

**STAFF REPORT
C31**

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10/18/18

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PRC 7946.1
G. Asimakopoulos

**GENERAL LEASE – RECREATIONAL AND
PROTECTIVE STRUCTURE USE**

APPLICANT:

Rebecca J. Cabral, Trustee of the Rebecca J. Cabral Revocable Trust Dated December 4, 2002

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Three Mile Slough, adjacent to 18110 Sherman Island East Levee Road, near Rio Vista, Sacramento County.

AUTHORIZED USE:

Continued use and maintenance of three existing pilings, a two-pile dolphin, and bank protection.

LEASE TERM:

10 years, beginning October 18, 2018.

CONSIDERATION:

Three Pilings and a Two-Pile Dolphin: \$221 per year, with an annual Consumer Price Index adjustment.

Bank Protection: The public use and benefit; with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests.

SPECIFIC LEASE PROVISIONS:

1. Liability insurance in an amount no less than \$1,000,000 per occurrence.
2. Lessee agrees and acknowledges hazards associated with sea-level rise may require additional maintenance or protection strategies regarding the improvements on the Lease Premises.

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3. The Lessee shall have the term of this lease to determine if Lessee will construct a dock facility utilizing the existing pilings. If Lessee desires to occupy the Lease Premises beyond the term of this Lease, Lessee shall submit an application, minimum expense deposit, and filing fee for a new lease at least 2 years prior to the expiration of this Lease. That application shall include construction plans and evidence applications have been submitted to obtain all permits or other entitlements for the proposed improvements on State lands. Submission of an application does not guarantee a new lease will be granted to Lessee.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 6501.1, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

Public Trust and State's Best Interests Analysis:

On May 10, 2007, the Commission authorized a 10-year General Lease – Recreational and Protective Structure Use to Rebecca J. Cabral, Trustee of the Rebecca J. Cabral Revocable Trust Dated December 4, 2002, for the continued use, and maintenance of three existing pilings, a two-pile dolphin, and bank protection ([Item C32, May 10, 2007](#)). That lease expired on March 31, 2017. The bank protection has existed at this location for many years, and the three pilings and two-pile dolphin are the only authorized improvements that have been completed. The Applicant is now applying for a lease for the continued use and maintenance of the three existing pilings, a two-pile dolphin, and bank protection. Staff recommends issuance of a new lease beginning October 18, 2018. Staff also recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State Land in the amount of \$345 for the period beginning April 1, 2017 through October 17, 2018.

The adjacent upland parcel is privately owned and developed with a residence. The three existing pilings and two-pile dolphin are intended to support a boat dock that will be for the docking and mooring of boats. Applicant has informed staff that construction of a covered floating boat dock and gangway will occur within the next 5 to 7 years, and Applicant will submit an application for the construction of those improvements at that time.

The existing facilities are to be used for recreational boating and shoreline protection. Recreational boating is water-dependent and is generally

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consistent with the common law Public Trust Doctrine. The California Legislature has identified private recreational boating facilities as an authorized use of Public Trust lands (Pub. Resources Code, § 6503.5). The shoreline protection helps preserve the channel for navigational and recreational purposes. The three pilings and two-pile dolphin have existed at this location for many years and are located directly adjacent to the Applicant's upland property.

The proposed lease includes certain provisions protecting the public use of the proposed lease area, including a limited lease term of 10 years and a non-exclusive use provision. The facilities do not significantly alter the land, the lease does not alienate the State's fee simple interest, and neither permanently impairs public rights. Upon termination of the lease, the lessee may be required to remove any improvements 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. The bank protection will maintain and improve the integrity of the river channel, which will help protect the Public Trust resource of the river for recreational and navigational purposes by the public.

Climate Change:

Climate change impacts including sea-level rise, increased wave activity, storm events, and flooding are not limited to the open coast. The lease area is located along Three Mile Slough within a tidally influenced region vulnerable to flooding at current sea levels. In the foreseeable future, this area will be at a higher risk of flood exposure given future projected scenarios of sea-level rise. The existing structures for this lease area are three pilings, one two-pile dolphin, and bank protection.

By 2030, this region could see up to 1 foot of sea-level rise (from year 2000 levels), 2 feet by 2050, and possibly more than 5 feet by 2100 (National Research Council 2012). This effect could increase Three Mile Slough'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).

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Climate change could have a number of impacts for this region. The amount and timing of snowmelt runoff will likely change such that runoff pulses are earlier in the season and stronger precipitation events will occur over a shorter period of time. This outcome is because warming temperatures will result in more water falling as rain rather than snow, earlier spring snowmelt, and less snowpack overall. In rivers and tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris. In addition, there will be greater amounts of runoff because less water will be trapped at higher altitudes in snowpack. 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 coastal and riverine areas by changing erosion and sedimentation rates. In rivers and tidally influenced waterways, flooding and storm flow will likely increase scour, decreasing bank stability and structure.

