

Staff Report 36

LESSEE:

Jack Durell Kelp and Candice Deak Kelp, as Co-Trustees and any Successor Trustees of the Kelp Family 2011 AB Revocable Trust, Created April 14, 2011

APPLICANT:

James Russell Kagy and Paula Kagy as Trustees of The Kagy Family Trust dated 4/26/2013

PROPOSED ACTION:

Termination of a General Lease – Recreational Use and Issuance of a General Lease – Recreational and Protective Structure Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Georgiana Slough, adjacent to 431 W. Willow Tree Lane, near Isleton, Sacramento County.

AUTHORIZED USE:

Continued use and maintenance of an existing boat dock, walkway, gangway, two pilings, and one unattached piling previously authorized by the Commission and existing bank protection not previously authorized by the Commission.

TERM:

10 years; beginning July 14, 2020.

CONSIDERATION:

Boat dock, walkway, gangway, two pilings, and one unattached piling: \$278 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 that the hazards associated with sea-level rise may require additional maintenance or protection strategies regarding the improvements on the lease premises.

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:

On August 15, 2014, the Commission authorized a 10-year General Lease – Recreational to Jack Durell Kelp and Candice Deak Kelp, as Co-Trustees and any Successor Trustees of the Kelp Family 2011 AB Revocable Trust, Created April 14, 2011 ([Item C18, August 15, 2014](#)). That lease will expire on June 20, 2024. On July 14, 2020, the upland and lease improvements were deeded to James Russell Kagy and Paula Kagy as Trustees of The Kagy Family Trust dated 4/26/2013. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use, for the use and maintenance of an existing boat dock, walkway, gangway, two pilings, and one unattached piling previously authorized by the Commission and existing bank protection not previously authorized by the Commission in Georgiana Slough. Though the Lessee retains responsibility for removing the improvements after the expiration or termination of their lease, Applicant has asserted ownership of the lease improvements by applying for a new lease. Staff recommends terminating the current lease and approving a new lease to authorize the Applicant's use of the lease premises.

Staff recommends termination of the existing lease because the upland parcel was sold without a lease quitclaim deed, application for assignment, and notification to Commission staff. The Applicant assumed ownership of the upland parcel and lease improvements on July 14, 2020. Staff recommends the effective date of the proposed new lease align with the upland transfer date. Accounting records show the annual rent was paid current.

The Applicant owns the upland adjoining the lease premises. The subject facilities have existed at this location for many years. The facilities are used for recreational boating and shoreline protection. Recreational boating is a water-dependent activity and 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 lands (Pub. Resources Code, § 6503.5). The existing bank protection will maintain and improve the integrity of the river channel, which will help protect the Public Trust resources 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. 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 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 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

Year	Projection (feet)
2030	0.8
2040	1.3
2050	1.9

2100	6.9
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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, drought, 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 potentially raise 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 structures 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 dock. Lowered water levels could also reduce navigability of the channel, thereby increasing hazards and impacting the functionality and utility of the lease area structures.

The floating boat dock and adjustable gangway are somewhat adaptable to variable water levels, allowing them a small ability to rise and fall with tides, storm surges, and droughts, and thus may have increased resiliency to climate change impacts. However, they may require more frequent maintenance to ensure continued functionality during and after storm seasons and to avoid dislodgement of lease structures. The fixed features, such as the pilings and walkway may need reinforcement to withstand higher levels of flood exposure and more frequent storm events. The pilings appear to be at sufficient heights to withstand projected changes in water levels, but additional fortification may be needed. The exposed bank protection provides stability but does not reduce the amount of erosion and scour pressure experienced during future events, and therefore remains at risk of accelerated deterioration from currents and floods. Any exposed portions of the bank could be vulnerable to future events, and bank restoration may be required

to protect the anchoring points of the lease premise structures and reduce flood impacts.

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, and may require additional maintenance or protection as a result, for which the Applicant agrees to be solely responsible.

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

OTHER PERTINENT INFORMATION:

1. Approval or denial of the 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 as authorized by law. If the Commission denies the application, the Applicant and prior lessee may be required to remove the existing boat dock, walkway, gangway, two pilings, one unattached piling, and bank protection, and restore the premises to their original condition. Upon expiration or prior termination of the lease, the lessee also 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:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the 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:

Find that termination of the lease and issuance of 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 termination, effective July 13, 2020, of Lease PRC 6684, a General Lease – Recreational Use, issued to Jack Durell Kelp and Candice Deak Kelp, as Co-Trustees and any Successor Trustees of the Kelp Family 2011 AB Revocable Trust, Created April 14, 2011.
2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning July 14, 2020, for a term of 10 years, for the continued use and maintenance of an existing boat dock, walkway, gangway,

two pilings, and one unattached piling previously authorized by the Commission and existing bank protection 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; consideration for the boat dock, walkway, gangway, two pilings, and one unattached piling: \$278 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

LEASE 6684

LAND DESCRIPTION

Two (2) parcels of tide and submerged land situate in the bed of Georgiana Slough lying adjacent to Swamp and Overflow Survey 943 patented April 14, 1873, Sacramento County, State of California, more particularly described as follows:

PARCEL 1 – DOCK

All those lands underlying a floating boat dock, walkway, gangway, and two (2) pilings lying adjacent to those parcels as described in Exhibit "A" of that Trust Transfer Deed recorded May 16, 2011, in Book 20110516, Page 1163 of Official Records of said County.

