

Staff Report 44

LESSEE:

Caleb Counts

APPLICANT:

Dennis Stephan Jr. and Kyla Stephan

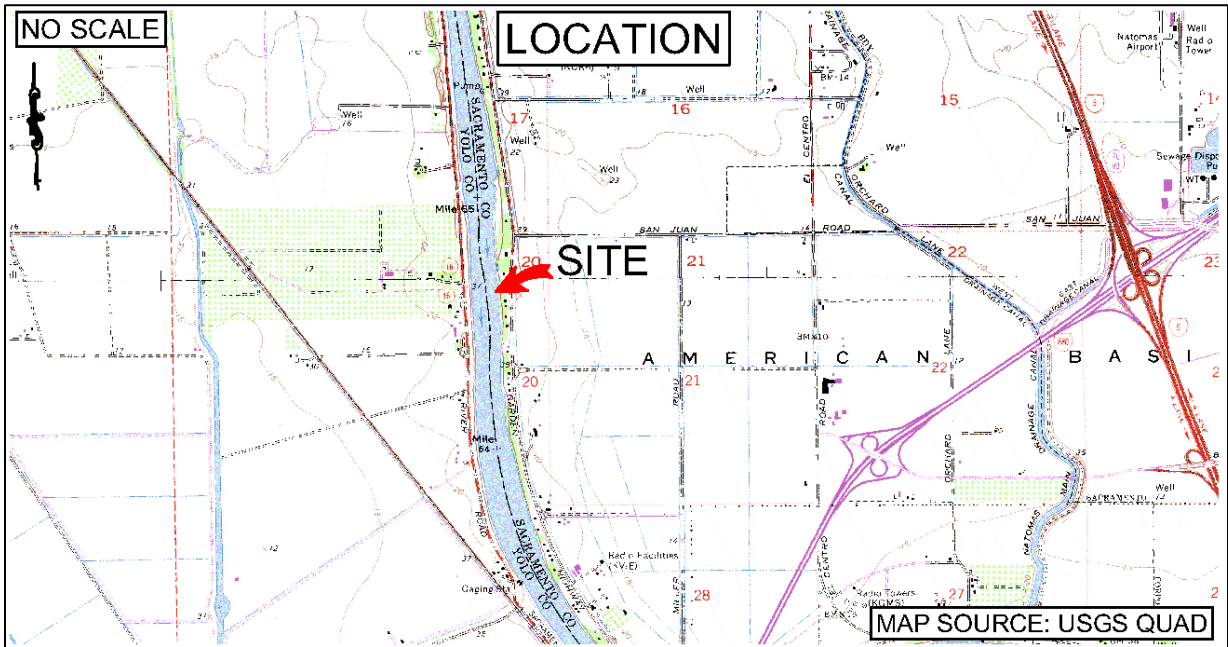
PROPOSED ACTION:

Acceptance of a Lease Quitclaim Deed and Issuance of a General Lease –
Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Sacramento River, adjacent to 3083 Garden Highway, Sacramento, Sacramento County (as shown in Figure 1).

