

Staff Report 27

LESSEE:

Donna Obert Blower

APPLICANT:

Carol Jane Dunn and Alexander Benton Pakter, Trustees of the Alexander Benton Pakter and Carol Jane Dunn Living Trust, dated June 21, 2018.

PROPOSED ACTION:

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 Georgiana Slough, adjacent to 15433 Andrus Island Road, near Isleton, Sacramento County.

AUTHORIZED USE:

Use and maintenance of an existing boat dock with two stabilizer poles, boat hoist, utility outlets, cable wires, deck, ramp, platform, two speed buoys, and bank protection.

TERM:

10 years, beginning December 1, 2020.

CONSIDERATION:

Boat dock with two stabilizer poles, boat hoist, utility outlets, cable wires, deck, ramp, platform, and two speed buoys: \$669 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 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, 6503.5, and 6505.5; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On February 20, 2015, the Commission authorized a 10-year General Lease - Recreational and Protective Structure Use to Donna Obert Blower ([Item C40, February 20, 2015](#)). That lease will expire on November 30, 2024. On August 13, 2020, the upland and lease improvements were transferred to Carol Jane Dunn and Alexander Benton Pakter, Trustees of the Alexander Benton Pakter and Carol Jane Dunn Living Trust, dated June 21, 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 with two stabilizer poles, boat hoist, utility outlets, cable wires, deck, ramp, platform, two speed buoys, and bank protection in Georgiana Slough.

Staff recommends termination of the existing lease because the upland parcel was sold without a lease quitclaim deed, application for assignment, or notification to staff. The Lessee failed to notify the Commission prior to the sale or transfer of the upland property, in violation of the lease obligations, and following the sale were no longer entitled to use the infrastructure without the express agreement of the upland owner. These actions constitute an intentional act to discontinue use of the lease improvements in favor of the new upland owner. Legally the Lessee remains responsible for removing the improvements after the expiration or termination of their lease, but the Applicant, the new upland owner, has asserted ownership of the lease improvements by applying for a new lease. The Commission's accounting records show the annual rent was paid through November 30, 2020. Therefore,

Commission staff recommends the starting date of the proposed lease be December 1, 2020.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The existing dock and appurtenant facilities 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 Georgiana Slough channel, which will help protect the Public Trust resources for recreational and navigational use by the public.

The existing deck is located slightly landward of the boat dock. It offers scenic views of the waterway and enjoyment of Public Trust resources. Although the subject deck is not associated with traditional Public Trust uses, a recreational deck that has been in place for several years may be permitted if, as in this case, the improvement does not significantly interfere with Trust activities. The deck is slightly elevated and therefore does not impair public use of State land. Further, the lease contains provisions that the deck may not be expanded or rebuilt, if significantly destroyed. The deck has been in place for many years and occupies a small area of State land. The deck does not substantially interfere with the needs and values of the Public Trust at this location, at this time, and for the foreseeable term of the proposed lease.

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

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: 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 dock and stabilizer poles. 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 and buoys 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 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 hoist, stabilizer poles, and bank protection 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 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; 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. An applicant has no right to a new lease or to renewal of any previous lease. Denial of the application may result in a determination that the proposed activity on or use of state land is unauthorized and may result in legal action.
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 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 existing boat dock with two stabilizer poles, boat hoist, utility outlets, cable wires, ramp, platform, two speed buoys, and bank protection 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 existing deck is 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. Terminate, effective November 30, 2020, Lease PRC 5780, a General Lease – Recreational and Protective Structure Use, issued to Donna Obert Blower.

2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning December 1, 2020, for a term of 10 years, for the use and maintenance of the existing boat dock with two stabilizer poles, boat hoist, utility outlets, cable wires, deck, ramp, platform, two speed buoys, 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; consideration for the existing boat dock with two stabilizer poles, boat hoist, utility outlets, cable wires, deck, ramp, platform, and two speed buoys: \$669 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 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 5780

LAND DESCRIPTION

Three parcels of tide and submerged land situate in the bed of the Georgiana Slough, lying adjacent to Swamp and Overflow Survey 360, approved April 14, 1871, County of Sacramento, State of California, and more particularly described as follows:

PARCEL 1 – BOAT DOCK, DECK

All those lands underlying existing boat dock with two (2) stabilizer poles, boat hoist, utility outlets, cable wires, deck, ramp, and platform adjacent to that parcel described in Grant Deed, recorded August 13, 2020 in Document Number 202008131229 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(s) lying landward of the ordinary high water mark of the right bank of the Georgiana Slough.

PARCELS 2 & 3 –SPEED BUOYS

Two circular parcels of land being 50 feet in diameter, underlying two (2) existing buoys lying adjacent to that parcel described in Grant Deed, recorded August 13, 2020 in Document Number 202008131229 in Official Records of said County.

Accompanying plat is hereby made a part of this description.

END OF DESCRIPTION

Prepared September 30, 2020 by the California State Lands Commission Boundary Unit.