PARCEL 2 – UNATTACHED PILING

All those lands underlying an unattached piling lying adjacent to said parcels.

TOGETHER WITH any applicable impact area(s).

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

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

Accompanying plat is hereby made part of this description.

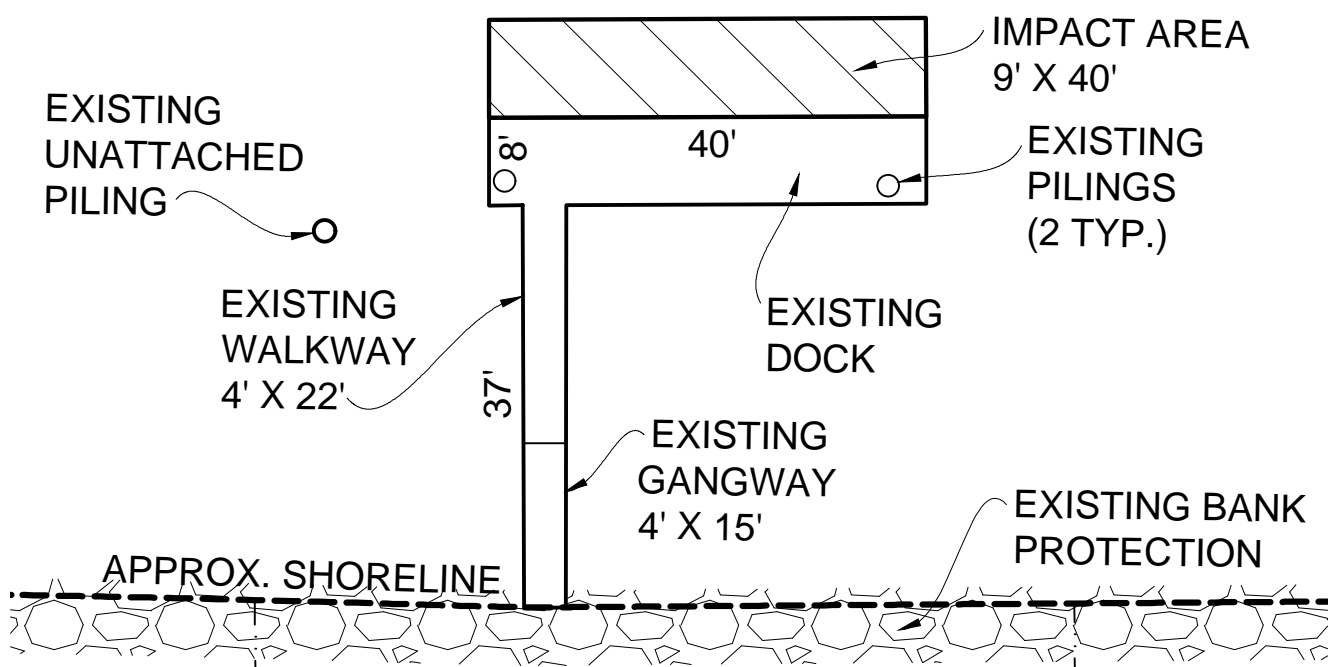
END OF DESCRIPTION

Prepared October 27, 2020 by the California State Lands Commission Boundary Unit.





