

# Staff Report 39

## **APPLICANT:**

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Legacy Investments, a California General Partnership

## **PROPOSED ACTION:**

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Issuance of a General Lease – Recreational Use

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

Sovereign land in Steamboat Slough, adjacent to 13737 Grand Island Road, near Walnut Grove, Sacramento County.

## **AUTHORIZED USE:**

Use and maintenance of an existing boat dock, debris deflector, boat lift, gangway, five pilings, and electrical and water conduits previously authorized by the Commission, and an existing covered floating patio not previously authorized by the Commission.

## **TERM:**

10 years; beginning May 24, 2022.

## **CONSIDERATION:**

\$492 per year, with an annual Consumer Price Index adjustment, and \$295 to compensate for the unauthorized occupation of state sovereign land by the covered floating patio for the period prior to May 24, 2022.

## **SPECIFIC LEASE PROVISIONS:**

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- The lease contains provisions stating that the existing covered floating patio, as shown on the attached Exhibit B, cannot be expanded, and if repairs to any portion of the existing covered floating patio cost more than 50 percent of the base value of the covered floating patio, then the covered floating patio must be removed from the lease premises.

- 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:**

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### **AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 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 May 24, 2012, the Commission authorized a General Lease – Recreational Use to Jeffrey A. Hart and Toni T. Hart for the use and maintenance of an existing single berth floating boat dock, debris deflector, boat lift, gangway, five pilings, and electrical water conduits ([Item 20, May 24, 2012](#)). There is existing bank protection at this location covered under Lease 7203, to the Central Valley Flood Protection Board.

On January 5, 2017, ownership interest in the upland parcel was deeded from Jeffrey A. Hart and Toni T. Hart to Legacy Investments, a California General Partnership. On April 20, 2017, the Commission authorized an Assignment and Amendment of Lease and Revision of Rent ([Item 51, April 20, 2017](#)). When Lease 8173 was assigned to Legacy Investments, a California General Partnership, staff also conducted a review of the rent as called for in the lease.

Subsequently, based on the updated 2015 Sacramento River Benchmark, the rent was revised from \$367 to \$472 per year, effective May 24, 2017. Also, Exhibits A and B of the lease were amended to reflect the new reduced lease (impact) area, with all other terms and conditions of the lease to remained unchanged. The lease expired on May 23, 2022.

If the Commission approves the proposed lease, the Applicant will pay \$295 for the unauthorized occupation of state land by the covered floating patio for the period prior to the start of the proposed lease on May 24, 2022. Additionally, the proposed lease will require the Applicant to indemnify the State for the period of occupation from January 5, 2017 through May 23, 2022, ensuring the State is protected.

The Applicant is applying for a General Lease – Recreational Use, for use and maintenance of the boat dock, debris deflector, boat lift, gangway, five pilings, and electrical and water conduits previously authorized by the Commission, and an existing covered floating patio not previously authorized by the Commission.

The covered floating patio is securely attached to the existing dock and has existed for many years, according to publicly available aerial images and prior to the Applicant acquiring the property in 2017. Staff recommends bringing the existing structure under lease.

The subject boat dock, debris deflector, boat lift, gangway, and five pilings are privately owned and maintained 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).

Although the electrical, water conduits, and covered floating patio are not Public Trust consistent uses, their presence does not substantially interfere with Public Trust needs or activities at this location and at this time. However, the lease prohibits reconstruction or replacement of these improvements.

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 proposed 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.

### **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 lease area is in the Sacramento River, which at this location is a tidally influenced site vulnerable to flooding at current sea levels; therefore, this area would be at a higher risk of flood exposure given future projection 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 existing floating boat dock, covered floating patio, debris diverter, 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 combination of these projected conditions could also increase the likelihood of damage and affect the fixed piles within the lease premises during the term of the lease, which may need reinforcement and possibly replacement to withstand higher levels of flood exposure and more frequent storm events

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 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; 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 may be required to remove the improvements and restore the premises to their original condition. The lessee 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. Staff recommends that the Commission find that the 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:**

1. Find that the existing and continuing use and maintenance of the boat dock, debris deflector, boat lift, gangway, and five pilings will not substantially impair the public rights to navigation, fishing, and commerce; or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the Public Trust Doctrine; and
2. Find that the existing and continuing use and maintenance of the electrical, water conduits, and covered floating patio 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. Authorize acceptance of compensation from the Applicant in the amount of \$295 for the unauthorized occupation of state sovereign land for the period prior to May 24, 2022.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning May 24, 2022, for a term of 10 years, for the use and maintenance of an existing boat dock, debris deflector, boat lift, gangway, five pilings, and electrical and water conduits previously authorized by the Commission, and an existing covered floating patio 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; annual rent in the amount of \$492, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**LEASE 8173**

**LAND DESCRIPTION**

A parcel of tide and submerged land situate in the bed of the Steamboat Slough, lying adjacent to Swamp and Overflowed Land Survey 493 patented September 5, 1864, County of Sacramento, State of California and more particularly described as follows:

All those lands underlying an existing floating single-berth boat dock with boat lift, gangway, floating patio, utility conduits and five pilings lying adjacent to that parcel described in Grant Deed, recorded January 5, 2017, in Book 20170105 at page 1628 in Official Records of said County.

