

# Staff Report 33

## **LESSEE:**

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Roberta Holm

## **APPLICANT:**

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Riaz Ali Shah and Carolina Candotti

## **PROPOSED ACTION:**

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Consider Waiver of Rent, Penalty, and Interest, and Termination and Issuance of a General Lease – Recreational and Protective Structure Use

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

Sovereign land in the Sacramento River, adjacent to 10205 Garden Highway, near Sacramento, Sutter County.

## **AUTHORIZED USE:**

Continued use and maintenance of an existing boat dock, one two-pile dolphin, one piling, one unattached piling, gangway, and bank protection.

## **TERM:**

10 years, beginning December 8, 2021.

## **CONSIDERATION:**

### **Boat dock, one two-pile dolphin, one piling, one unattached piling, and gangway:**

\$326 per year, with an annual Consumer Price Index adjustment; and \$953 to compensate for the unauthorized occupation of state sovereign land for the period beginning August 15, 2018 through December 7, 2021.

**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, 6503.5, and 6505.5; 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 General Lease - Recreational and Protective Structure Use for an existing boat dock, one two-pile dolphin, one piling, one unattached piling, gangway, and bank protection to Roberta Holm ([Item C24, August 15, 2014](#)). On January 3, 2018, upland ownership and the facilities were transferred to Riaz Ali Shah and Carolina Candotti, in violation of the lease provisions for transfer and assignment. The lease would have expired on August 14, 2024, had the lessee complied with the lease terms and payments. The Applicant, as the current upland owner, is now applying for a General Lease – Recreational and Protective Structure Use for the continued use and maintenance of the existing facilities.

Staff recommends termination of the existing lease because the Lessee abandoned the lease, sold the upland property without notifying staff, failed to execute a lease quitclaim, and defaulted on lease payments. The Lessee paid rent through August 14, 2018, past the date of transfer, but did not pay invoice numbers 45265 or 47901 for the period of August 15, 2018 through August 14, 2020. The Applicant agrees to pay, and staff recommends acceptance of, compensation of \$953 for the unauthorized occupation of State land from August 15, 2018 through December 7, 2021, the day before staff recommends the new lease begin. Staff believes it is not in the State's best interests to pursue the unpaid rent, penalty, and interest from the Lessee since the Applicant was the upland owner as of January 3, 2018.

The subject 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 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 people of 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 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 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 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 of dock facilities. The existing one two-pile dolphin, one piling, one unattached piling, and bank protection may need reinforcement and possibly replacement to withstand higher levels of flood exposure and more frequent storm events.

The vegetated bank provides additional stability and reduces 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.

Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland are located in an area that may be subject to the 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 an 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. If the Commission denies the application, the Applicant, as the owner of the improvements on state land, may be required to remove the docking facilities 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 "Leading Climate Activism" and "Meeting Evolving Public Trust Needs" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. Waiver of rent, penalty, and interest, and termination of the lease are not projects as defined by the California Environmental Quality Act (CEQA) because they are administrative actions 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 the 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 the termination of a lease; waiver of rent, penalty, and interest; and issuance of 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; are consistent with the common law Public Trust Doctrine; and are in the best interests of the State.

### **AUTHORIZATION:**

1. Waive annual rent, penalty, and interest due for the period from August 15, 2018 through August 14, 2020, and void annual rent invoice numbers 45265 and 47901 issued to Roberta Holm.
2. Terminate, effective January 2, 2018, Lease Number PRC 6119, a General Lease – Recreational and Protective Structure Use, issued to Roberta Holm.

3. Authorize acceptance of compensation from the Applicant in the amount of \$953 for the unauthorized occupation of State land for the period beginning August 15, 2018 through December 7, 2021.
4. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning December 8, 2021, for a term of 10 years, for the continued use and maintenance of an existing boat dock, one two-pile dolphin, one piling, one unattached piling, gangway, 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 boat dock, one two-pile dolphin, one piling, one unattached piling, gangway: \$326 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 6119**

### **LAND DESCRIPTION**

Two parcels of tide and submerged land situate in the bed of the Sacramento River, lying adjacent to Lot 4 of fractional Section 36, Township 11 North, Range 3 East, M.D.B.&M., as shown on Official Government Township Plat approved August 5, 1870, County of Sutter, State of California and more particularly described as follows:

#### **PARCEL 1 – Boat Dock**

All those lands underlying an existing floating boat dock, gangway, one piling and one 2-pile dolphin lying adjacent to that parcel described in Grant Deed, recorded January 3, 2018 in Document Number 2018-0000090 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.

#### **PARCEL 2 – Unattached Piling**

All those lands underlying an existing unattached piling lying adjacent to that parcel described in Grant Deed, recorded January 3, 2018 in Document Number 2018-0000090 in Official Records of said County.

Accompanying plat is hereby made part of this description.

### **END OF DESCRIPTION**

Prepared 04/08/2021 by the California State  
Lands Commission Boundary Unit





NO SCALE



SACRAMENTO RIVER

9' IMPACT  
AREA

EXISTING  
FLOATING  
BOAT DOCK

EXISTING  
2-PILE  
DOLPHIN

EXISTING  
GANGWAY  
5' x 55'

