

# Staff Report 30

**LESSEE:**

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David Manning Chodos and Mark Chodos

**APPLICANT:**

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Mark Chodos

**PROPOSED ACTION:**

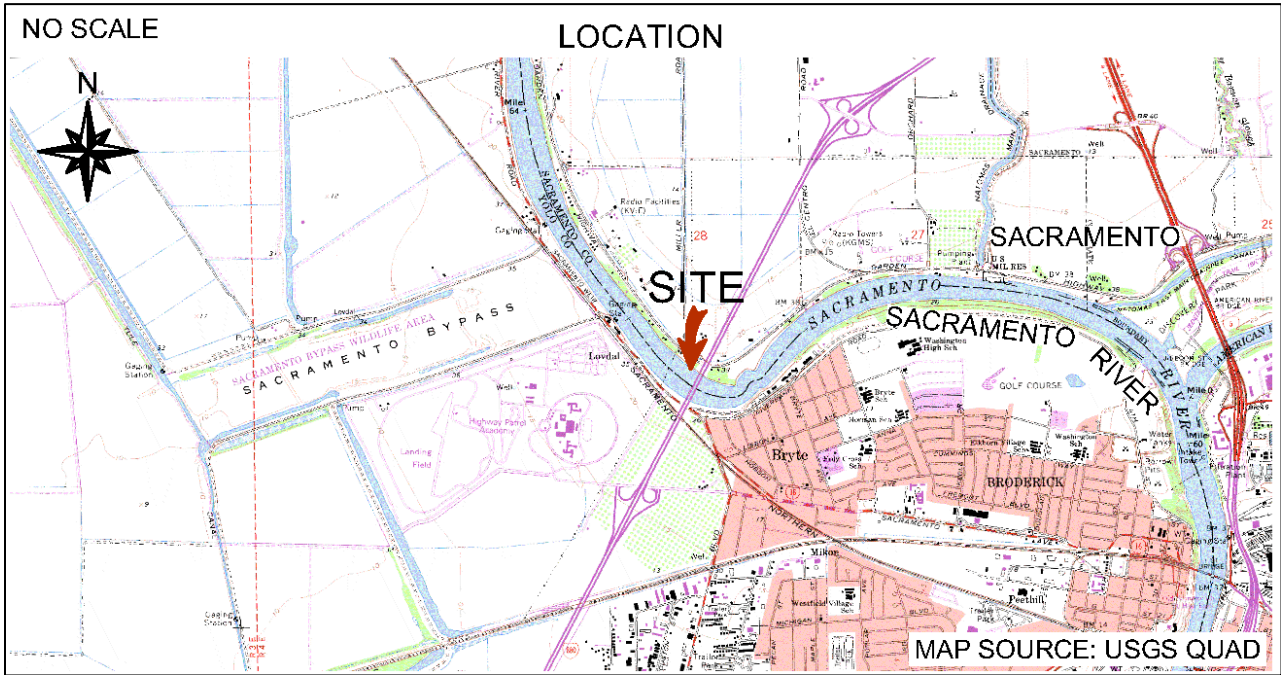
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Termination of a General Lease – Recreational and Protective Structure Use; and Issuance of a General Lease – Recreational and Protective Structure Use

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

Sovereign land in the Sacramento River, adjacent to 2181 Garden Highway, near Sacramento, Sacramento County (as shown in Figure 1).