GEORGIANA SLOUGH



APN 156-0100-026

EXHIBIT A

LAND DESCRIPTION PLAT
 LEASE 6684, KAGY FAMILY TRUST
 SACRAMENTO COUNTY

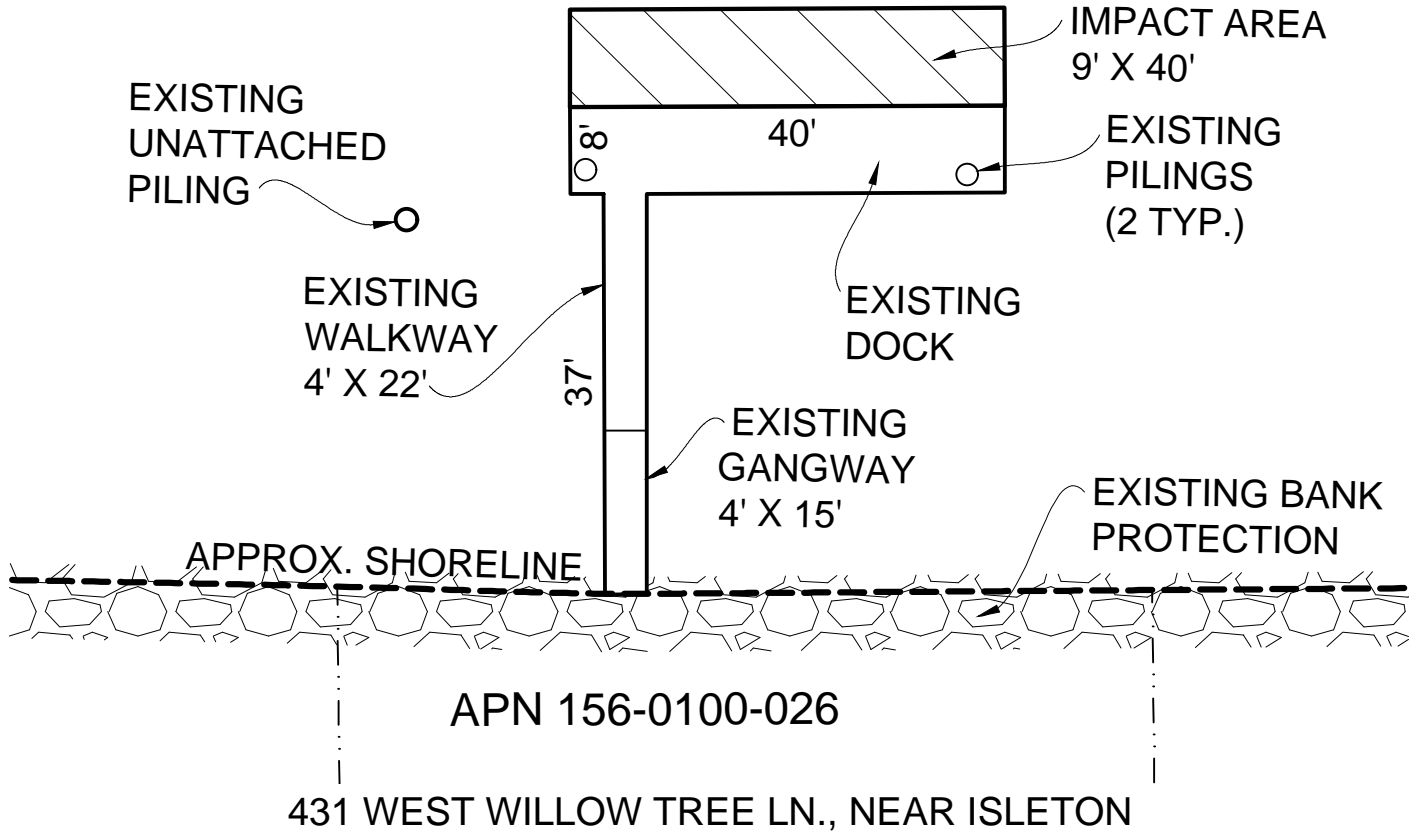
CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

SITE

GEORGIANA SLOUGH



NO SCALE

LOCATION

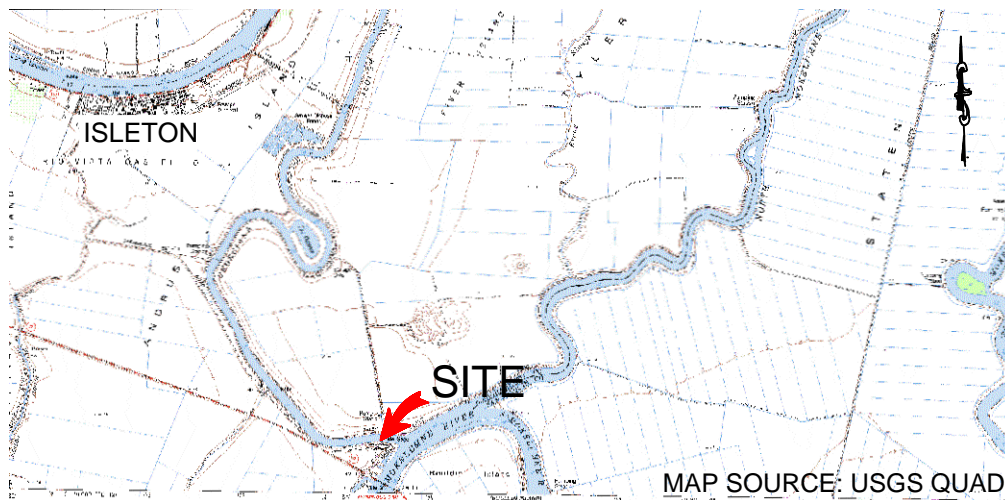


EXHIBIT B

LEASE 6684
 KAGY FAMILY TRUST
 APN 156-0100-026
 GENERAL LEASE -
 RECREATIONAL & PROTECTIVE
 STRUCTURAL USE
 SACRAMENTO COUNTY



RGB 10/27/20

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.