

Staff Report 31

APPLICANT:

Mark Chodos

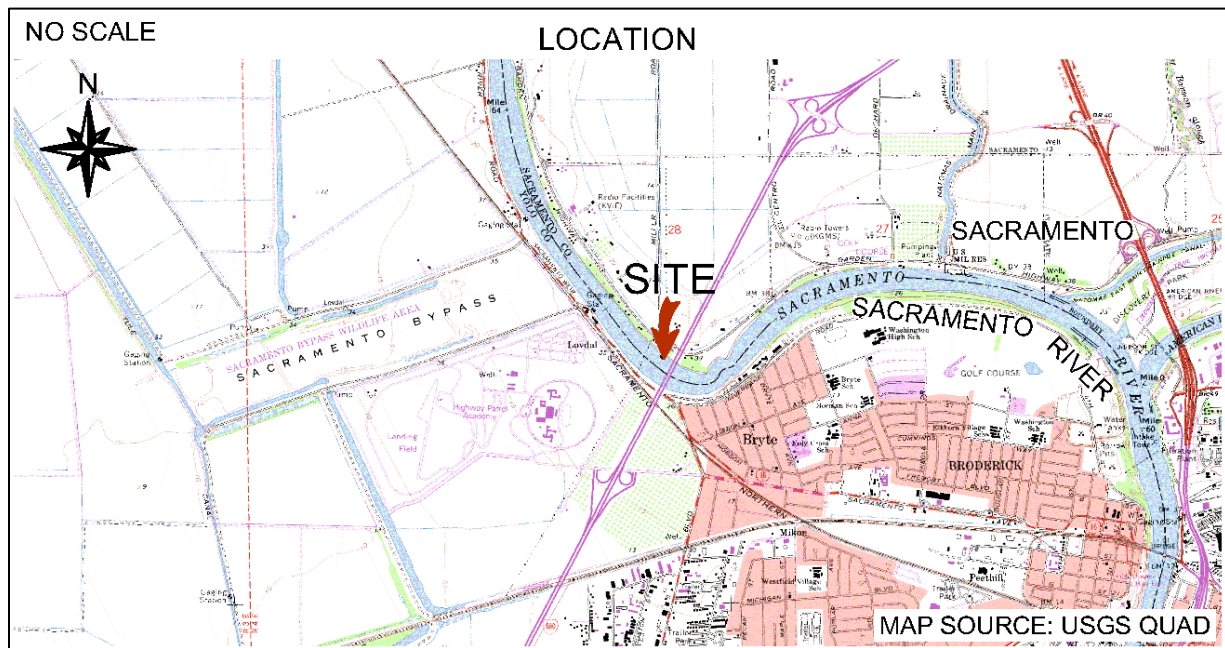
PROPOSED ACTION:

Issuance of a General Lease – Recreational and Protective Structure Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Sacramento River, adjacent to 2191 Garden Highway, near Sacramento, Sacramento County (as shown in Figure 1).

