

# Staff Report 14

**APPLICANT:**

Richard M. Hunt and Shannon L. Mlcoch

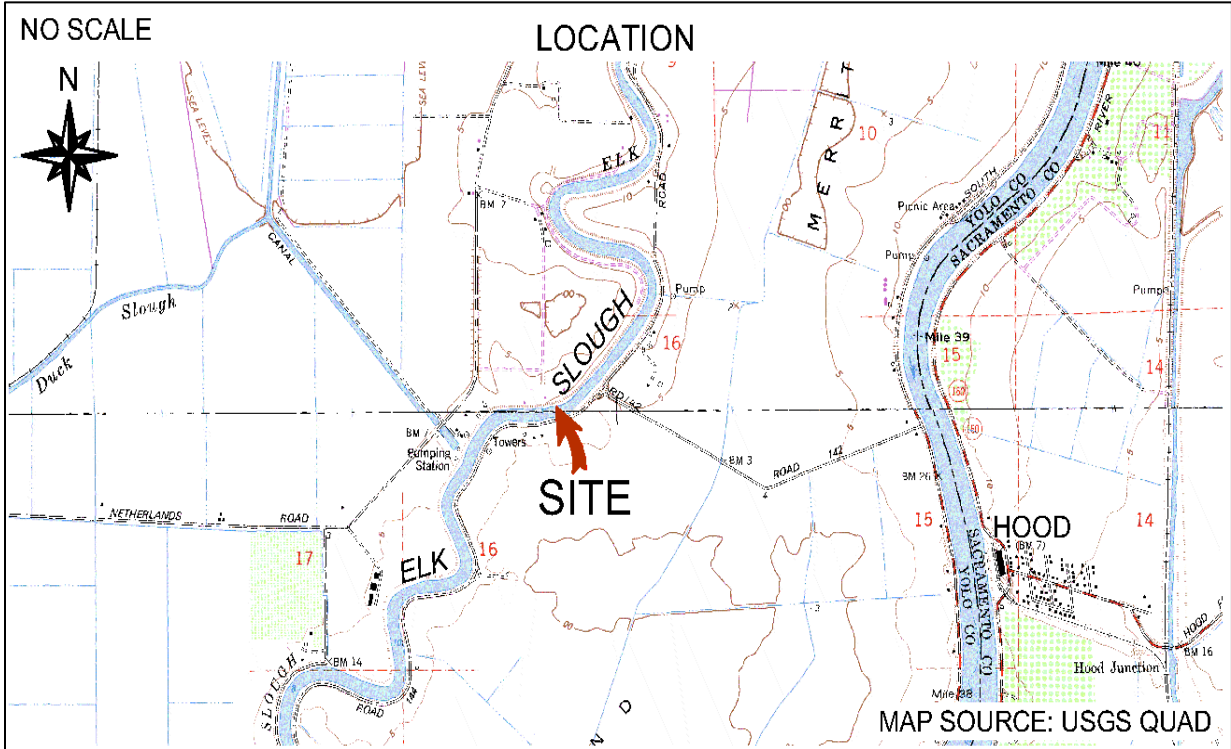
**PROPOSED ACTION:**

Issuance of a General Lease – Recreational Use

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

Sovereign land in Elk Slough, adjacent to 52265 Nishida Lane, Clarksburg, Yolo County (as shown in Figure 1).

