

# Staff Report 31

## **APPLICANT:**

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Paul D. Thayer and Martha H. Lennihan as Trustees of the Paul D. Thayer and Martha H. Lennihan 2016 Revocable Trust, dated March 14, 2016

## **PROPOSED ACTION:**

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Issuance of a General Lease – Recreational and Protective Structure Use

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

Sovereign land in the Sacramento River, adjacent to 6645 Garden Highway, near Sacramento, Sacramento County.

## **AUTHORIZED USE:**

Continued use and maintenance of an existing single berth floating U-shaped boat dock, two steel pilings, gangway, utility conduit, and bank protection previously authorized by the Commission and an existing boat lift and two-pile dolphin not previously authorized by the Commission.

## **TERM:**

10 years, beginning April 6, 2021.

## **CONSIDERATION:**

**Single berth U-shaped floating boat dock with boat lift, two-pile dolphin, two steel pilings, gangway, and utility conduit:** \$311 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 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 April 6, 2011, the Commission authorized a General Lease - Recreational and Protective Structure Use for the removal of an existing uncovered floating boat dock, two pilings, and gangway; construction of a new uncovered single-berth floating boat dock with galvanized cables, three steel pilings, gangway, and utility conduit; and continued use and maintenance of existing bank protection to Paul D. Thayer and Martha H. Lennihan ([Item 13, April 6, 2011](#)). The Applicant recently notified staff that on March 15, 2016, the property was deeded to Paul D. Thayer and Martha H. Lennihan as Trustees of the Paul D. Thayer and Martha H. Lennihan 2016 Revocable Trust, dated March 14, 2016. The lease expired on April 5, 2021.

The previously authorized galvanized cables and third piling were not constructed, and a two-pile dolphin and a boat lift within the berth of the floating boat dock were added. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use for the continued use and maintenance of an existing single berth U-shaped floating boat dock, two steel pilings, gangway, utility conduit, and bank protection previously authorized by the Commission and a boat lift and two-pile dolphin not previously authorized by the Commission that extend onto sovereign land.

The Applicant owns the upland parcel adjoining the lease premises. The subject facilities are privately owned and maintained, 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). The bank protection has existed at this location for several years. The bank protection will maintain and improve the integrity of the river channel,

which helps 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 and restore the lease premises to their original condition.

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 State for the occupation of the public land involved, except for the bank protection, which provides a public benefit.

### **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 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 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 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 existing floating boat dock and gangway would be 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 pilings, utility conduit, and bank protection may need reinforcement and possibly replacement to withstand higher levels of flood exposure and more frequent storm events. The bank is covered with riprap and contains some vegetation, 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. Regular maintenance, as required by the terms of the lease, will reduce the likelihood of severe structural degradation or dislodgement.

Pursuant to the 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 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:**

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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, as the owner of the improvements on state land, may be required to remove the single berth U-shaped floating boat dock with boat lift, two-pile dolphin, two steel pilings, gangway, utility conduit, 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 the "Meeting Evolving Public Trust Needs" and the "Leading Climate Activism" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. 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:**

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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 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 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:**

Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant, beginning April 6, 2021, for a term of 10 years, for the use and maintenance of an existing single berth U-shaped floating boat dock, two steel pilings, gangway, utility conduit, and bank protection previously authorized by the Commission and an existing boat lift and two-pile dolphin 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 single berth U-shaped floating boat dock, dolphin, pilings, and gangway: \$311 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 interest; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**LEASE 6042**

**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 183 patented February 1, 1866, County of Sacramento, State of California and more particularly described as follows:

All those lands underlying an existing uncovered floating boat dock with boat lift, gangway, two pilings, one 2-pile dolphin and utility conduit lying adjacent to that parcel described in Trust Transfer Deed, recorded March 15, 2016 in Book 20160315 at Page 1610 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.