The combination of these projected conditions could increase the likelihood of damage 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.

The fixed features, such as the three existing pilings and one two-pile dolphin, may need reinforcement to withstand higher levels of flood exposure in the future. The vegetated bank provides additional stability and reduces the amount of erosion and scour pressure experienced during future events because of the vegetation's underground root system but remains at risk of accelerated deterioration from currents and floods. Regular maintenance, as required by the terms of the lease, will 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.

Conclusion:

For all the reasons above, staff believes the issuance of this lease will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

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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

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

AUTHORIZATION:

1. Authorize acceptance of compensation from the Applicant in the amount of \$345 for the unauthorized occupation of State land for the period beginning April 1, 2017 through October 17, 2018.
2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant, beginning October 18,

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2018, for a term of 10 years, for the use and maintenance of three existing pilings, a two-pile dolphin, and bank protection, as described in Exhibit A, Land Description, and as shown on Exhibit B, Site and Location Map (for reference purposes only), attached and by this reference made a part hereof; consideration for the three pilings and two-pile dolphin: \$221 per year, with an annual Consumer Price Index adjustment; consideration for the bank protection: the public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 7946.1

LAND DESCRIPTION

A parcel of tide and submerged land situate in the bed of Three-Mile Slough, lying adjacent to Swamp and Overflowed Land Survey 583 patented December 19, 1867, County of Sacramento, State of California and more particularly described as follows:

All those lands underlying three (3) existing pilings and a two-pile dolphin lying adjacent to and east of that parcel of land as described in "Exhibit A" of that Trust Transfer Deed, recorded December 19, 2002 in Book 20021219, Page 0665 in Official Records of said County.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of said slough.

TOGETHER WITH those lands underlying any existing bank protective structure.

Accompanying plat is hereby made part of this description.

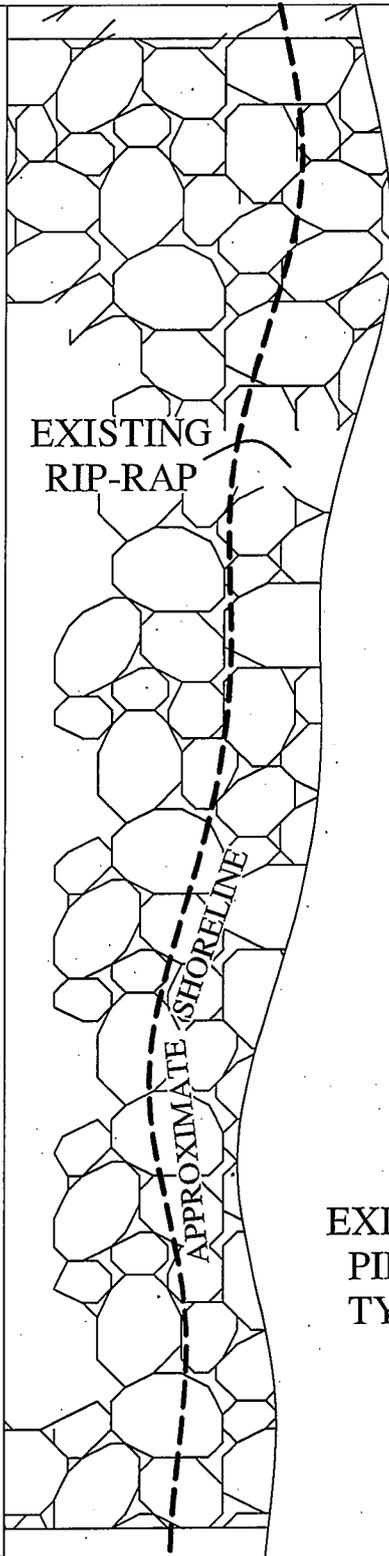
END OF DESCRIPTION

PREPARED 9/13/18 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



APN: 158-0010-024

SHERMAN ISLAND EAST LEVEE ROAD



EXISTING
RIP-RAP

APPROXIMATE
SHORELINE

EXISTING DOLPHIN

THREE MILE
SLOUGH

EXISTING
PILINGS
TYP. (3)

NO SCALE

EXHIBIT A

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LAND DESCRIPTION PLAT
PRC 7946.1, CABRAL REVOCABLE TRUST
SACRAMENTO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE

APN: 158-0010-024

SHERMAN ISLAND EAST LEVEE ROAD

EXISTING
RIP-RAP

APPROXIMATE SHORELINE

EXISTING DOLPHIN

THREE MILE
SLOUGH

EXISTING
PILINGS
TYP. (3)

18110 Sherman Island East Levee Road, Threemile Slough

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 7946.1

CABRAL REVOCABLE TRUST

APN: 158-0010-024

GENERAL LEASE -

RECREATIONAL & PROTECTIVE

STRUCTURE USE

SACRAMENTO 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.