TOGETHER WITH any applicable Impact Area(s).

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the left bank of said slough.

Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

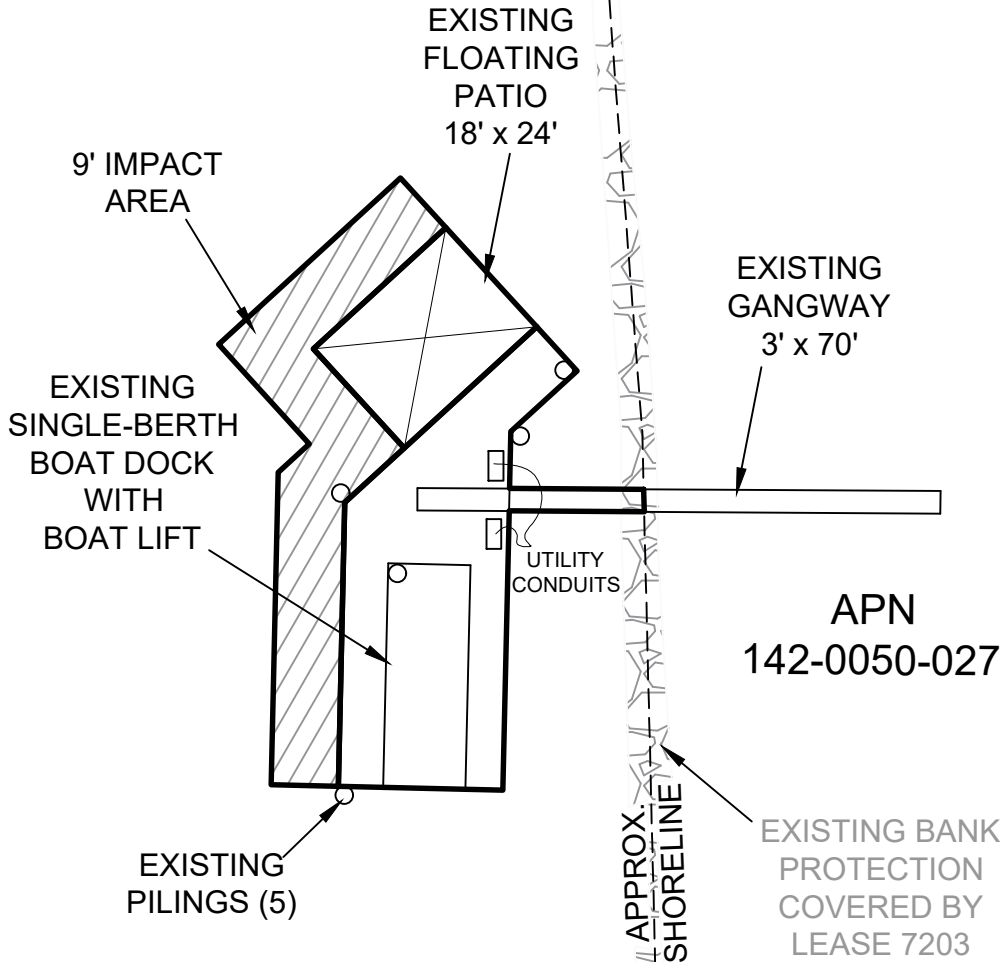
Prepared 08/01/2022 by the California State Lands Commission Boundary Unit



