

STAFF REPORT

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08/23/19
PRC 5140.1
M. Schroeder

GENERAL LEASE – RECREATIONAL AND PROTECTIVE STRUCTURE USE

APPLICANT:

Michael J. Chilelli and Cynthia L. Chilelli

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Sacramento River, adjacent to 2281 Garden Highway, near Sacramento, Sacramento County.

AUTHORIZED USE:

Continued use and maintenance of two existing pilings and bank protection.

LEASE TERM:

10 years, beginning August 23, 2019.

CONSIDERATION:

Two pilings: \$140 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:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- 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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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 February 2, 2004, the Commission authorized a 10-year Recreational Pier Lease for a floating boat dock, walkway, two steel pilings, and bank protection to Michael J. Chilelli ([Item C17, February 2, 2004](#)). That lease expired on May 30, 2013. Since issuance of the lease, ownership of the upland has transferred to the Applicant. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use for the continued use and maintenance of two existing pilings and bank protection.

The floating boat dock and walkway were damaged years ago and removed. The improvements have not been replaced. The Applicant plans to replace the improvements in the future. The Applicant understands they must apply for an amendment of the proposed lease and that the improvements cannot be constructed without Commission approval.

The Applicant has agreed to pay the Commission rent for the period of unauthorized occupation. Therefore, staff recommends that the Commission accept compensation from the Applicant for \$623, for the period beginning May 31, 2013, through August 22, 2019, the day before the proposed new lease would become effective.

The Applicant owns the upland adjoining the lease premises, which has been improved with a private residence. There is no public access from the upland to the water at the subject location. The subject pilings are located close to the shore and outside of the main channel of the river. The relatively small encroachment by the existing pilings onto State-owned lands would not substantially interfere with the Public Trust needs and values at this location at this time.

The bank protection will maintain and improve the integrity of the Sacramento River channel, which will help protect the Public Trust resources of the Sacramento River for recreational and navigational use by the public.

The bank protection and pilings have existed for many years at this location. The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 10-

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year term and does not grant the lessee exclusive rights to the lease premises. Upon termination of the lease, the lessee may be required to remove all improvements and restore the lease premises to their original condition. Based on the foregoing, staff believes the bank protection and two pilings will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease.

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 lease premises consist of two pilings and bank protection.

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 Francisco¹

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: ¹ Projections are with respect to a 1991 to 2009 baseline.

This effect could increase 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

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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 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. Conversely, prolonged drought conditions could lower water levels, exposing previously submerged structures to the elements and potentially leading to increased wear-and-tear on the pilings. Lowered water levels could also reduce navigability of the channel, thereby increasing hazards and impacting the function and utility of the lease area structures.

The fixed features may need reinforcement and possibly replacement to withstand higher levels of flood exposure and more frequent storm events. The bank is vegetated, which provides additional stability and will reduce 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. Any exposed portions of the protective structure could be vulnerable to future events, and an alternative bank protection strategy, such as bank restoration, may be required to improve slope stability and reduce flood impacts to the upland parcel. 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, including sea-level rise.

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Conclusion:

For all the reasons above, staff believes the issuance of this lease will not substantially impair 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.

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.
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, or 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.

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AUTHORIZATION:

1. Authorize acceptance of compensation in the amount of \$623 for unauthorized occupation of State lands for the period beginning May 31, 2013, through August 22, 2019.
2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning August 23, 2019, for a term of 10 years, for the continued use and maintenance of two existing pilings and bank protection, 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 \$140, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 5140.1

LAND DESCRIPTION

Two parcels of tide and submerged land situate in the bed of the Sacramento River, lying adjacent to Swamp and Overflowed Land Survey 828 patented April 5, 1869, County of Sacramento, State of California and more particularly described as follows:

PARCELS 1 & 2 – PILINGS

Two circular parcels of land, underlying two existing pilings lying adjacent to those parcels described in Grant Deed recorded April 3, 2014 as Document Number 2014-0020655-00 in Official Records of said County.

