

# Staff Report 35

## **LESSEE/APPLICANT:**

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Nautilus Data Technologies, Inc., a Delaware corporation

## **FINANCING PROVIDER:**

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Stockton PACE 2023-1 LLC, a Delaware limited liability company

## **PROPOSED ACTION:**

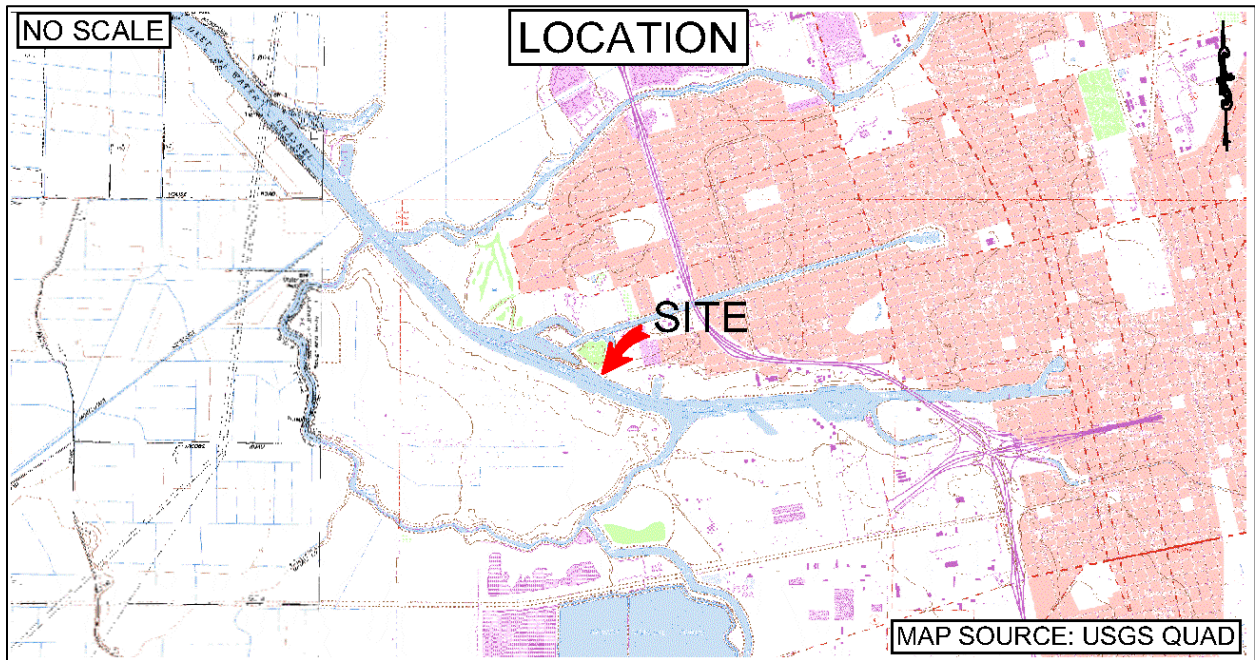
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Termination of an Agreement and Consent to Encumbrance of Lease and  
Authorization of an Agreement and Consent to Encumbrance of Lease

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

0.15± acre of proprietary land in the San Joaquin River located within the Port of Stockton, at Rough and Ready Island, adjacent to Assessor's Parcel Number 162-030-07, Stockton, San Joaquin County (as shown in Figure 1).