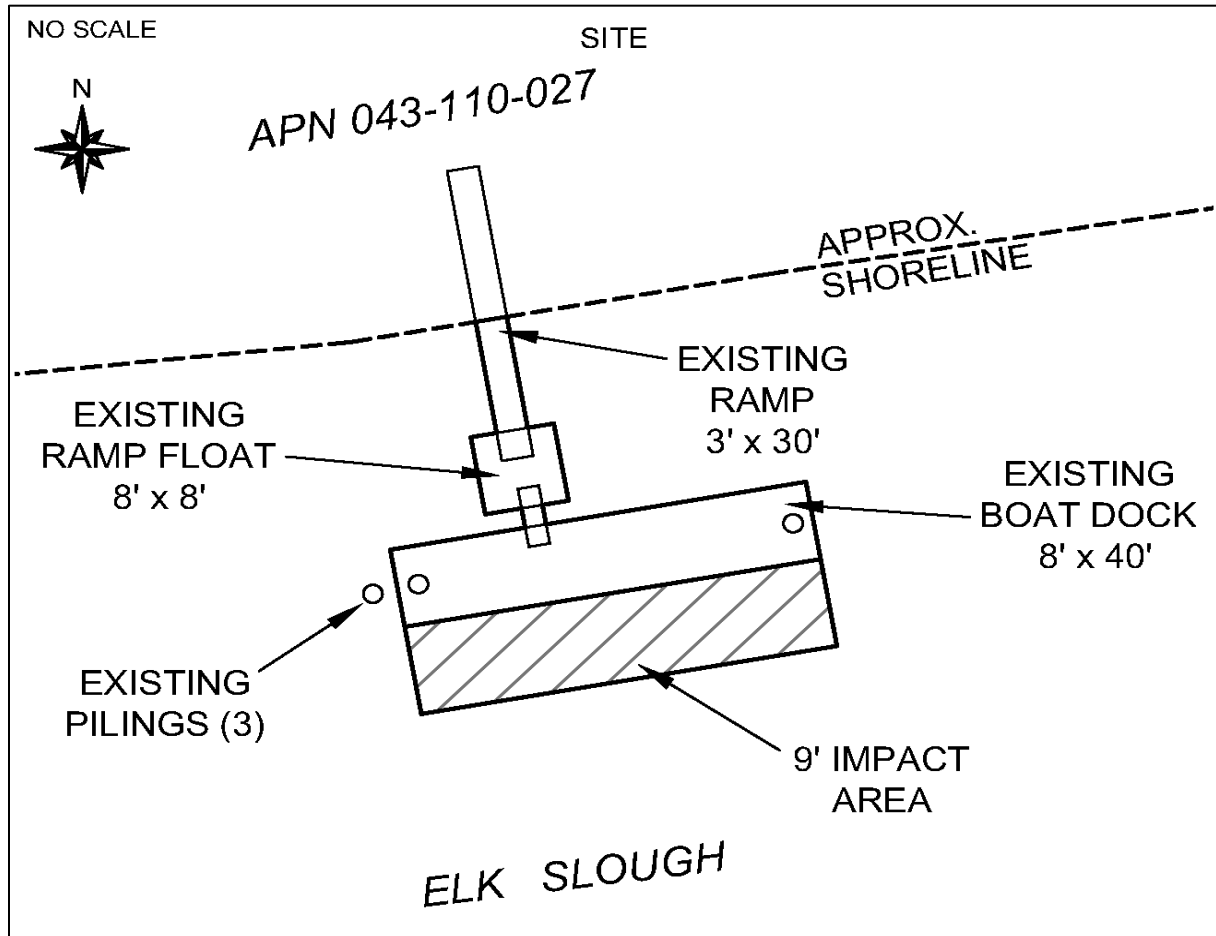
**Figure 1. Location**



**AUTHORIZED USE:**

Use of an existing boat dock, three pilings, and ramp (as shown in Figure 2).

**Figure 2. Site Map**



NOTE: This depiction of the lease premises is based on unverified information provided by the applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

**TERM:**

10 years, beginning April 26, 2023.

**CONSIDERATION:**

\$271 per year, with an annual Consumer Price Index adjustment.

**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 climate change may require additional maintenance or protection strategies regarding the improvements on the lease premises.

- Lessee agrees to submit a plan to the Commission for the removal of the unattached piling or for reuse of the piling, within two years of Lease execution date.

## **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 April 26, 2013, the Commission authorized the issuance of a General Lease – Recreational Use to Shannon Mlcoch and Richard M. Hunt, for the use and maintenance of an existing uncovered floating boat dock, three pilings, and ramp not previously authorized by the Commission ([Item C01, April 26, 2013](#)). The lease expired on April 25, 2023.

The Applicant is now applying for a General Lease – Recreational Use, for the use of the boat dock and appurtenant facilities. The subject facilities are privately owned and maintained by the Applicant. The boat dock, two pilings, and ramp are used for 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 existing pilings have been under lease for several years. Two of the existing pilings will be utilized by the boat dock, while the other remaining existing piling will be left in place and unattached. The lease requires the submittal of an application for the reuse or removal of the unattached pilings within two years of execution of the lease.

The subject facilities are located directly waterward of the upland property and occupy a relatively small area of the river. The proposed lease will not interfere with navigation and does not substantially interfere with any Public Trust needs at this time or the foreseeable future.

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.

**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 will be located on the Elk 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.

Rising sea levels can lead to more frequent flood inundation in low lying areas and larger tidal events and 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 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 cause damage to the bank protection at a faster rate.

The combination of these projected conditions could increase the likelihood of damage and affect access to the proposed 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 proposed 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. Lowered water levels could also reduce navigability of the channel, thereby increasing hazards and impacting the function and utility of the proposed lease area structures.

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 (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 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 existing boat dock, three pilings, and ramp, and return 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 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.

## **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 Use to the Applicant beginning April 26, 2023, for a term of 10 years, for the use of an existing boat dock, three pilings, and ramp; annual rent in the amount of \$271, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.