

Staff Report 39

APPLICANT:

Jonathan Rittenbach

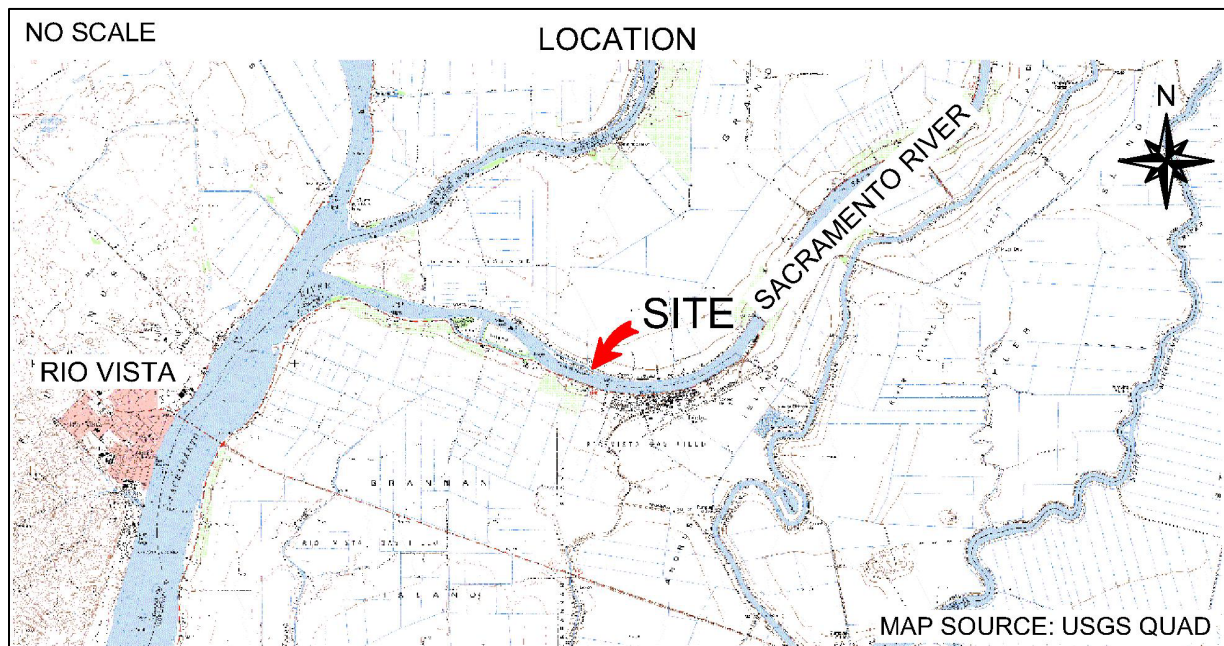
PROPOSED ACTION:

Consider Waiver of Rent, Penalty, and Interest; and Issuance of a General Lease –
Recreational and Protective Structure Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Sacramento River, adjacent to 17484 Grand Island Road, near Walnut Grove, Sacramento County (as shown on Figure 1).