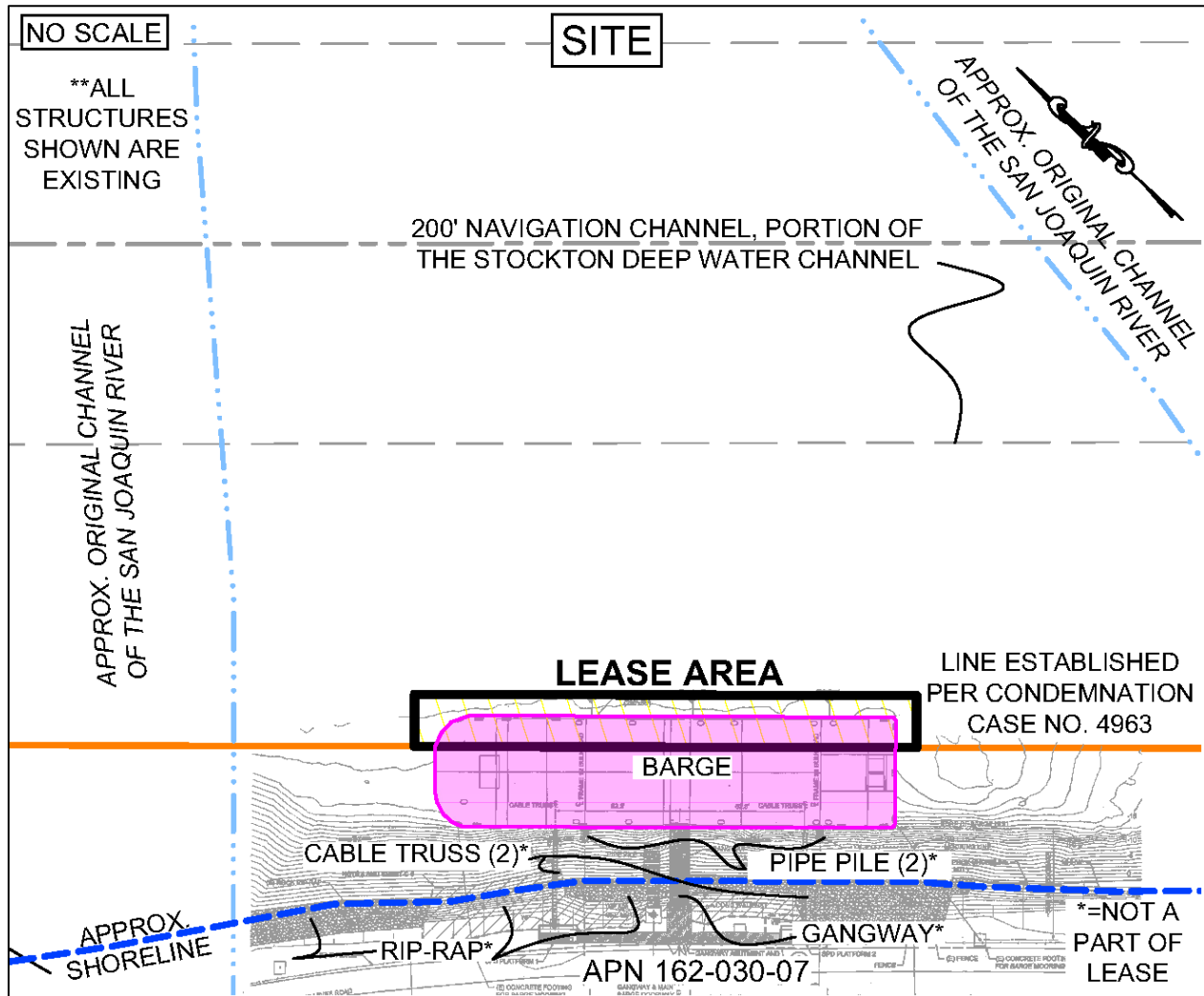
**Figure 1. Location**



**AUTHORIZED USE:**

Installation, use, and maintenance of a barge-mounted, water-cooled data center (as shown in Figure 2).

Figure 2. Site Map



NOTE: This depiction of the lease premises is based on unverified information provided by the Applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

**TERM:**

Beginning October 18, 2018; ending September 20, 2038.

**CONSIDERATION:**

\$2,164 per year, with an annual Consumer Price Index adjustment.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **AUTHORITY:**

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

### **STATE'S BEST INTERESTS:**

On October 18, 2018, the Commission authorized a General Lease – Industrial Use to Nautilus Data Technologies, Inc., a Delaware Corporation, for the installation, use, and maintenance of a barge-mounted, water-cooled data center to be located at the Port of Stockton ([Item 50, October 18, 2018](#)). On April 29, 2020, the Commission authorized an amendment of the lease and an Agreement and Consent to Encumbrance of Lease ([Item 37, April 29, 2020](#)). The existing lease is on State-owned proprietary land, not sovereign land. The lease will expire on September 20, 2038.

The Lessee is applying for an Agreement and Consent to Encumbrance of Lease in favor of Stockton PACE 2023-1 LLC, a Delaware limited liability company, the Financing Provider, in a loan amount not to exceed \$43,800,000. The Lessee also desires to terminate the existing Agreement and Consent to Encumbrance of Lease. The purpose of the loan is to refinance a portion of the costs incurred in connection with the construction of the data center facility and all shoreside infrastructure required to operate the data center facility. The encumbrance of the lease is a condition of the Financing Provider.

The encumbrance of the lease would be implemented through a document, "Agreement and Consent to Encumbrance of Lease," that would include protections for the State land associated with the lease. These protections include requirements that 1) no subsequent encumbrance of the lease shall be executed without prior written consent of the Commission; 2) any transfer of the lease to a third party shall be subject to the prior written approval and consent of the Commission; 3) if the Financing Provider becomes the lessee, it shall be bound by all terms and conditions of the lease; 4) any transaction requiring Commission approval and consent shall be void in the absence of such approval and consent; and 5) the duration of the encumbrance agreement is limited to the term of the lease.

The encumbrance of the lease would not permanently alienate the State's fee simple interest in the underlying land, and it would not permanently impair public rights. By encumbering the lease, the Lessee can obtain the funds required to continue to operate the data center facility and manage the leased State

property, and the lender effectively acts as the guarantor of Lessee's performance of its lease obligations.

The existing 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.

**CONCLUSION:**

For all the reasons above, staff believes that authorization of an Agreement and Consent to Encumbrance of Lease 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. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the Values and Guiding Principles of the Commission's 2021-2025 Strategic Plan.
3. The Termination of an Agreement and Consent to Encumbrance of Lease and the authorization of an Agreement and Consent to Encumbrance of Lease are not projects as defined by the California Environmental Quality Act because they are administrative actions that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

**RECOMMENDED ACTION:**

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It is recommended that the Commission:

**STATE'S BEST INTERESTS:**

Find that the proposed lease is in the best interests of the State.

**AUTHORIZATION:**

1. Authorize termination, effective April 6, 2023, of the document titled "Agreement and Consent to Encumbrance of Lease" for Lease Number PRC 9510, issued to Nautilus Data Technologies, Inc., a Delaware corporation and dated May 19, 2020.
2. Authorize the Executive Officer or designee to execute the document titled "Agreement and Consent to Encumbrance of Lease," allowing Lessee's right, title, and interest in Lease Number PRC 9510 to be pledged as partial security for a loan in the principle amount not to exceed \$43,800,000 in favor of Stockton PACE 2023-1 LLC, a Delaware limited liability company, in substantially the same form as that on file in the Sacramento office of the Commission, effective April 7, 2023.
3. Authorize the Executive Officer or designee to execute, acknowledge, accept, and record all related documents as may be reasonably necessary to complete the transaction.