

Staff Report 61

APPLICANT:

Nichole J. Pimentel and Andre L. Pimentel

PROPOSED ACTION:

Issuance of a General Lease – Recreational and Protective Structure Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Sacramento River, adjacent to 7173 Garden Highway, Sacramento, Sacramento County.

AUTHORIZED USE:

Construction, use and maintenance of a covered boat dock, gangway and three steel pilings; and use and maintenance of existing bank protection.

TERM:

10 years, beginning March 1, 2023.

CONSIDERATION:

\$327 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 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.

- The Lease contains a provision (Special Provision 12) that limits the improvements to docking and mooring purposes only. Other uses are prohibited.

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.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On July 30, 2021, the upland parcel was transferred to Nichole J. Pimentel and Andre L. Pimentel. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use for the construction of a covered boat dock, gangway, and three pilings; and existing bank protection. The bank protection at this location has existed for many years but was never under lease.

The proposed covered boat dock will be moored by three pilings that would be installed with barge mounted pile driver. Pilings will be steel with a 12-inch-diameter and will be installed to anchor the proposed dock. The boat dock will be prefabricated, floated in, and attached to the pilings. The boat dock will be 32 feet by 24 feet, with two fingers (one 8 feet by 24 feet and the other 4 feet by 24 feet) and a head float with aluminum frame, for a total of 608 square feet. The dock will include decking and a rub rail around the perimeter with cleats. The gangway will be 3 feet by 24 feet and made from aluminum. The gangway attaches to the upland and boat dock with rollers and brackets.

The proposed facilities will 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 bank protection will protect the upland property and maintain and improve the integrity of the river, which will help protect the Public Trust resources for recreational and navigational use by the public. The existing and proposed improvements are located directly waterward of the upland property and will 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 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 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 will 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 will 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 bank protection. Upon expiration or prior termination of the lease, a 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. **Existing Protective Structure:** 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).
4. **Construction of Boat Dock:** Staff recommends that the Commission find that this activity is exempt from the requirements of 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:

U.S. Army Corps of Engineers
Central Valley Flood Protection Board
California Department of Fish and Wildlife

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Existing Protective Structure: 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).

Construction of Boat Dock: 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 and Protective Structure Use to the Applicant beginning March 1, 2023, for a term of 10 years, for the construction, use and maintenance of a covered floating boat dock, gangway, and three pilings; and existing 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 \$327, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.
2. 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

A 3785

LAND DESCRIPTION

A parcel of tide and submerged land situate in the Sacramento River, lying adjacent to Swamp and Overflowed Land Survey No. 924, patented August 24, 1870, County of Sacramento, State of California, and more particularly described as follows:

All those lands underlying a proposed floating boat dock, pilings, and gangway adjacent to the parcel described in that Grant Deed recorded July 30, 2021 in Book 20210730, Page 1089 in Official Records of said County.

TOGETHER WITH any applicable Impact Area(s).

ALSO TOGETHER WITH those lands lying immediately beneath any bank protection adjacent to said parcel described in said Grant Deed.

EXCEPTING THEREFROM any portion lying landward of the Ordinary High Water Mark of the left bank of the Sacramento River.

Accompanying plat is hereby made a part of this description.

END OF DESCRIPTION

This description is based on Applicant provided design plans dated 8/12/22 by Mid-Cal Construction, for a proposed private floating 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 October 27, 2022 by the California State Lands Commission Boundary Unit.





SACRAMENTO RIVER FLOW

9' IMPACT AREA (PROPOSED)

PROPOSED PILINGS (3)

PROPOSED COVERED FLOATING BOAT DOCK

PROPOSED GANGWAY 3'X70'

SHORELINE

BANK PROTECTION (EXISTING)

