

# Staff Report 23

## **LESSEE:**

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James Grimes and Kim Grimes, Co-Trustees Under the Grimes Living Trust dated July 8, 2014 (as restated on August 21, 2015)

## **APPLICANT:**

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Brandon A. Castillo and Monica L. Castillo, as Trustees of the Castillo Family Trust dated April 20, 2018

## **PROPOSED ACTION:**

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

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

Sovereign land in the Sacramento River, adjacent to 3445 Garden Highway, near Sacramento, Sacramento County.

## **AUTHORIZED USE:**

Use and maintenance of an existing boat dock, ramp, piling, one 2-pile dolphin, and bank protection previously authorized by the Commission and an existing personal watercraft float not previously authorized by the Commission.

## **TERM:**

10 years, beginning February 23, 2021.

## **CONSIDERATION:**

**Boat dock, ramp, personal watercraft float, piling, and one 2-pile dolphin:** \$197 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.

**STAFF ANALYSIS AND RECOMMENDATION:**

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**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 October 13, 2016, the Commission authorized a 10-year General Lease - Recreational and Protective Structure Use to James Grimes and Kim Grimes, Co-Trustees Under the Grimes Living Trust dated July 8, 2014 (as restated on August 21, 2015) ([Item C16, October 13, 2016](#)). That lease will expire on August 14, 2026. On July 14, 2020, the upland was transferred to Brandon A. Castillo and Monica L. Castillo. On September 25, 2020, the upland was transferred to Brandon A. Castillo and Monica L. Castillo, as Trustees of the Castillo Family Trust dated April 20, 2018. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use, for the use and maintenance of an existing boat dock, ramp, piling, one 2-pile dolphin, and bank protection previously authorized by the Commission and an existing personal watercraft float not previously authorized by the Commission in the Sacramento River.

In 2016, the Lessee added a personal watercraft float to the lease premises without notification to staff and requesting an amendment of the lease. The exact duration of use and permanent nature was largely undetermined. Upon transfer of the upland title to the Applicant, the personal watercraft float resided in the lease premises. The Applicant was unaware of the actions of the prior upland owner and need to amend the lease. Therefore, staff recommends not seeking rent for the unauthorized occupation of State land from the Applicant for the existing personal watercraft float. The Applicant has acted in good faith; applied for a new lease; and requested continued use and maintenance of this improvement. The personal

watercraft float resides on a small portion of State land and does not significantly impair public use of the waterway.

Staff recommends termination of the existing lease because the upland parcel was sold without a lease quitclaim deed and assignment of the lease. The Applicant contacted staff about the application process. The Applicant assumed ownership of the upland parcel and lease improvements on September 25, 2020. Staff recommends that the proposed lease begin on February 23, 2021, to align with the proposed authorization date. Accounting records show the annual rent is paid with no amount past due.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The subject dock, ramp, and personal watercraft float will be used for the docking and mooring of boats and will 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 lands. (Pub. Resources Code, § 6503.5.) The bank protection will maintain and improve the integrity of the river channel, which will help protect the Public Trust resources of the Sacramento River, 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 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 a boat dock, ramp, personal watercraft float, piling, one 2-pile dolphin, 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 Francisco**

Year	Projection (feet)
2030	0.8
2040	1.2
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 the 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 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 dock. 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 dock, personal watercraft float, and adjustable ramp are adaptable to variable water levels, allowing them to rise and fall with storms and droughts and increasing their resiliency to some climate change impacts, but they may require more frequent maintenance or replacement to ensure continued function during and after storm seasons and to avoid dislodgement of dock facilities. The fixed features may need reinforcement and possibly replacement to withstand higher levels of flood exposure and more frequent storm events. The bank is somewhat vegetated, which provides additional stability and could partially reduce the amount of erosion and scour pressure experienced during future events because of the vegetation's underground root system. However, the bank remains at risk of accelerated deterioration from currents and floods. 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 protect the anchoring points of the other structures under lease, improve slope stability, and reduce flood impacts to the upland parcel (not within the lease area). 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 will not 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 Public Trust Doctrine; and is in the best interests of the State.