NO SCALE



STEAMBOAT SLOUGH



GRAND ISLAND ROAD

### EXHIBIT A

Page 2 of 2

TS 08/01/2022

LAND DESCRIPTION PLAT  
 LEASE 8173, LEGACY INVESTMENTS  
 SACRAMENTO COUNTY

CALIFORNIA STATE  
 LANDS COMMISSION



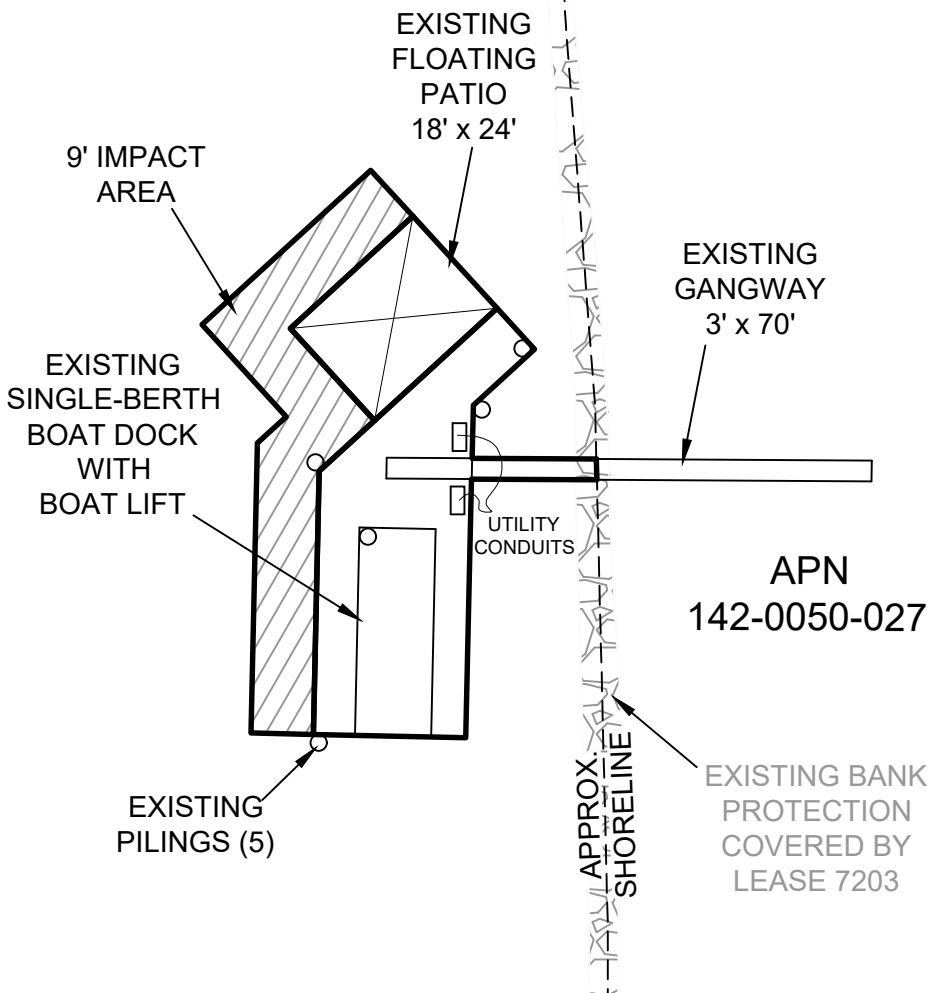


NO SCALE

# SITE



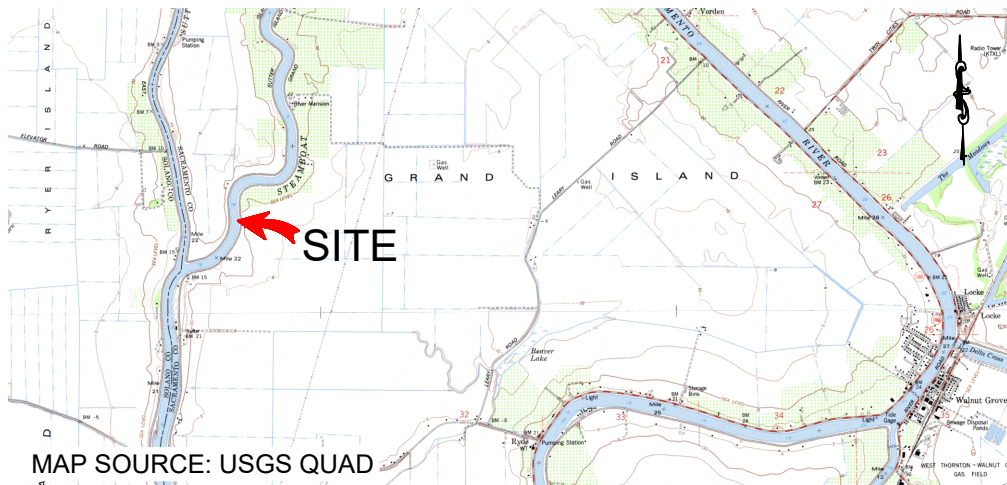
STEAMBOAT SLOUGH



13737 GRAND ISLAND ROAD, NEAR WALNUT GROVE

NO SCALE

# LOCATION



## Exhibit B

LEASE 8173

LEGACY INVESTMENTS

APN 142-0050-027

GENERAL LEASE -

RECREATIONAL USE

SACRAMENTO COUNTY



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.

TS 08/01/2022