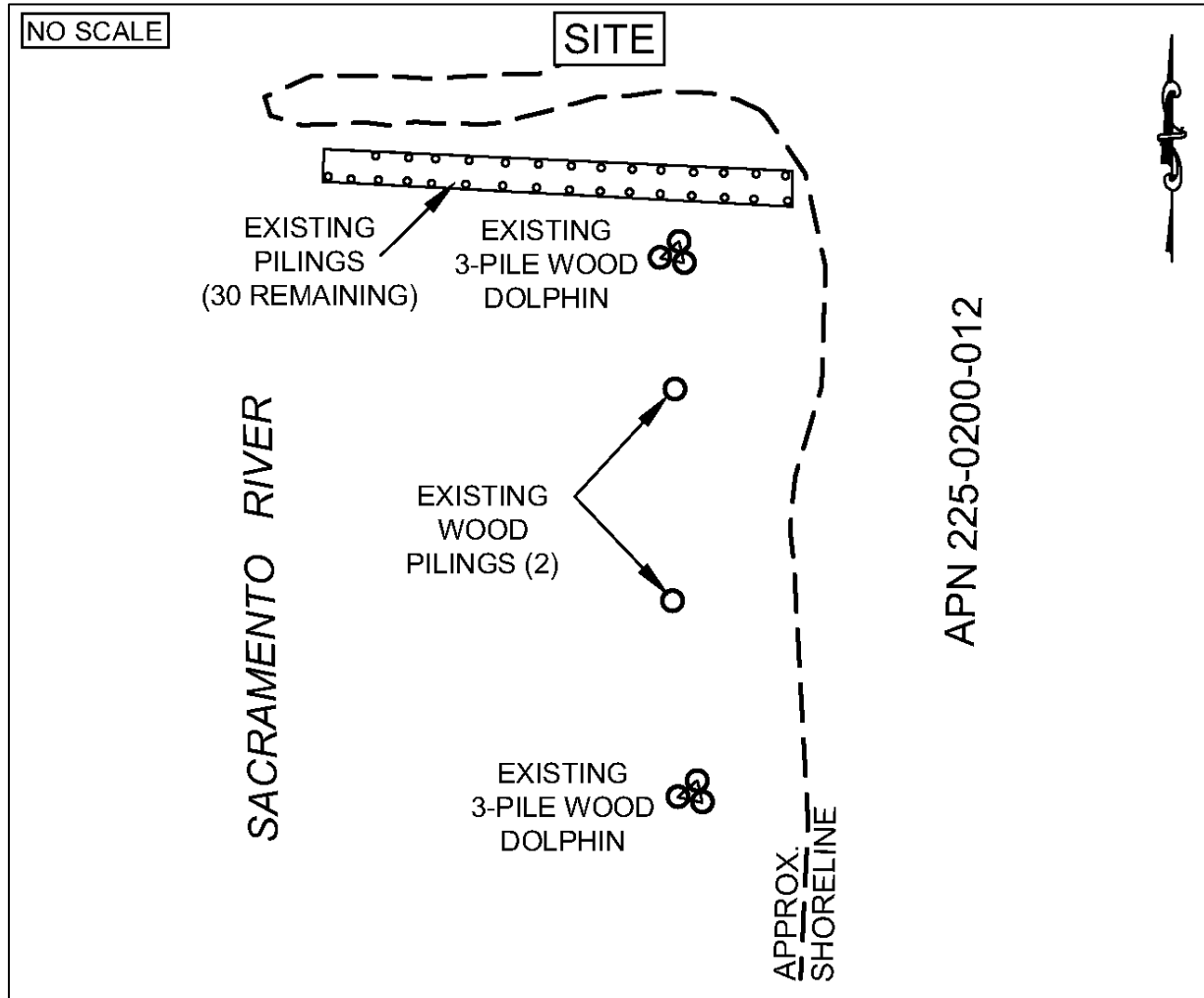
Figure 1. Location



AUTHORIZED USE:

Use and maintenance of two existing three-pile wood dolphins, two pilings, and 30 wood piling remnants (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:

10 years, beginning May 1, 2023.

CONSIDERATION:

\$423 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 and acknowledges that the hazards associated with sea level rise may require additional maintenance or protection strategies regarding the improvements on the lease premises.
- Lessee shall provide a plan for the reuse or removal of the authorized improvements no later than May 1, 2028.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 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 June 23, 2022, the Commission authorized a General Lease - Recreational Use to Caleb Counts for the use and maintenance of two three-pile wood dolphins and two wood pilings previously authorized by the Commission and 30 wood pilings not previously authorized by the Commission in the Sacramento River, adjacent to 3083 Garden Highway, Sacramento, Sacramento County ([Item 37, June 23, 2022](#)). This lease expires on June 22, 2032.

On September 15, 2022, ownership interest in the upland parcel was transferred to Dennis Stephan Jr. and Kyla Stephan. Commission staff was duly notified of this transfer of ownership.

Now the Lessee seeks to quitclaim its existing leasehold interest, and the Applicant is applying for a General Lease – Recreational Use for the use and maintenance of the two three-pile wood dolphins, two wood pilings, and 30 wood piling remnants. Staff recommends acceptance of a Lease Quitclaim Deed for the current lease, effective April 30, 2023, and issuance of a General Lease – Recreational Use to the Applicant, to take effect on May 1, 2023.

Commission records indicate that rent under the current lease has been paid through June 22, 2023. As Staff is recommending acceptance of a lease quitclaim deed and issuance of a new lease prior to June 22, 2023, the rent payment made on the current lease will be prorated, with the remaining balance used to offset a portion of the rent due for the proposed new lease. Therefore, a credit of \$59.10 will be applied to the first year’s rent under the proposed new lease. Additionally, the proposed lease will require the Applicant to indemnify the State for the entire

period of unauthorized occupation, from September 15, 2022 through April 30, 2023, ensuring the State is protected.

The Applicant owns the uplands adjoining the lease premises, the subject facilities are located directly waterward of this upland property, and these facilities 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 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 subject 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.

Rising sea levels can lead to more frequent flood inundation in low lying areas and larger tidal events and could increase the Sacramento River's inundation levels within the lease area over the term of the lease. 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 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 cause damage to the bank protection at a faster rate.

The combination of these projected conditions could increase the likelihood of damage and affect access to structures within the lease premises during the term of the lease. For example, the potential for more frequent and stronger storm events may expose the lease area structures to higher flood risks and cause facilities to be damaged or dislodged, presenting hazards to public safety as well as dangers for navigation within the channel. Lowered water levels could also reduce navigability of the channel, thereby increasing hazards and impacting the function and utility of the lease area structures.

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 believe approval of this lease will not substantially interfere with Public Trust needs at this location, at this time, nor for the remaining term of the 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 two three-pile wood dolphins, two wood pilings, and 30 wood piling remnants and return 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. Acceptance of the lease quitclaim deed is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action 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).

4. Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of 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, 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 issuance of the lease 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 Public Trust needs and values at this location, at this time, and for remaining term of the lease; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of a lease quitclaim deed of Lease 5347, a General Lease – Recreational Use issued to the Lessee, effective April 30, 2023.
2. Apply the payments previously submitted under Lease 5347 to offset rent due for the proposed lease, with a credit of \$59.10 being applied to the first year's rent of the proposed lease.
3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning May 1, 2023, for a term of 10 years, for the use and maintenance of two three-pile wood dolphins, two wood pilings, and 30 wood piling remnants; annual rent in the amount of \$423, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.