

# Staff Report 49

## APPLICANT:

Tower Garden Highway, LLC, a Delaware Limited Liability Company

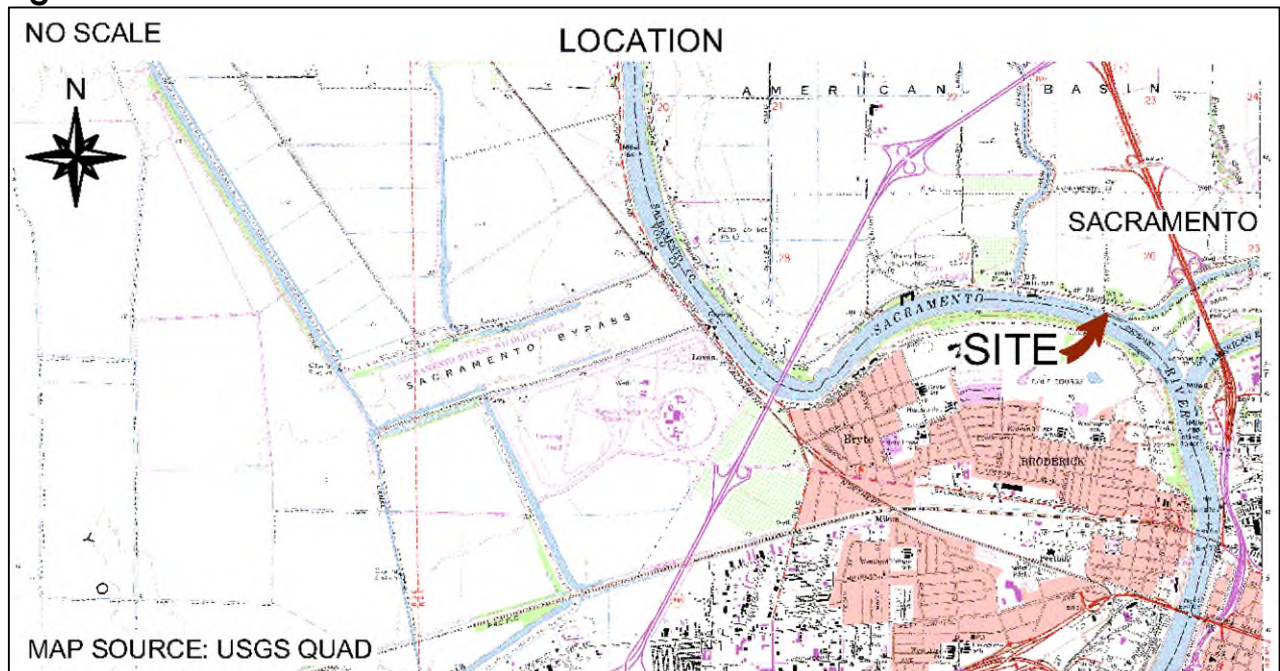
## PROPOSED ACTION:

Issuance of a General Lease – Protective Structure Use.

## AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Sacramento River, adjacent to 1331 Garden Highway (Assessor's Parcel Number 274-0050-035), Sacramento, Sacramento County (as shown in Figure 1).