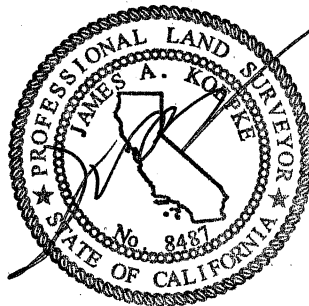
ALSO TOGETHER WITH that land lying immediately beneath any bank protection structure adjacent to said parcels.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the left bank of said river.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 10/23/18 by the California State Lands Commission Boundary Unit



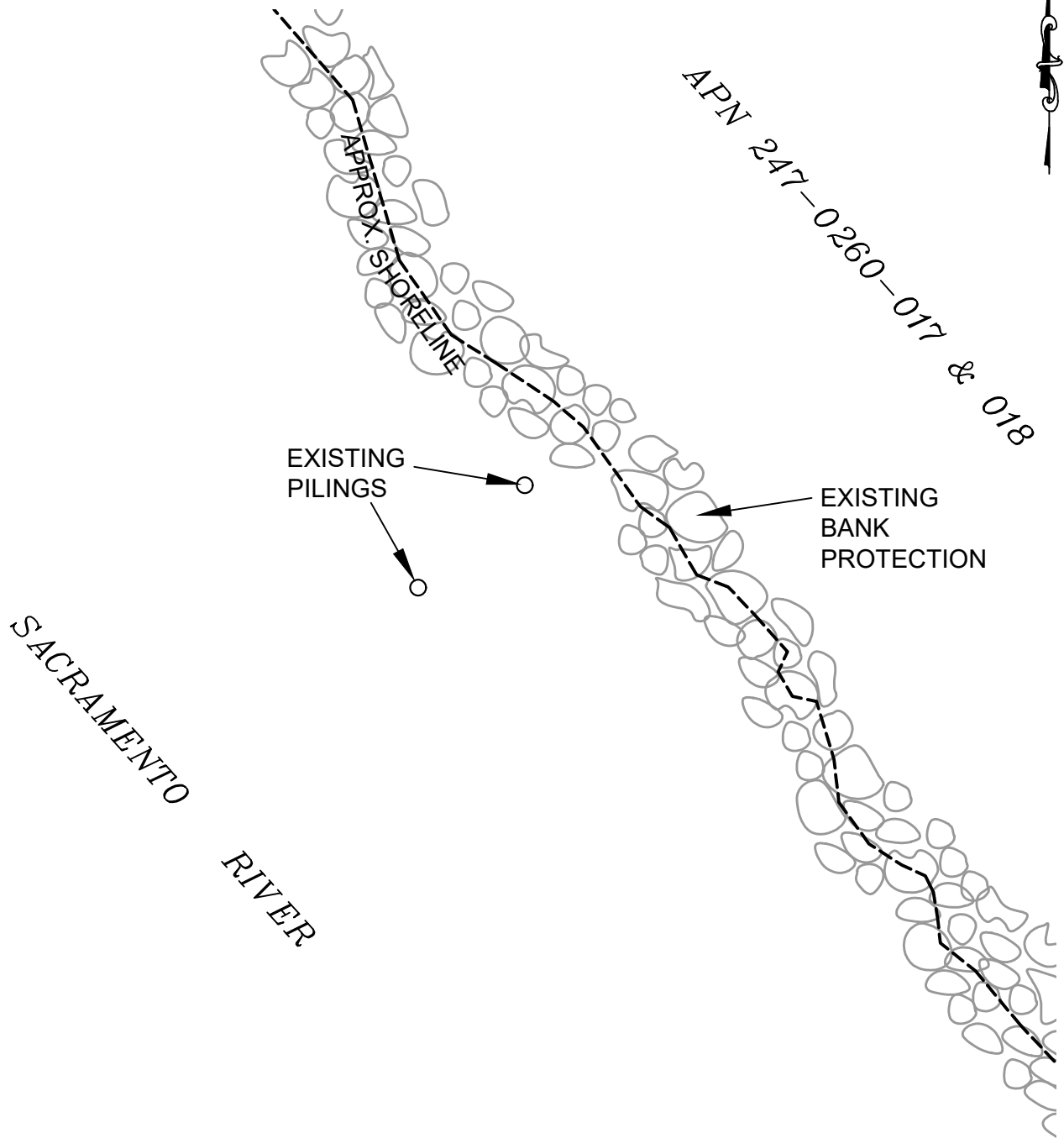


EXHIBIT A

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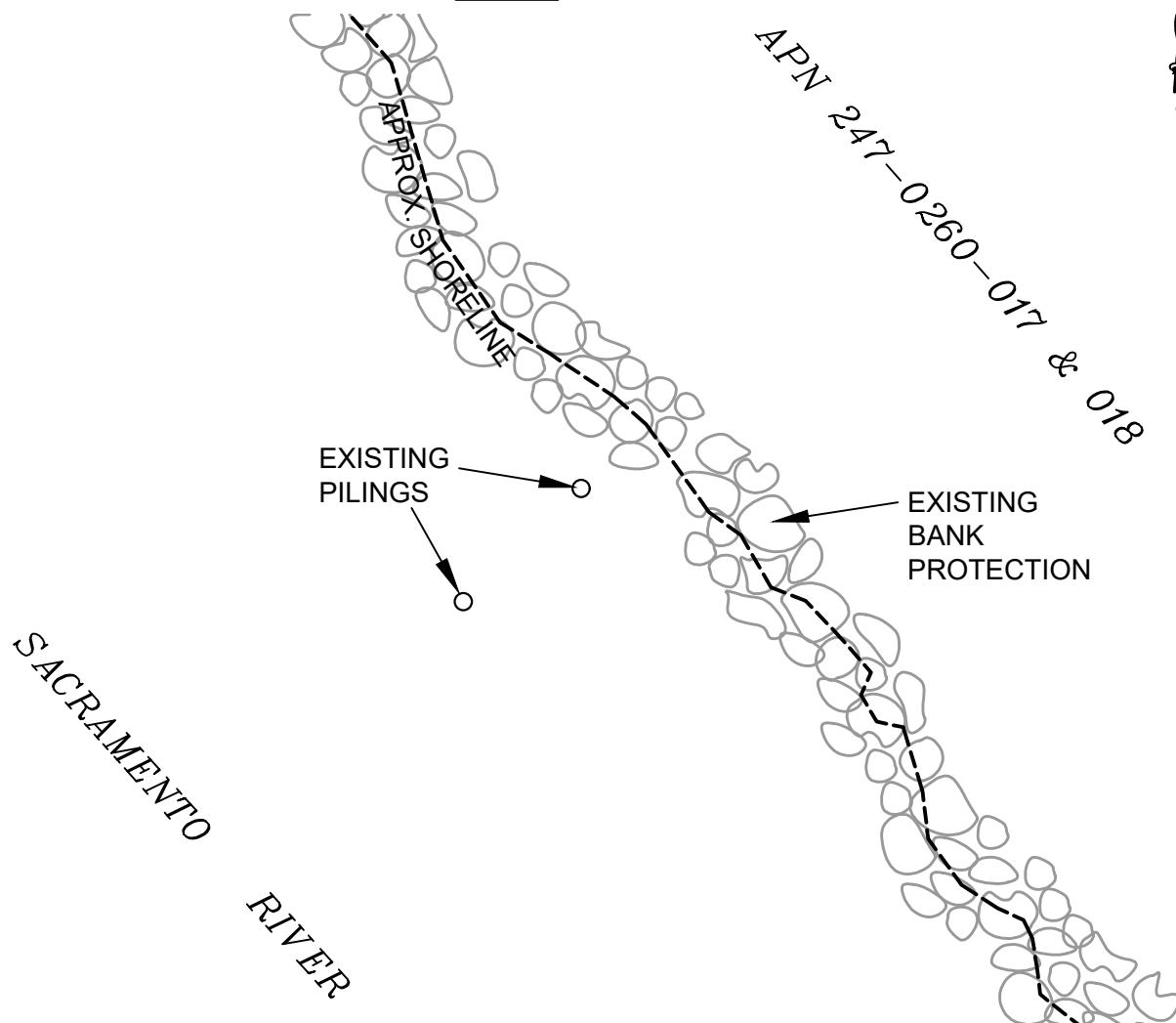
LAND DESCRIPTION PLAT
PRC 5140.1, CHILELLI
SACRAMENTO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE



2281 GARDEN HIGHWAY, SACRAMENTO

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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.

Exhibit B

PRC 5140.1

CHILELLI

APNs 274-0260-017 & 018

GENERAL LEASE -

RECREATIONAL AND

PROTECTIVE STRUCTURE USE

SACRAMENTO COUNTY



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