APN 35-351-002

EXISTING  
PILING

EXISTING  
PROTECTIVE  
STRUCTURES

EXISTING  
UNATTACHED  
PILING

## EXHIBIT A

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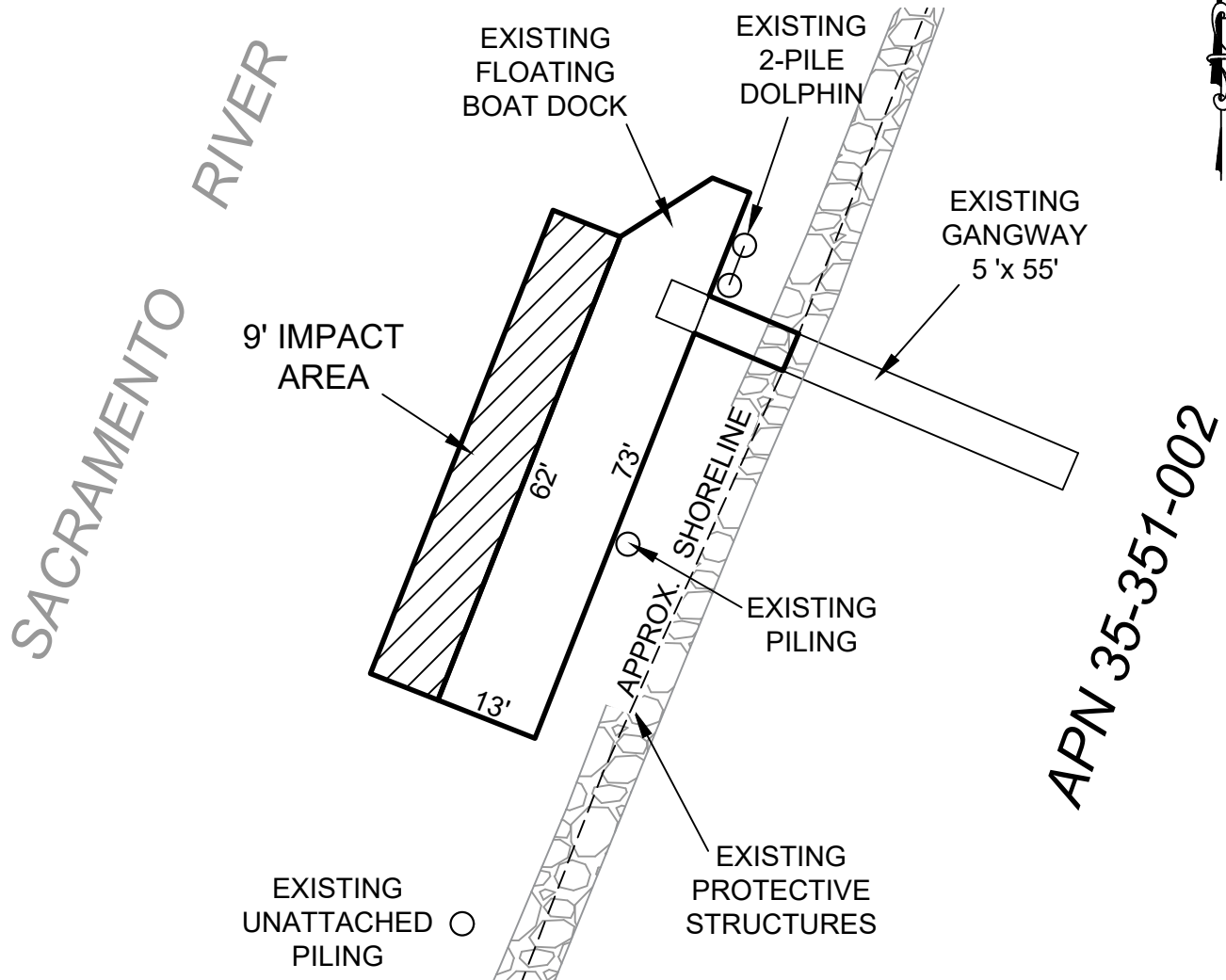
LAND DESCRIPTION PLAT  
LEASE 6119, SHAH ET. AL  
SUTTER COUNTY

CALIFORNIA STATE  
LANDS COMMISSION



NO SCALE

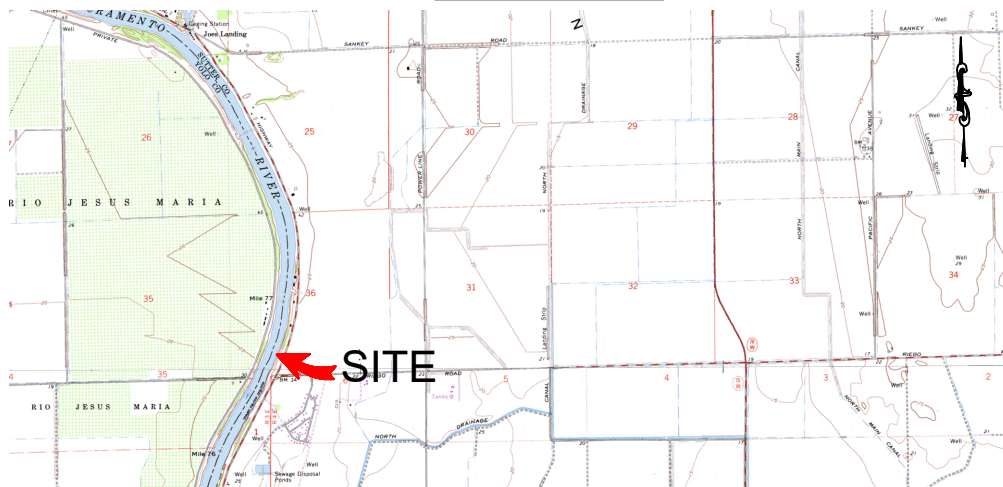
## SITE



10205 GARDEN HIGHWAY, NEAR SACRAMENTO

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 6119  
SHAH ET. AL  
APN 35-351-002  
GENERAL LEASE -  
RECREATIONAL & PROTECTIVE  
STRUCTURE USE  
SUTTER COUNTY



TS 04/08/2021