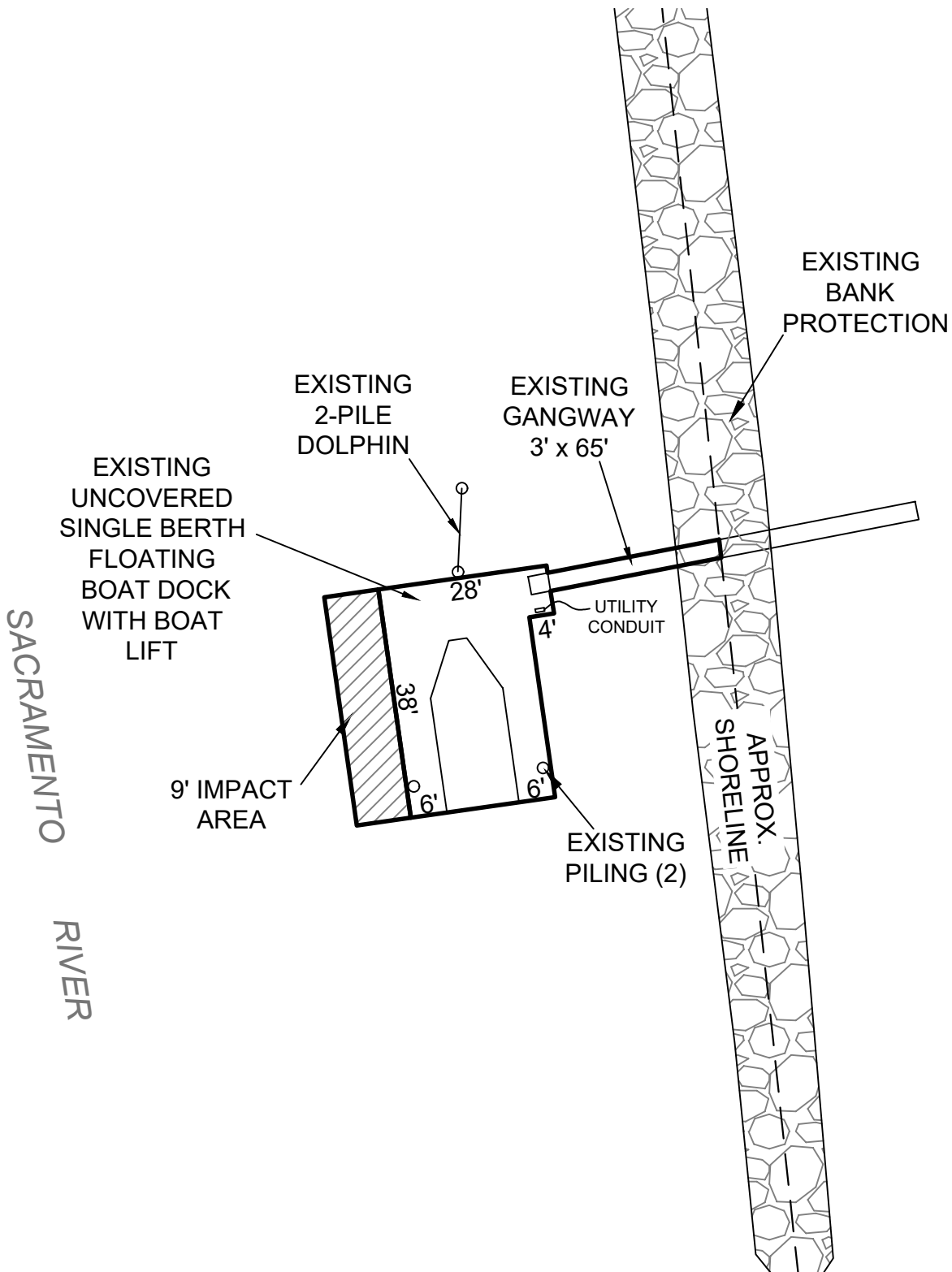
Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

Prepared 03/24/2021 by the California State Lands Commission Boundary Unit.



NO SCALE



APN 201-0270-034

## EXHIBIT A

Page 2 of 2

TS 03/24/2021

LAND DESCRIPTION PLAT  
LEASE 6042, THAYER & LENNIHAN TRUST  
SACRAMENTO COUNTY

CALIFORNIA STATE  
LANDS COMMISSION





6645 GARDEN HIGHWAY, SACRAMENTO

TS 03/24/2021