

**STAFF REPORT
C70**

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06/21/18
PRC 8773.1
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GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Carl W. Tunnell and Betsy Tunnell

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Kings River adjacent to 38550 Road 16, Kingsburg, Tulare County.

AUTHORIZED USE:

Continued use and maintenance of an existing 24-foot by 10-foot fixed recreational dock.

LEASE TERM:

10 years, beginning February 25, 2018.

CONSIDERATION:

\$125 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

If the facilities are ever used for the docking and mooring of boats, the Lessee will apply to the Commission requesting an amendment to allow that use and to modify the Lease Premises to add an impact area.

Insurance: liability coverage in an amount no less than \$1,000,000 per occurrence.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, and 6503.5, California Code of Regulations, title 2, sections 2000 and 2003.

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Public Trust and State's Best Interests Analysis:

On March 25, 2008, the Commission authorized the issuance of a 10-year Recreational Pier Lease to Carl W. Tunnell and Betsy Tunnell for a 24-foot by 10-foot fixed dock in the Kings River, beginning February 25, 2008 ([Item C04, March 25, 2008](#)). That lease expired on February 24, 2018. The applicant is now applying for a General Lease – Recreational Use of the existing facilities in the Kings River.

The proposed lease area contains the same facilities as the prior lease, a 24-foot by 10-foot fixed dock. The existing dock is used by the Applicant for water-dependent recreation on, including bird watching, and access to the Kings River. The dock is capable of being used for the docking or mooring of boats but is not currently used for that purpose because the applicant does not own a boat. Water-dependent recreation is generally consistent with the common law Public Trust Doctrine.

The existing improvements on State land do not significantly alter the land, and the proposed lease does not alienate the State's fee simple interest, or permanently impair public rights. Upon termination of the lease, the lessee may be required to remove all improvements from State land and restore the lease premises to their natural condition. Staff believes that use of the existing fixed recreational dock will not substantially interfere with Public Trust needs at this location, at this time, or for the foreseeable term of the proposed lease.

The proposed lease is limited to a 10-year term and does not grant the Lessee exclusive rights to the lease premises. The proposed lease also 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, and the payment of annual rent to compensate the State for the occupation of the sovereign land involved.

Climate Change:

The lease area is not tidally influenced and, therefore, would not be subject to sea-level rise. However, as stated in *Safeguarding California* (California Natural Resources Agency 2014), climate change is projected to increase the frequency and severity of natural disasters related to flooding, drought, and storms. In rivers, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris. Conversely, prolonged droughts could dramatically reduce river flow and water levels, leading to loss of public access and navigability. Climate change will further influence riverine areas by changing erosion and sedimentation rates, and flooding and storm flow, as

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well as runoff, will likely increase scour, decreasing bank stability at a faster rate.

Due to these potential changes, the existing, fixed recreational dock may need reinforcement in the future to withstand higher levels of flood exposure and more frequent storm events. Because the dock is fixed, it is not adaptable to variable water levels resulting from flooding or drought and may require more frequent maintenance or replacement to ensure continued function during and after storm seasons or to avoid dislodgement. Regular maintenance, as required by the lease, will reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises are located in an area that may be subject to effects of climate change.

Conclusion:

For all the reasons above, staff believes the issuance of this lease is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
2. 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 15300 and California Code of Regulations, title 2, section 2905.

EXHIBITS:

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

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RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the activity 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).

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; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Recreational Use to Carl W. Tunnell and Betsy Tunnell beginning February 25, 2018, for a term of 10 years, for an existing 24-foot by 10-foot fixed recreational dock, 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 \$125, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 8773.1

LAND DESCRIPTION

A parcel of tide and submerged land situate in the bed of the Kings River, lying adjacent to Swamp and Overflow Survey 551 patented January 21, 1882 in the County of Tulare, State of California, and more particularly described as follows:

All those lands underlying an existing boat dock adjacent to parcel as described in that Grant Deed recorded as Document 2000-003466 filed January 20, 2000 in Official Records of said County.

EXCEPTING THEREFROM any portion(s) lying landward of the Ordinary High Water Mark of the right bank of the Kings River.

Accompanying plat is hereby made a part of this description.

END OF DESCRIPTION

Prepared May 8, 2018 by the California State Lands Commission Boundary Unit.





K i n g s

R i v e r

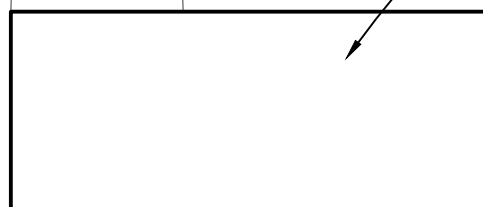


EXISTING DOCK

24'

10'

APN 028-200-013



APPROX

TOP OF BANK

SHORELINE



SCALE 1" = 10'

EXHIBIT A

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LAND DESCRIPTION PLAT
PRC 8773.1, TUNNELL
TULARE COUNTY

CALIFORNIA STATE
LANDS COMMISSION

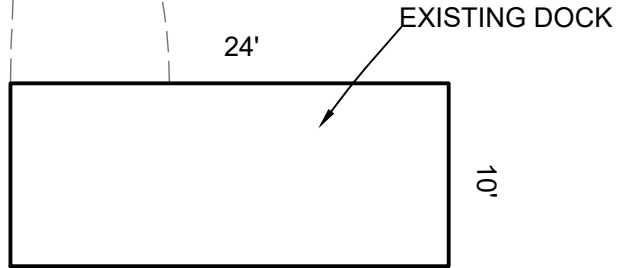


NO SCALE

SITE



APN 028-200-013



38550 ROAD 16, NEAR KINGSBURG

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 8773.1
 TUNNELL
 APN 028-200-013
 GENERAL LEASE -
 RECREATIONAL USE
 TULARE 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.

MJJ 4/05/18