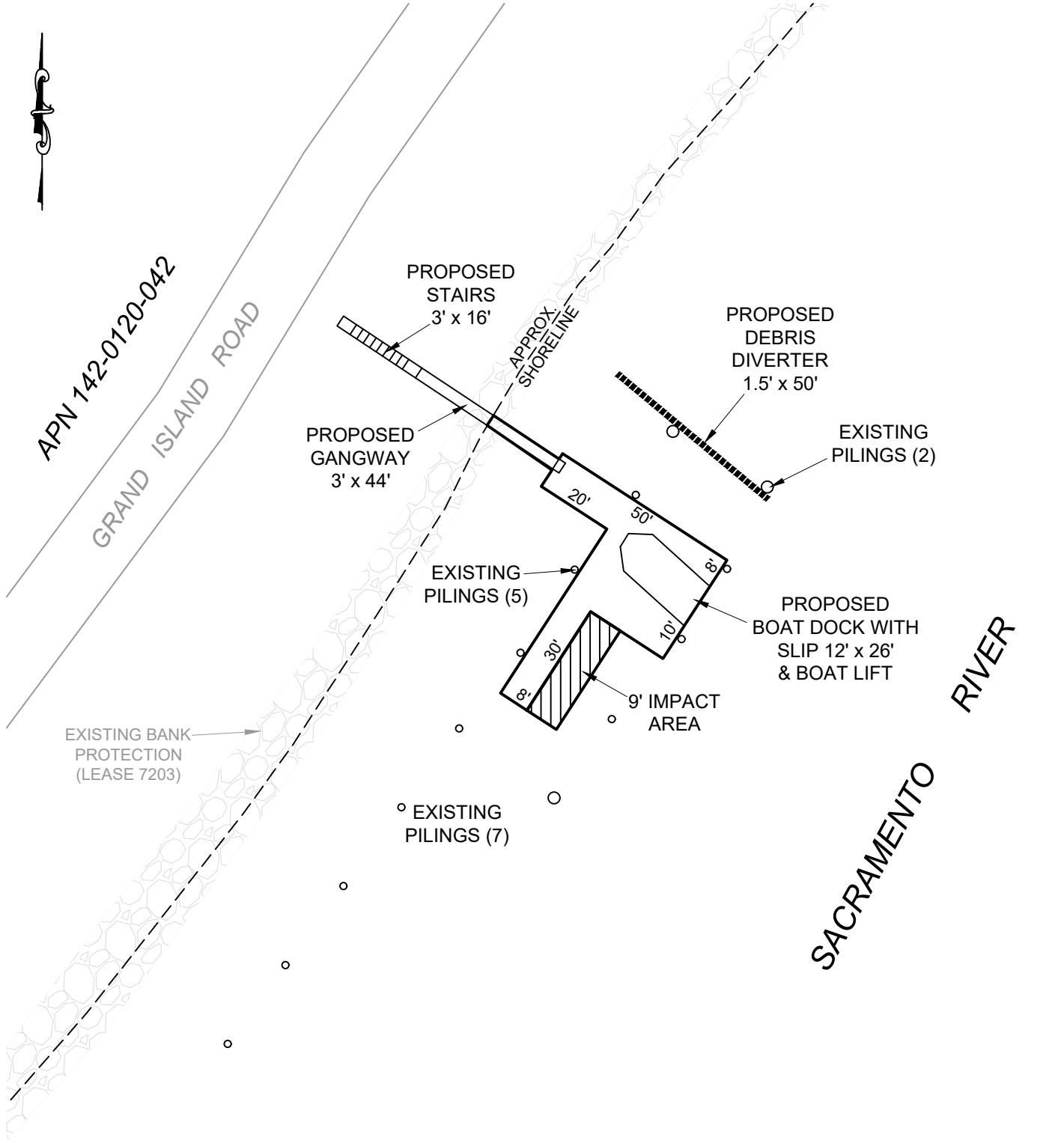


EXHIBIT A

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LAND DESCRIPTION PLAT
 LEASE 7473, GOMES
 SACRAMENTO COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