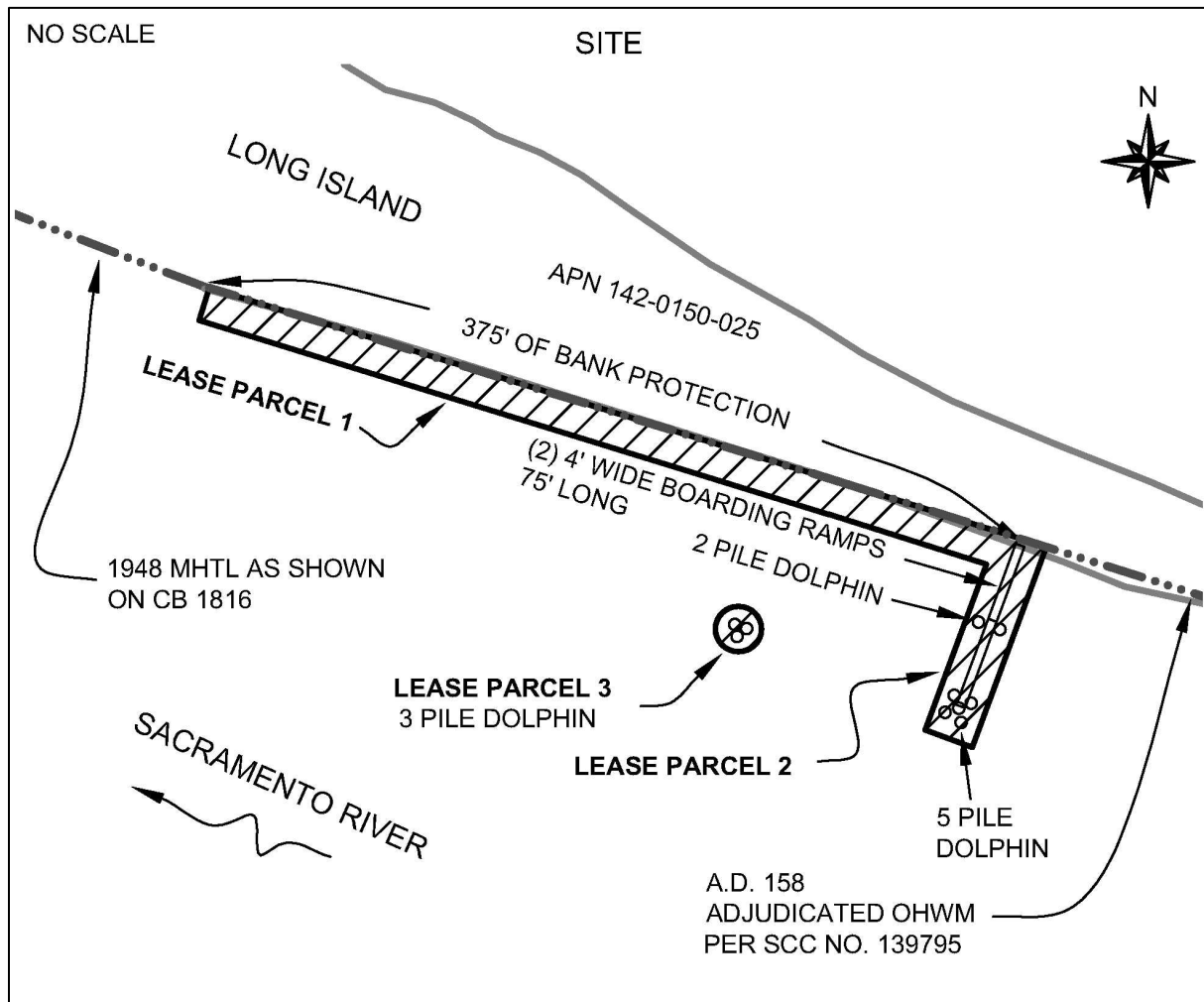
Figure 1. Location



AUTHORIZED USE:

Use and maintenance of an existing pier, two-pile dolphin, three-pile dolphin, five-pile dolphin, and bank protection (as shown on 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:

10 years, beginning April 7, 2023.

CONSIDERATION:

\$564 per year, with an annual Consumer Price Index adjustment, and \$1,145 to compensate for the unauthorized occupation of state sovereign land for the period prior to April 6, 2023.

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, 6321, 6321.2, 6501.1, 6503, 6503.5, and 6505.5; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On March 29, 2012, the Commission authorized issuance of a 10-year General Lease – Recreational and Protective Structure Use to Bobbie J. Collier for an existing pier, two-pile dolphin, three-pile dolphin, five-pile dolphin, and bank protection ([Item 39, March 29, 2012](#)). The lease expired on March 28, 2022.

On February 27, 2018, staff conducted a review of the rent as called for in the lease. Subsequently, the rent was continued at \$188 per year ([Executive Officer's Report, February 27, 2018](#)).

On September 24, 2020, ownership interest in the upland parcel and lease improvements was deeded from Bobbie J. Collier to Jonathan Rittenbach. The Lessee did not apply for an assignment of the lease.

The Applicant is now applying for a General Lease – Recreational and Protective Structure Use, for use and maintenance of the authorized improvements on the Sacramento River. The Applicant uses the existing three-pile dolphin as an occasional mooring or to string a safety line for a children's swimming area.

Staff issued Invoice Number 51931 in the amount of \$188 to the Lessee on January 12, 2021, for rent that was due March 29, 2021. Staff recommends voiding Invoice Number 51931, and waiving rent and any penalty and interest.

The proposed lease requires the Applicant to pay \$1,145 in compensation for the unauthorized occupation of State land for the period beginning March 29, 2021, when no rent was paid, through April 6, 2023, and to be responsible for future rent. Additionally, the lease provisions regarding indemnity would extend to the period of the Applicant's unauthorized occupation of State-owned lands, from September

24, 2020 through April 7, 2023, the day before the proposed lease becomes effective.

The subject improvements are privately owned and maintained and facilitate recreational boating. Based on information provided in the application and the Commission's records, the subject facilities have existed at this location for many years. 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 Sacramento River, which will help protect the Public Trust resources for recreational and navigational use by the public. The facilities are located directly adjacent to the upland property and occupy a relatively small area of the river.

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 proposed 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 the 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 combination of these projected conditions could also increase the likelihood of damage and affect the fixed pier, dolphins, and bank protection within the lease premises during the term of the lease, which may need reinforcement and possibly replacement to withstand higher levels of flood exposure and more frequent storm events.

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 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; 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 improvements 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 the 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.

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; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of compensation from the Applicant in the amount of \$1,145 for the unauthorized occupation of state sovereign land for the period prior to April 7, 2023.
2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning April 7, 2023, for a term of 10 years, for the use and maintenance of an existing pier, two-pile dolphin, three-pile dolphin, five-pile dolphin, and bank protection; annual rent in the amount of \$564, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.