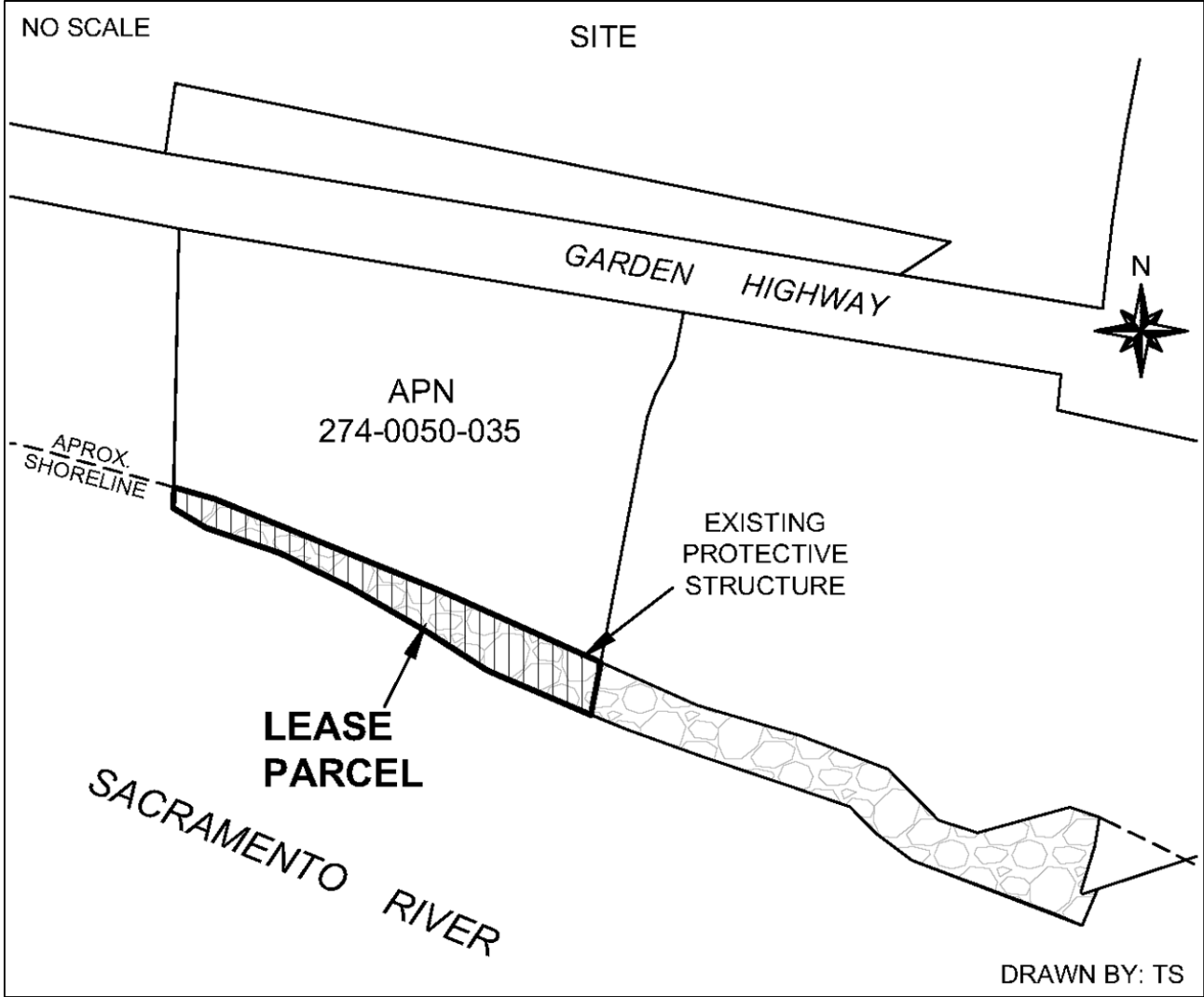
**Figure 1. Location**



**AUTHORIZED USE:**

Use of existing bank protection (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 August 15, 2024.

**CONSIDERATION:**

\$167 per year, with annual Consumer Price Index adjustment.

**SPECIFIC LEASE PROVISIONS:**

- Liability insurance in an amount no less than \$1,000,000 per occurrence.

**STAFF ANALYSIS AND RECOMMENDATION:**

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**AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

On May 12, 1997, the Commission authorized a 25-year General Lease – Protective Structure Use, Lease 7951, to the Sierra Health Foundation, a California nonprofit benefit corporation (Sierra Health), for the construction of riverbank protection for purposes of stabilization, revegetation, and maintenance of the river slope ([Item 25, May 12, 1997](#)). The lease expired on March 30, 2021. The original lease included Assessor's Parcel Numbers (APN) 274-0050-034 and 274-0050-035. On November 20, 2017, Sierra Health sold APN 274-0050-035 to Tower Garden Highway, LLC, a Delaware limited liability company. Lease 7951 expired March 31, 2021. Staff were not made aware of the sale. On February 25, 2022, the Commission authorized the renewal of Lease 7951 to Sierra Health authorizing the bank protection adjacent to APN 274-0050-34 ([Item 24, February 25, 2022](#)). When Commission staff became aware that Sierra Health had sold the adjacent property, they contacted the new owner. Once the new owner became aware a lease was required, they submitted an application in a timely manner. The Applicant is now applying for a General Lease – Protective Structure Use, for the continued use and maintenance of existing bank protection adjacent to APN 274-0050-35.

The bank protection is privately-owned, maintained, and occupies a relatively small area of the river. The bank protection will maintain and improve the integrity of the river channel, which will help protect the Public Trust resources of the river for recreational and navigational use by the public.

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. The indemnity provisions of the lease shall be backdated to March 31, 2021 to coincide with Applicant's purchase of the upland property. Upon termination of the lease, the lessee may be required to remove the

bank protection 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 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 bank is protected with rock riprap and vegetation, but is at risk of scouring, loss of backfill, slope failure, and accelerated deterioration from currents, floods, and increased precipitation. As sea levels rise, the bank protection will provide decreasing protection against flood waters, increasing the vulnerability of the bank protection and upland parcel. Alternative bank protection strategies, such as bank restoration and revegetation, may be required to protect the anchoring points of the other structures in the lease premise and reduce flood impacts to the upland parcel (not within the lease area). Additionally, maintaining a wide buffer between the bank and upland improvements will minimize potential impacts from flooding and erosion.

Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation and 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 term of the proposed lease; and is in the best interests of the State.

### **OTHER PERTINENT INFORMATION:**

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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 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 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).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15061 and California Code of Regulations, title 2, section 2905.

## **RECOMMENDED ACTION:**

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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:**

1. Find that the existing and, for a limited period, continuing use of the existing bank protection is not generally associated with Public Trust uses, but the current use does not substantially interfere with Public Trust needs and values at this location, at this time.
2. Find that issuing the proposed lease is in the best interests of the State.

### **AUTHORIZATION:**

Authorize issuance of a General Lease – Protective Structure Use to the Applicant beginning August 15, 2024, for a term of 10 years, for the use of existing bank protection; annual rent in the amount of \$167, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.