APPROXIMATE

APN 201-0250-031

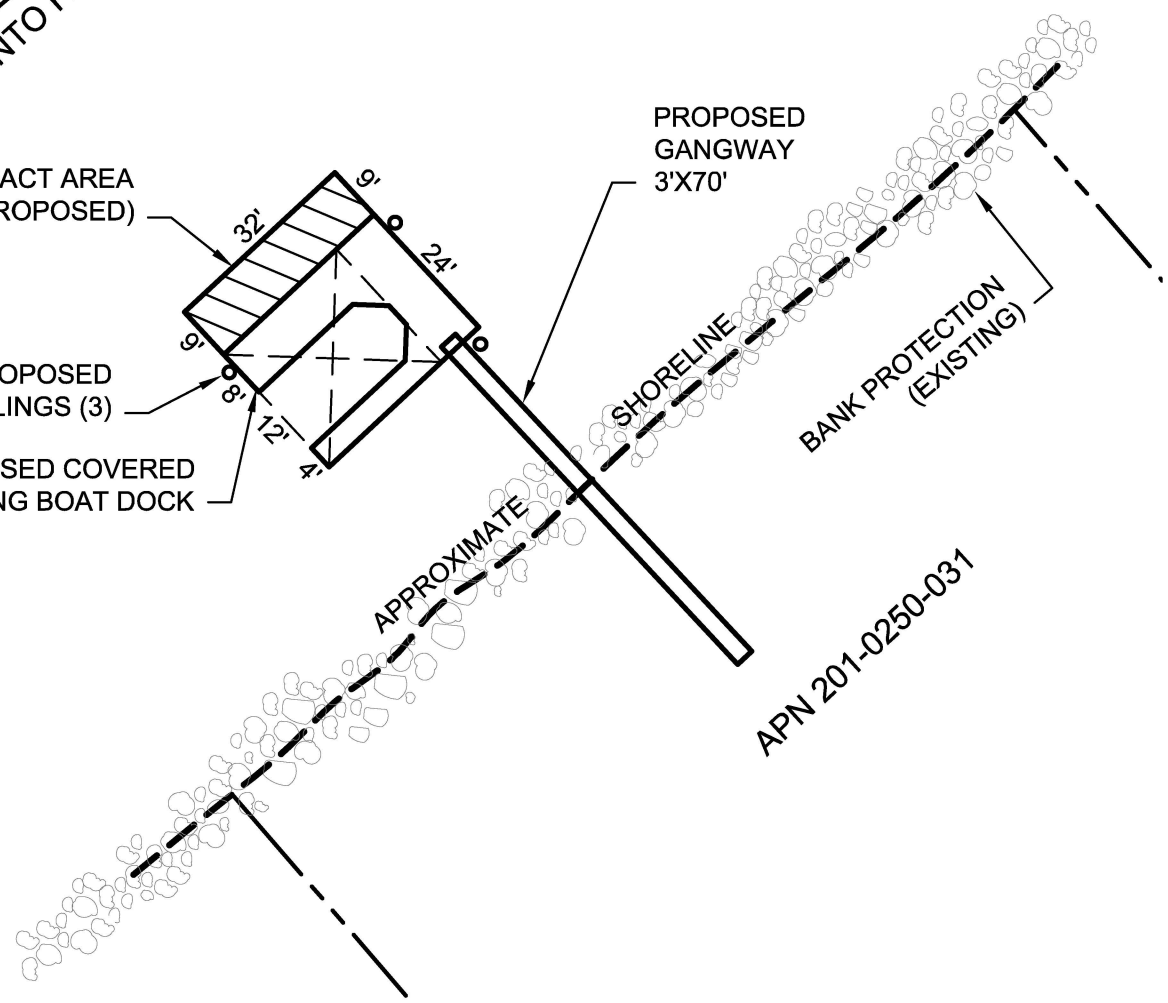


EXHIBIT A

LAND DESCRIPTION PLAT
A3785, PIMENTEL
SACRAMENTO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE

SACRAMENTO RIVER FLOW

9' IMPACT AREA (PROPOSED)

PROPOSED PILINGS (3)

PROPOSED COVERED FLOATING BOAT DOCK

PROPOSED GANGWAY 3'X70'

SHORELINE

BANK PROTECTION (EXISTING)

APPROXIMATE

APN 201-0250-031

7173 GARDEN HIGHWAY, SACRAMENTO

NO SCALE

LOCATION

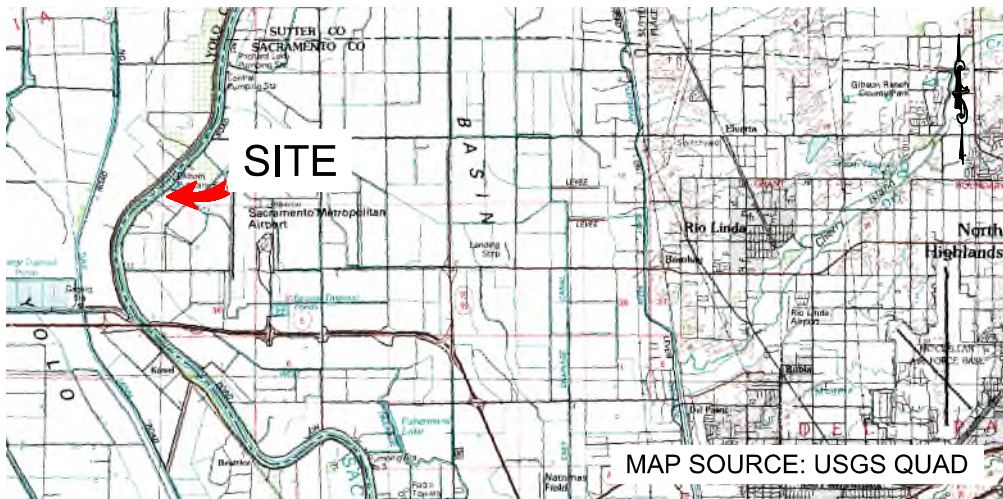


EXHIBIT B

A3785
 PIMENTEL
 APN 201-0250-031
 GENERAL LEASE -
 RECREATIONAL & PROTECTIVE
 STRUCTURE 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.

DdV 10/27/2022