

Staff Report 33

APPLICANT:

Vincent Vong and Thuy Thi Tran, Co-Trustees of The Vong Tran Family Trust dated January 15, 2010

PROPOSED ACTION:

Issuance of a General Lease – Recreational and Protective Structure Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Sacramento River, adjacent to 1861 Garden Highway, Sacramento, Sacramento County.

AUTHORIZED USE:

Use and maintenance of an existing three-pile dolphin boat tie-up and bank protection.

TERM:

10 years; beginning June 29, 2021.

CONSIDERATION:

Three-pile dolphin boat tie-up: \$140 per year, with an annual Consumer Price Index adjustment, and \$97 to compensate for the unauthorized occupation of state sovereign land dating back to October 16, 2020.

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 December 14, 2006, the Commission authorized a 10-year General Lease – Recreational and Protective Structure Use to Jean Duval Starnes and Sandra Jeanne Renwanz ([Item 22, December 14, 2006](#)). That lease expired on December 13, 2016.

On October 16, 2020, ownership of the upland parcel and lease area improvements was deeded to the Applicant, Vincent Vong and Thuy Thi Tran, Co-Trustees of The Vong Tran Family Trust dated January 15, 2010. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use, for the continued use and maintenance of an existing three-pile dolphin boat tie-up and bank protection.

Staff recommends issuance of a lease to the Applicant beginning June 29, 2021. Therefore, staff recommends the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$97 for the period beginning October 16, 2020, the day the Applicant took ownership, through June 28, 2021, the day before the effective date of the proposed lease.

The Applicant owns the upland adjoining the lease premises and the subject facilities have existed at this location for several years. The subject facilities are privately owned and maintained. The three-pile dolphin 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). The 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 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 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

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 the Sacramento River's inundation levels within the lease area over the term of the lease. 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 the fixed structures within the lease premises during the term of the lease. The three-piling dolphin and bank protection may need reinforcement and possibly replacement 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 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 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 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 lessee may be required to remove the three-pile dolphin boat tie-up and bank protection and to 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 a 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:

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

RECOMMENDED ACTION:

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 the 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.

AUTHORIZATION:

1. Authorize acceptance of compensation from the Applicant in the amount of \$97 for unauthorized occupation of State land for the period beginning October 16, 2020 through June 28, 2021.
2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant, beginning June 29, 2021, for a term of 10 years, for the continued use and maintenance of an existing three-pile dolphin boat tie-up 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; annual rent in the amount of \$140, 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, as specified in the lease, 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 6727

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

All those lands underlying an existing three-pile dolphin (boat tie-up) lying adjacent to those parcels described in Grant Deed, recorded October 16, 2020 in Document Number 202010161401 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 parcels.

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 03/09/2021 by the California State Lands Commission Boundary Unit



NO SCALE



APN 274-0021-005

EXISTING
BANK
PROTECTION

APPROX. SHORELINE

RIVER

SACRAMENTO

9' IMPACT
AREA

EXISTING
THREE-PILE
DOLPHIN
(BOAT TIE-UP)

EXHIBIT A

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LAND DESCRIPTION PLAT
LEASE 6727, VONG TRAN FAMILY TRUST
SACRAMENTO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE

APN 274-0021-005

EXISTING
BANK
PROTECTION

APPROX. SHORELINE

RIVER

SACRAMENTO

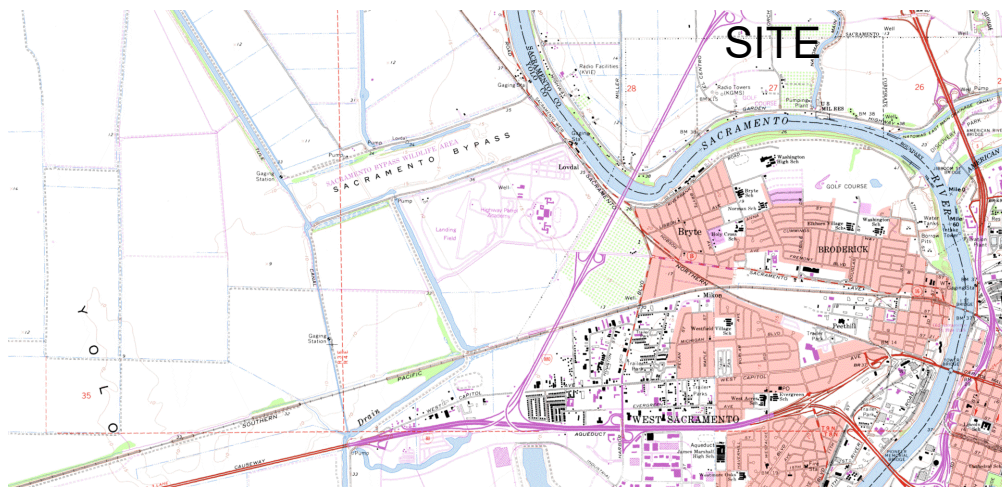
EXISTING
THREE-PILE
DOLPHIN
(BOAT TIE-UP)

9' IMPACT
AREA

1861 GARDEN HIGHWAY, SACRAMENTO

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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 6727
VONG TRAN FAMILY TRUST
APN 274-0021-005
GENERAL LEASE-
RECREATIONAL &
PROTECTIVE
STRUCTURE USE
SACRAMENTO COUNTY



TS 03/09/2021