

# Staff Report 26

## **LESSEE:**

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Charles S. McDowell and Corinne L. McDowell, Trustees of the McDowell Family Trust, dated June 28, 1994

## **APPLICANT:**

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Terminous Road, LLC, a California Limited Liability Company

## **PROPOSED ACTION:**

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Waiver of Rent, Penalty, and Interest; Termination and Issuance of General Lease – Recreational Use

## **AREA, LAND TYPE, AND LOCATION:**

Sovereign land in Georgiana Slough, adjacent to 16925 Terminous Road, near Isleton, Sacramento County.

## **AUTHORIZED USE:**

Continued use and maintenance of an existing uncovered floating three-berth boat dock, pump house, boat lift, gangway, five pilings, debris diverter, and utility conduits previously authorized by the Commission; and use and maintenance of an existing gazebo not previously authorized by the Commission.

## **TERM:**

10 years, beginning October 22, 2020

## **CONSIDERATION:**

\$816 per year, with an annual Consumer Price Index adjustment

## **SPECIFIC PROVISIONS:**

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

- Lessee agrees and acknowledges that hazards associated with sea-level rise may require additional maintenance or protection strategies regarding the improvements on the Lease Premises.
- The Applicant acknowledges that it owns the existing improvements on the lease premises.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **AUTHORITY:**

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

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

On June 21, 2013, the Commission authorized a General Lease – Recreational Use to Charles S. McDowell and Corinne L. McDowell, Trustees of the McDowell Family Trust, dated June 28, 1994 for an existing uncovered floating three-berth boat dock, pump house, boat lift, gangway, five pilings, debris diverter and utility conduits ([Item C32, June 21, 2013](#)). That lease will expire on October 19, 2022.

On August 7, 2019, ownership of the upland parcel was deeded to the Applicant. The Applicant is now applying for a General Lease – Recreational Use, for the continued use and maintenance of an existing uncovered floating three-berth boat dock, pump house, boat lift, gangway, five pilings, debris diverter, and utility conduits previously authorized by the Commission; and use and maintenance of an existing gazebo not previously authorized by the Commission. The existing gazebo has existed for several years and is used for a shaded seating area. The facilities are located in Georgiana Slough, adjacent to the Applicant's upland parcel.

The Lessee paid annual rent through October 19, 2019. Commission staff sent an annual rent invoice to the Lessee for the 2019-2020 lease period. The Lessee did not pay this invoice. On August 7, 2019, the Applicant acquired ownership of the upland parcel. Staff believes that it is not in the State's best interests to pursue collection of rent, penalty, and interest from the Lessee for the period of October 20, 2019, through October 19, 2020, because the Applicant became the upland owner and used the lease premises as their own.

Therefore, staff recommends waiving the rent, penalty, and interest due from the Lessee. Staff recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$824 for

the period beginning October 20, 2019, through October 21, 2020, the day before the proposed new lease would become effective.

Staff recommends termination of the existing lease because the Lessee failed to pay their annual rent in October 2019, the Lessee failed to seek a legal assignment of the lease, quitclaim the lease, or properly convey the lease through an authorized Commission action as required when the upland was transferred. The Applicant has taken ownership and control over the unauthorized improvements on State Land and is the appropriate party to hold a lease.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The dock and appurtenant facilities are used for the docking and mooring of boats and facilitate recreational boating. Recreational boating is a water-dependent use that is generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private recreational boating facilities as an authorized use of Public Trust land (Pub. Resources Code, § 6503.5). While the debris diverter, pump house, and gazebo are not historically considered trust-consistent uses, they do not substantially impair the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values 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-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.

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 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 Georgiana Slough, 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

<b>Year</b>	<b>Projection (feet)</b>
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 Georgiana 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). 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 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. 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 and docks. 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 floating boat docks, gangway, and debris diverters are adaptable to variable water levels, allowing them to rise and fall with storms and droughts, increasing their resiliency to some climate change impacts, but may require more frequent

maintenance or replacement to ensure continued function during and after storm seasons and to avoid dislodgement. The fixed features, such as the boat lift and pilings may need reinforcement to withstand higher levels of flood exposure and more frequent storm events. 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.

### **CONCLUSION:**

For all the reasons above, staff believes the issuance of this lease is consistent with the common law Public Trust Doctrine; will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable 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 the application for a new lease 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 uncovered floating three-berth boat dock, pump house, boat lift, gangway, five pilings, debris diverter, utility conduits, and gazebo and restore the premises to their original condition. Upon expiration or prior termination of the lease, the lessee has no right to a new lease or to renewal of any previous lease.
2. 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.
3. Termination of the lease 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 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

## **EXHIBITS:**

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

## **RECOMMENDED ACTION:**

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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:**

1. Find that the existing and, for a limited period, continuing use and maintenance of the boat dock, boat lift and appurtenant facilities will not substantially interfere with Public Trust needs and values at this location and are consistent with the common law Public Trust Doctrine; and
2. Find that the existing and, for a limited period, continuing use and maintenance of the debris diverter, pump house and gazebo are not generally consistent with the Public Trust Doctrine, but the current use does not substantially interfere with the trust; and
3. Find that issuing the proposed lease is in the best interests of the State.

### **AUTHORIZATION:**

1. Waive annual rent, penalty, and interest due for the period of October 20, 2019, through October 21, 2020, and void annual rent invoice number 48222 issued to

Charles S. McDowell and Corinne L. McDowell, Trustees of the McDowell Family Trust, dated June 28, 1994.