**OTHER PERTINENT INFORMATION:**

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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 Lessee may be required to remove the existing boat dock, ramp, personal watercraft float, piling, 2-pile dolphin, 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:**

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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:**

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

**AUTHORIZATION:**

1. Terminate, effective February 22, 2021, Lease Number PRC 5124, a General lease – Recreational and Protective Structure Use, issued to James Grimes and Kim Grimes, Co-Trustees Under the Grimes Living Trust dated July 8, 2014 (as restated on August 21, 2015).
2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning February 23, 2021, for a term of 10 years, for the use and maintenance of the existing boat dock, ramp, piling, one 2-pile dolphin, and bank protection previously authorized by the Commission and an existing personal watercraft float 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, ramp, personal watercraft float, piling, and one 2-pile dolphin: \$197 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 5124**

**LAND DESCRIPTION**

A parcel of tide and submerged land situate in the bed of the Sacramento River, lying adjacent to Swamp and Overflowed Land Survey 178 patented June 10, 1869, County of Sacramento, State of California and more particularly described as follows:

All those lands underlying an existing floating boat dock, ramp, personal watercraft float, piling and one 2-pile dolphin lying adjacent to that parcel as described in Grant Deed, recorded July 14, 2020 in Document Number 202007141453 in Official Records of said County.

TOGETHER WITH any applicable Impact Area(s).

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

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 10/05/2020 by the California State Lands Commission Boundary Unit





NO SCALE



SACRAMENTO RIVER

EXISTING PERSONAL WATERCRAFT FLOAT 12' x 10'

EXISTING 2-PILE DOLPHIN

EXISTING PROTECTIVE STRUCTURE

APN 225-0260-007

9' IMPACT AREA

EXISTING BOAT DOCK 20' x 12'

EXISTING PILING

SHORELINE

EXISTING GANGWAY 4' x 49'

### EXHIBIT A

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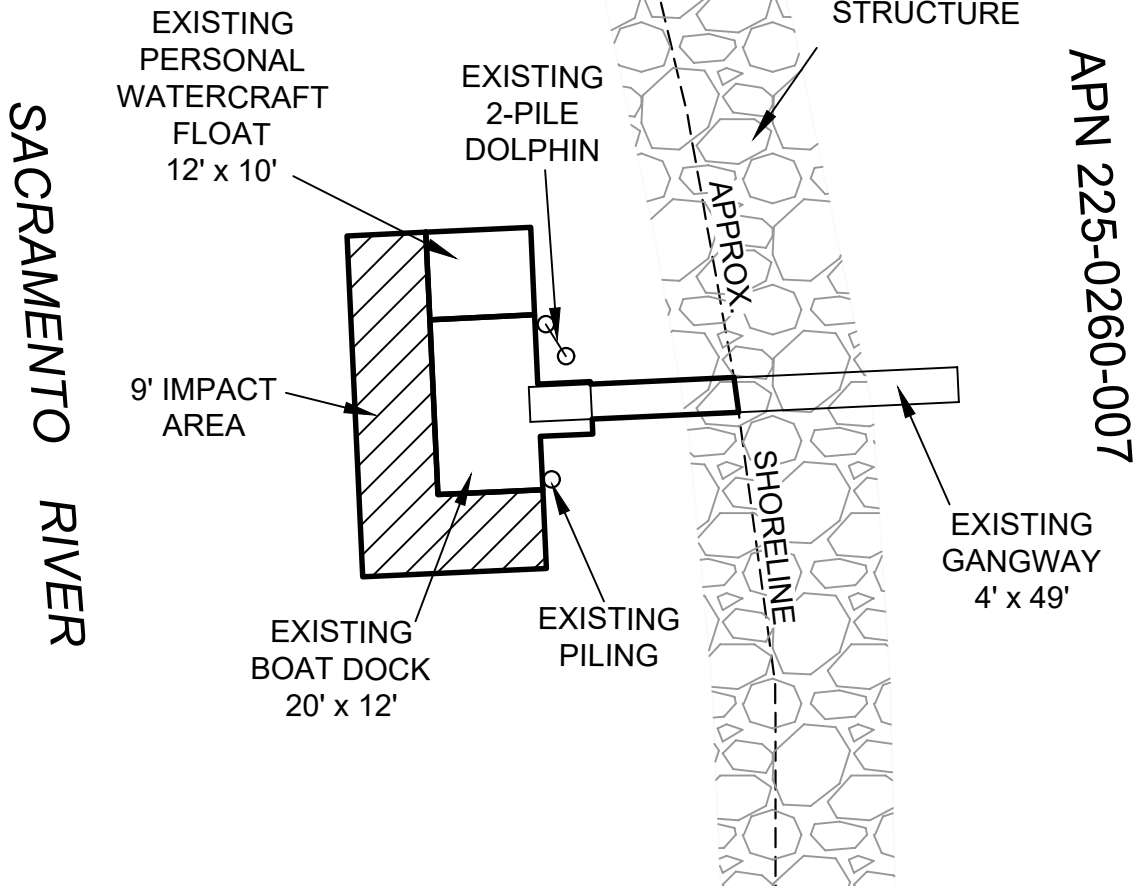
LAND DESCRIPTION PLAT  
LEASE 5124, CASTILLO FAMILY TRUST  
SACRAMENTO COUNTY