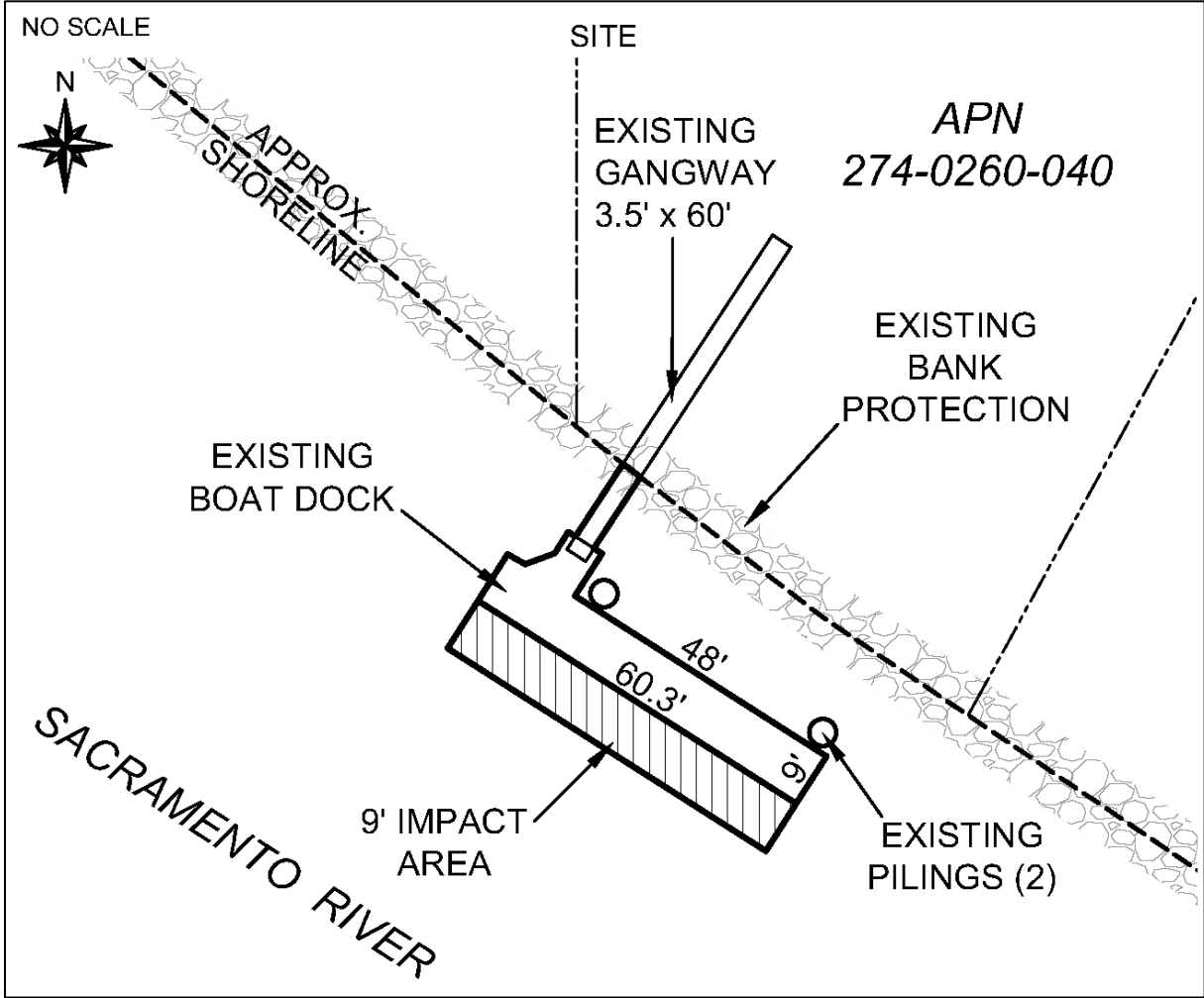
**Figure 1. Location**



**AUTHORIZED USE:**

Use of an existing boat dock, two steel pilings, gangway, and bank protection (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 June 5, 2023.

**CONSIDERATION:**

\$395 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 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:**

This is one of two applications appearing on this meeting agenda submitted by Mark Chodos. The Applicant owns adjacent properties on the Sacramento River, 2181 and 2191 Garden Highway. This staff report relates to previously authorized improvements adjacent to 2181 Garden Highway.

On October 14, 2014, the Commission authorized a General Lease – Recreational and Protective Structure Use to David Manning Chodos and Mark Chodos for the use of an existing boat dock, steel dolphin, two steel pilings, gangway, and bank protection not previously authorized by the Commission ([Item 9, October 14, 2014](#)). That lease will expire on October 13, 2024.

On August 2, 2021, ownership interest in the upland parcels located at 2181 Garden Highway transferred from David Manning Chodos and Mark Chodos to Mark Chodos. The Lessee did not notify the Commission or request an assignment. However, the Applicant, as one of the prior Lessees, otherwise fulfilled all lease obligations.

During the prior lease term, the Applicant removed half of the authorized dock associated with 2181 Garden Highway and installed it at the neighboring lot (2191 Garden Highway). The Commission will consider lease application (A3720) under a separate staff report at the June 5, 2023 meeting for the improvements located adjacent to 2191 Garden Highway.

Because David Manning Chodos is not available to sign a lease quitclaim deed, staff recommends the termination of Lease 9152, a General Lease – Recreational and Protective Structure Use; and the authorization of a General Lease – Recreational and Protective Structure Use, for the use of the existing boat dock, two steel pilings, gangway, and bank protection.

Staff recommends the Commission terminate the lease, effective June 4, 2023. The proposed lease is recommended to start June 5, 2023, the date of the Commission meeting.

The subject improvements are privately owned and maintained and facilitate recreational boating. The existing uncovered floating boat dock, two steel pilings, and gangway, 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).

The bank protection will protect the upland property and maintain and improve the integrity of the Sacramento River, which will help protect the Public Trust resources for recreational and navigational use by the public. The facilities are located directly adjacent to the upland property and occupy a relatively small area of the river.

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 subject 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**

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, and this risk of flood exposure is likely to increase with time. 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. 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 floating 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 they may require more frequent maintenance or replacement to ensure continued function during and after storm seasons and to avoid dislodgement. The fixed features may need reinforcement and possibly replacement to withstand higher levels of flood exposure and more frequent storm

events. The bank is protected with riprap but is also heavily vegetated, 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. However, an alternative bank protection strategy, such as bank restoration, may be required in the future to protect the anchoring points of the other structures in the lease premise and reduce flood impacts to the upland parcel (not within the lease area).

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 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 boat dock, two steel pilings, gangway, and bank protection, 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. Termination of a lease is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action that will not result in direct or indirect 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 the issuance of the lease is exempt from the requirements of 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 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:**

1. Find that the existing and continuing use of the boat dock, two steel pilings, and gangway 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.
2. Find that the existing and continuing use of the bank protection does not substantially interfere with the trust.
3. Find that termination of the lease and issuance of the proposed lease is in the best interests of the State.

### **AUTHORIZATION:**

1. Authorize termination, effective June 4, 2023, of Lease Number 9152, a General Lease – Recreational and Protective Structure Use, issued to David Manning Chodos and Mark Chodos.
2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning June 5, 2023, for a term of 10 years, for the use of an existing boat dock, two steel pilings, gangway, and bank protection; annual

rent in the amount of \$395, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.