2. Authorize termination, effective October 21, 2020, of Lease No. PRC 8489, a General Lease – Recreational Use, issued to Charles S. McDowell and Corinne L. McDowell, Trustees of the McDowell Family Trust, dated June 28, 1994.
3. Authorize acceptance of compensation in the amount of \$824 for unauthorized occupation of State lands for the period beginning October 20, 2019, through October 21, 2020, from the Applicant.
4. Authorize issuance of a General Lease – Recreational Use to the Applicant, beginning October 22, 2020, for a term of 10 years, for the continued use and maintenance of an existing uncovered floating three-berth boat dock, pump house, boat lift, gangway, five pilings, debris diverter, and utility conduits previously authorized by the Commission; and use and maintenance of an existing gazebo not previously authorized by the Commission, 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 \$816, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**LEASE 8489**

**LAND DESCRIPTION**

Two parcels of tide and submerged land situate in the bed of the Georgiana Slough, lying adjacent to Swamp and Overflowed Land Survey 849 patented April 2, 1873, County of Sacramento, State of California and more particularly described as follows:

**PARCEL 1 – DOCK**

All those lands underlying an existing floating three-berth boat dock with boat lift, gazebo, pump house, gangway, utility conduits, and five pilings adjacent to that parcel described in Grant Deed, recorded August 7, 2019 in Document No. 201908071517 in Official Records of said County.

TOGETHER WITH any applicable Impact Area(s).

**PARCEL 2 – DEBRIS DIVERTER**

All those lands underlying an existing debris diverter and one piling adjacent to that parcel described in Grant Deed, recorded August 7, 2019 in Document No. 201908071517 in Official Records of said County.

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

Accompanying plat is hereby made a part of this description.

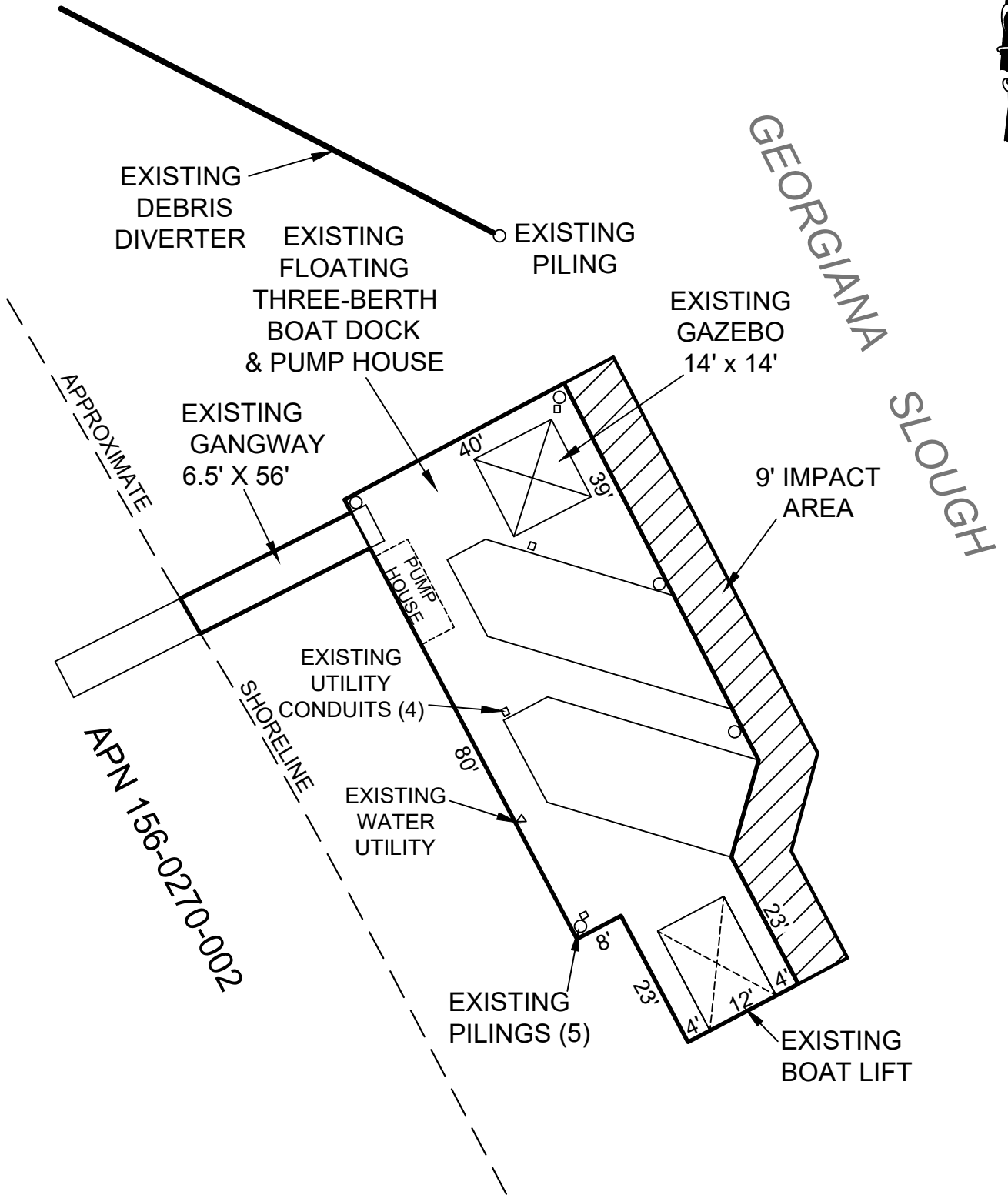
**END OF DESCRIPTION**

Prepared September 8, 2020 by the California State Lands Commission Boundary Unit.





NO SCALE



### EXHIBIT A

LAND DESCRIPTION PLAT  
 LEASE 8489, TERMINOUS ROAD, LLC  
 SACRAMENTO COUNTY

CALIFORNIA STATE  
 LANDS COMMISSION