CALIFORNIA STATE  
LANDS COMMISSION



NO SCALE

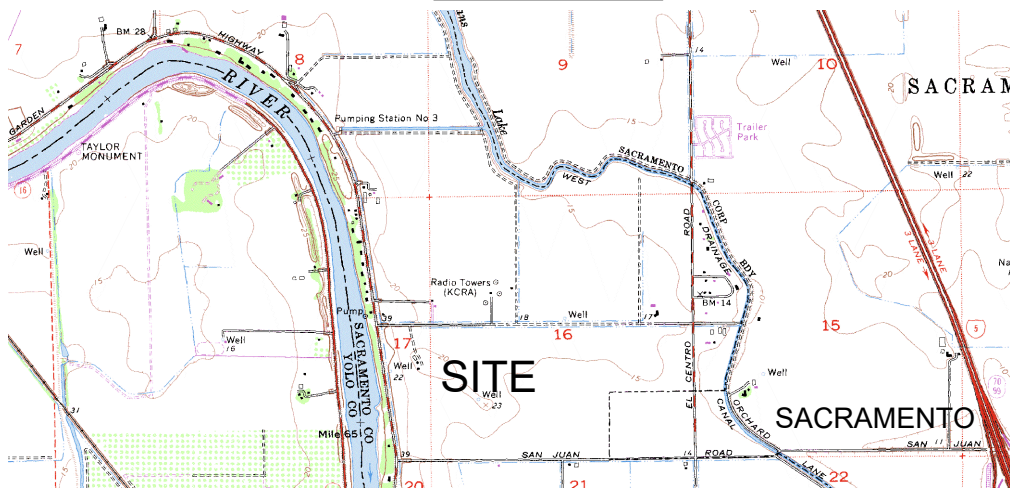
# SITE



3445 GARDEN HIGHWAY, SACRAMENTO

NO SCALE

# LOCATION



MAP SOURCE: USGS QUAD

## Exhibit B

LEASE 5124  
 CASTILLO FAMILY TRUST  
 APN 225-0260-007  
 GENERAL LEASE-  
 RECREATIONAL AND  
 PROTECTIVE STRUCTURE USE  
 SACRAMENTO COUNTY



TS 10/05/2020

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.