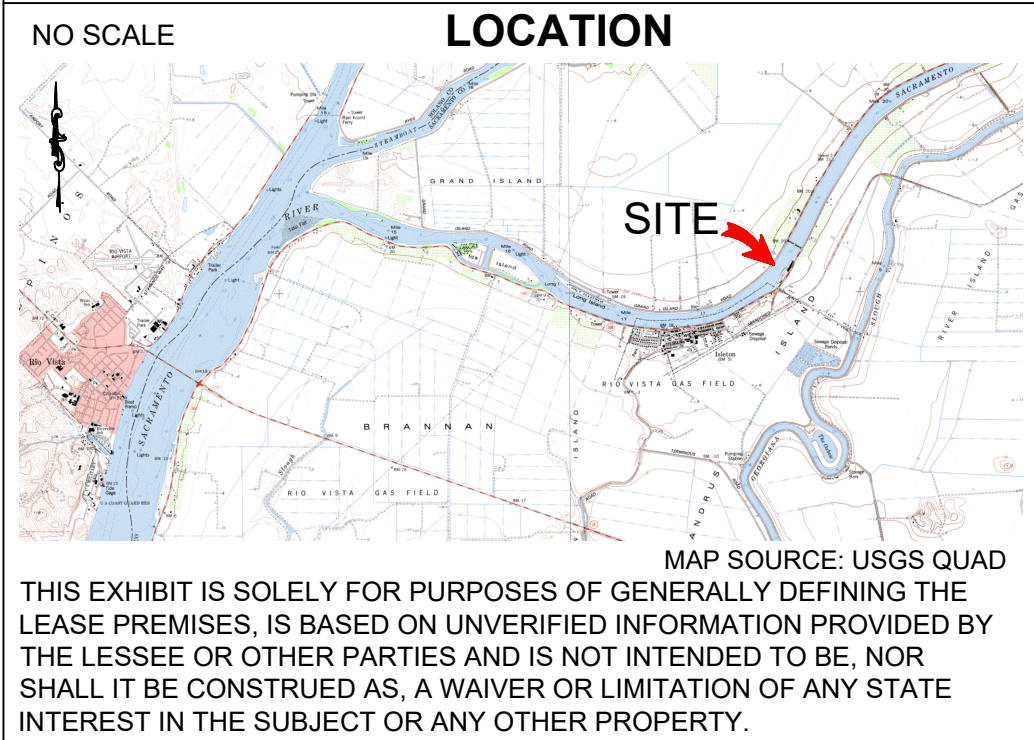
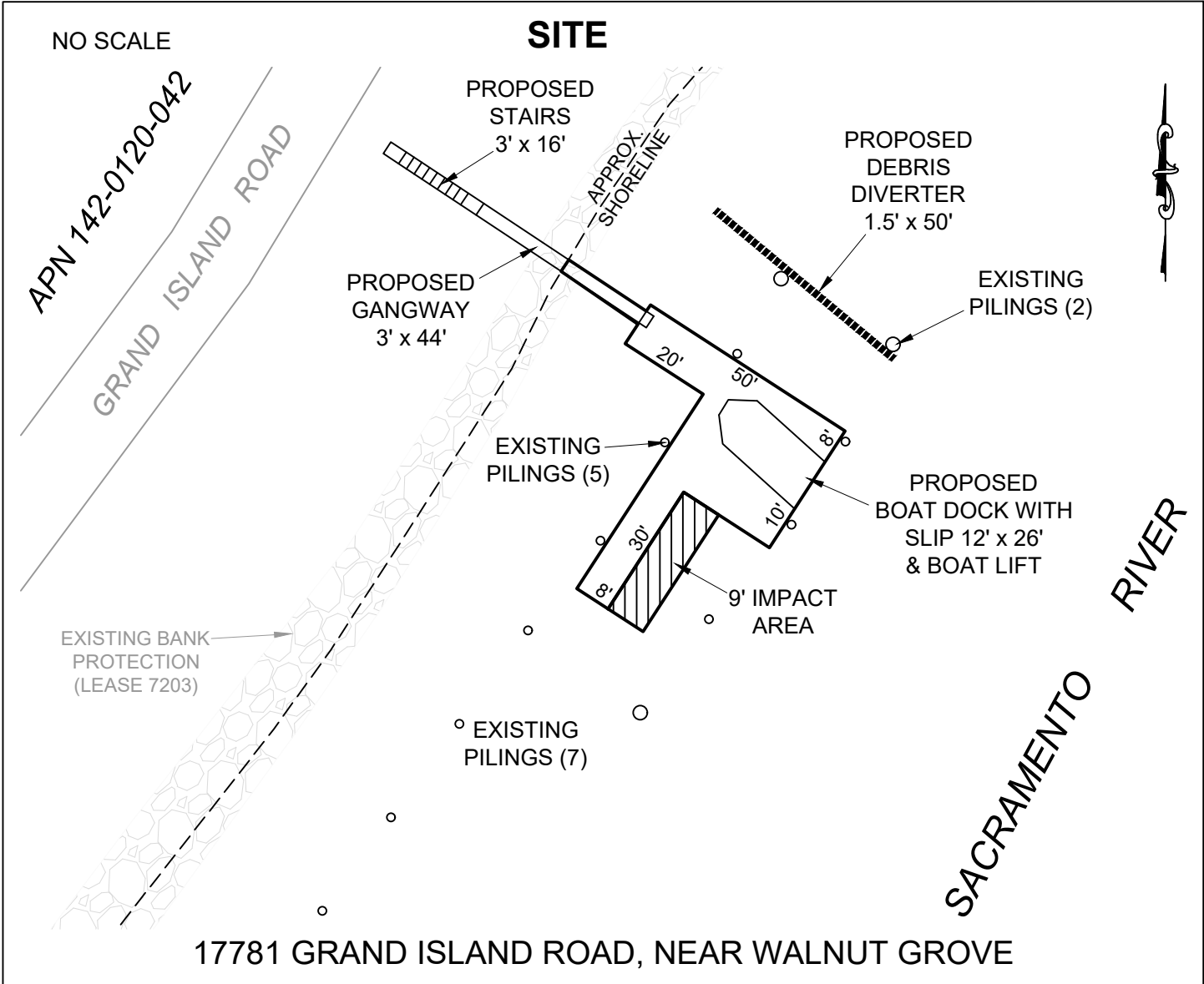


Exhibit B

LEASE 7473
GOMES
APN 142-0120-042
GENERAL LEASE -
RECREATIONAL USE
SACRAMENTO COUNTY

SITE

TS 09/20/2022