NO SCALE

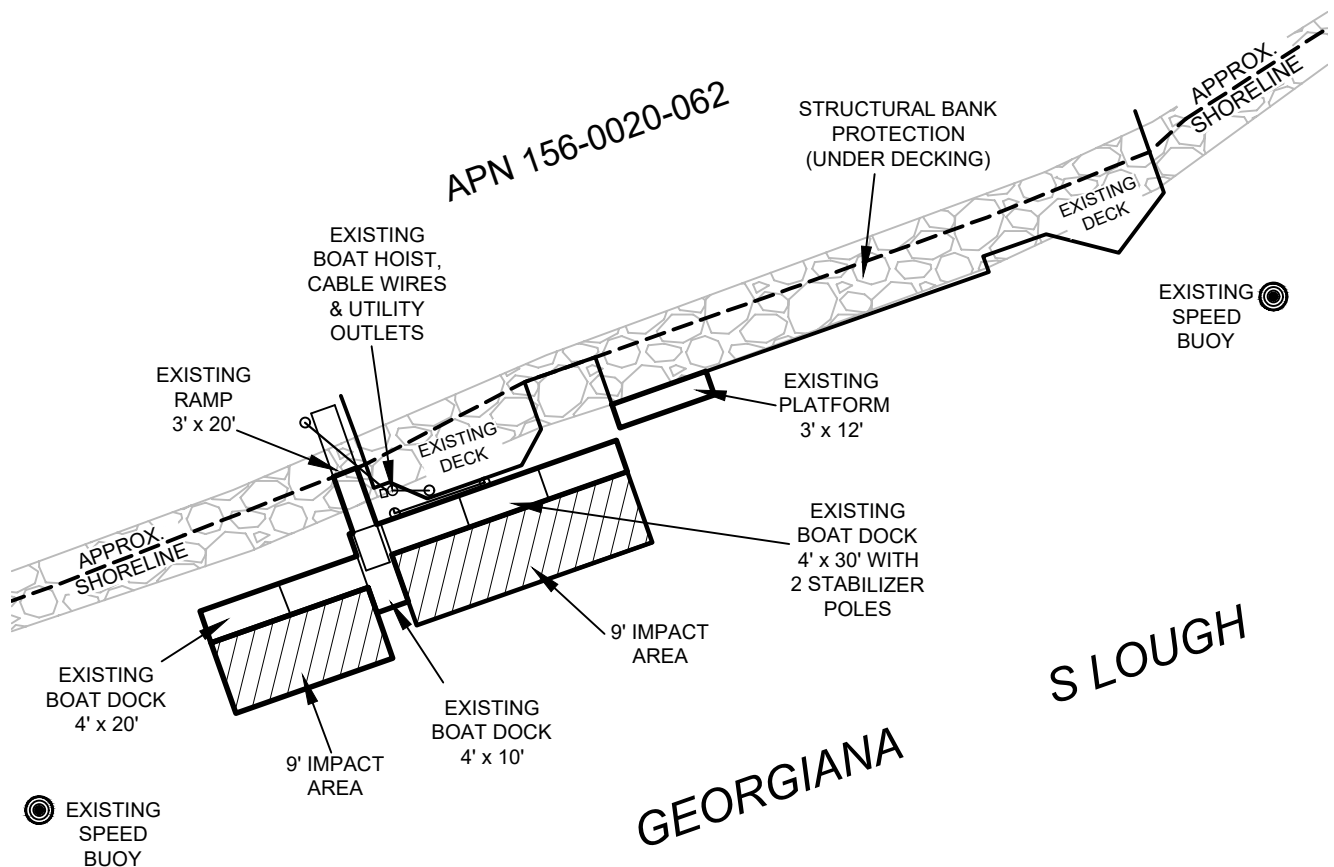


EXHIBIT A

Page 2 of 2

TS 09/30/2020

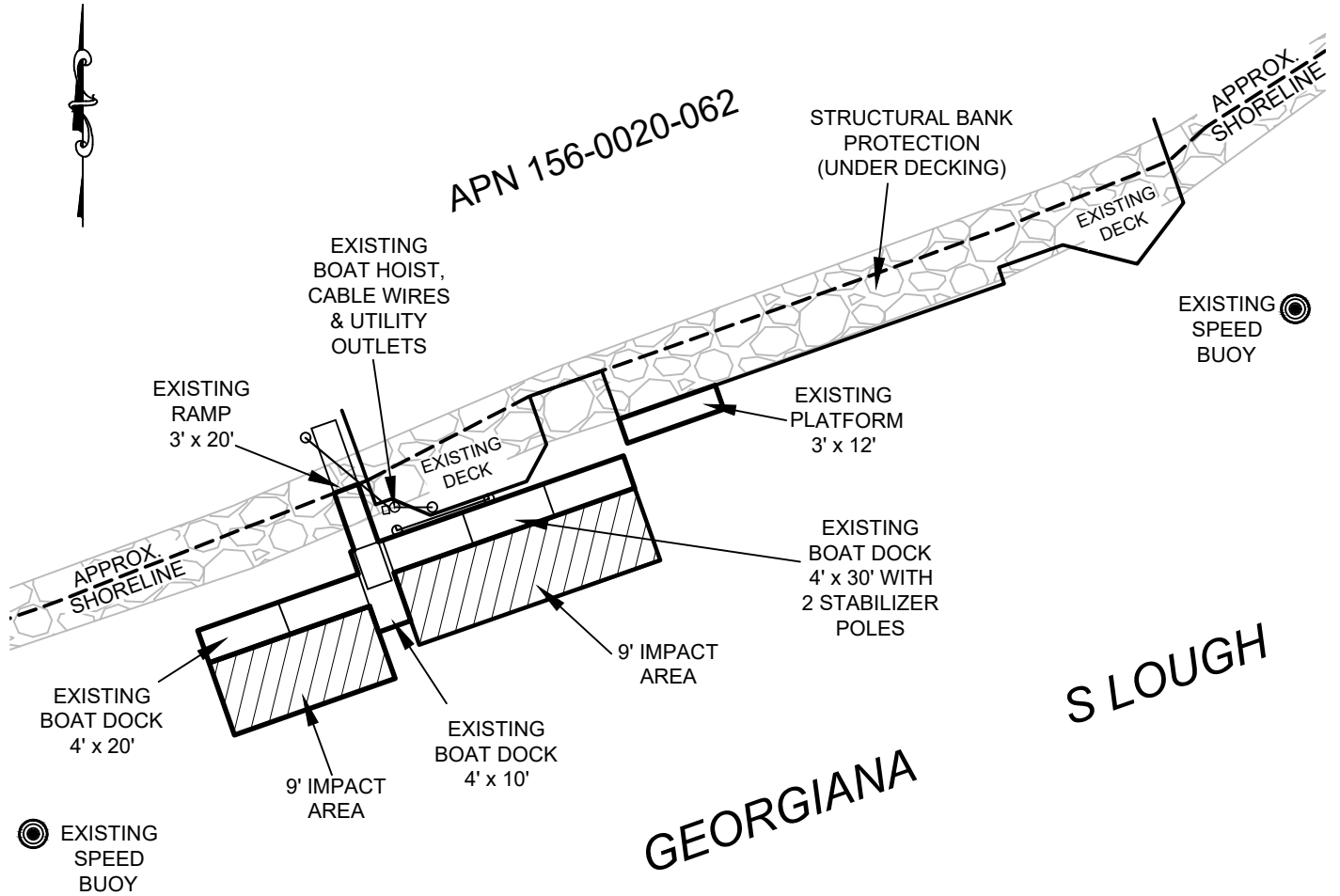
LAND DESCRIPTION PLAT
LEASE 5780, PAKTER & DUNN, TRUSTEES
SACRAMENTO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

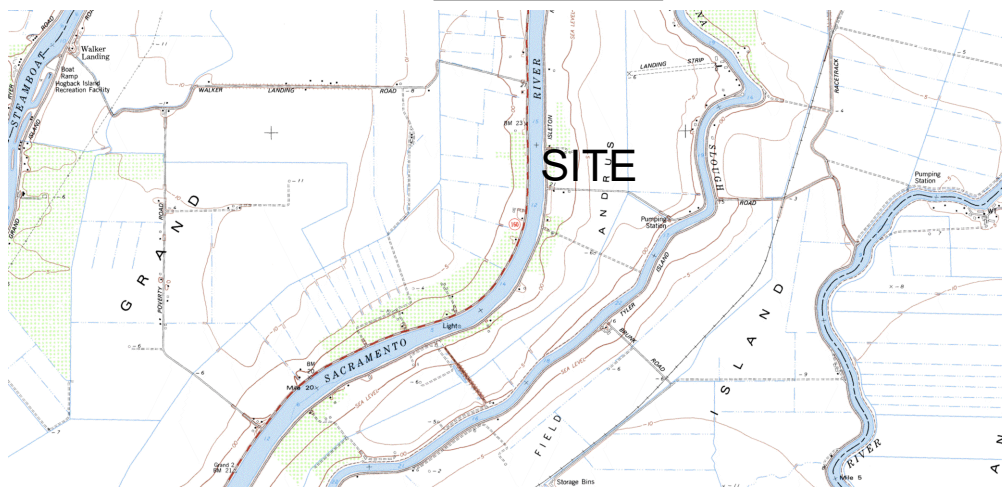
SITE



15433 ANDRUS ISLAND ROAD, GEORGIANA SLOUGH

NO SCALE

LOCATION



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

LEASE 5780
PAKTER & DUNN, TRUSTEES
APN 156-0020-062
GENERAL LEASE -
RECREATIONAL & PROTECTIVE
STRUCTURE USE
SACRAMENTO COUNTY



TS 09/30/2020