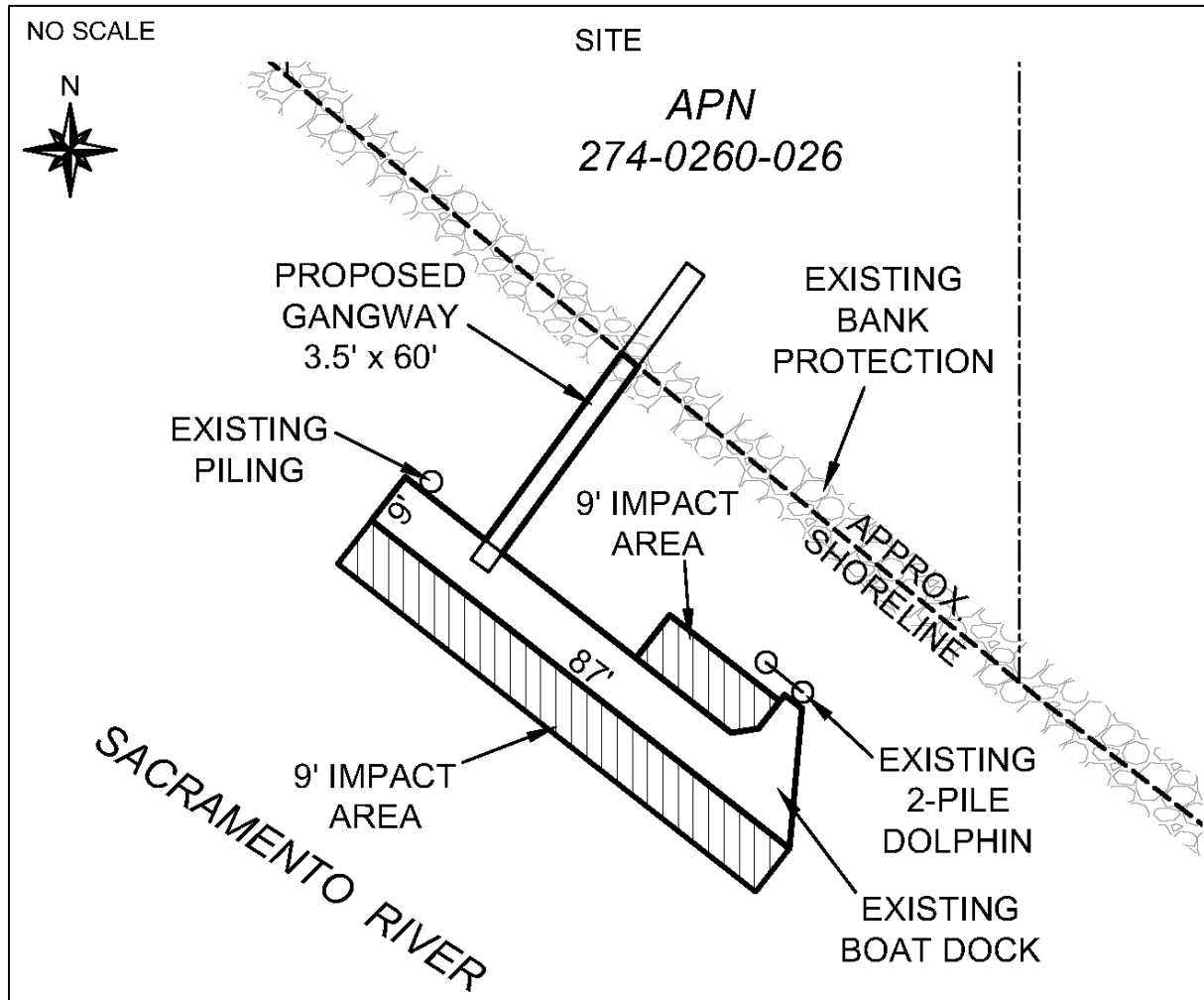
Figure 1. Location



AUTHORIZED USE:

Use of an existing two-pile steel dolphin previously authorized by the Commission; and a boat dock, one steel piling, gangway, personal watercraft float, and bank protection not previously authorized by the Commission (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:

\$557 per year, with an annual Consumer Price Index adjustment, and \$2,083 to compensate for the unauthorized occupation of state sovereign land for the period prior to June 5, 2023.

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, 6503.5, and 6505.5; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On June 21, 2022, an 85-foot vessel known as the "All-American" burned at an unauthorized boat dock in the Sacramento River adjacent to 2191 Garden Highway. After regional fire crews extinguished the fire, State and Federal agencies worked to contain and remove the remaining hazardous waste and debris. Mark Chodos, owned the dock where the vessel burnt. The unauthorized boat dock had existed adjacent to 2191 Garden Highway for an unknown period, but the Applicant had not notified staff of its existence.

Chodos drove the vessel "All-American" to Sacramento and tied it up to his dock before the vessel burnt but did not claim ownership of the vessel. On August 23, 2022, the Commission authorized the emergency removal of the hazardous marine debris remaining of the vessel "All-American" from the Sacramento River ([Item 44, August 23, 2022](#)). During the removal activity, the previously existing unauthorized dock was also removed as part of the debris.

After the fire and subsequent debris removal, Chodos placed a new boat dock in approximately the same footprint where the destroyed boat dock had been located adjacent to 2191 Garden Highway.

This new boat dock was created from approximately half of Chodos' existing boat dock which was previously authorized by the Commission on October 14, 2014, under Lease 9152 ([Item 9, October 14, 2014](#)) and located adjacent to 2181 Garden Highway. Chodos left the other half of that previously authorized floating boat dock in place.

The boat dock located adjacent to 2191 Garden Highway is secured to an existing two-pile dolphin previously authorized under Lease 9152. The reduced length of the existing boat dock adjacent to 2181 Garden Highway made the two-pile steel

dolphin too far away to be used for securing that dock. The dolphin is located in between and adjacent to 2181 and 2191 Garden Highway, but no longer serves to secure the boat dock at 2181 Garden Highway. Staff proposes the removal of the two-pile dolphin from Lease 9152 under a separate Commission action during the June 5, 2023 meeting.

The Applicant is applying for a General Lease – Recreational and Protective Structure Use, for the use of an existing two-pile dolphin previously authorized by the Commission; and an existing boat dock, one steel piling, gangway, personal watercraft float, and bank protection not previously authorized by the Commission. The current gangway is temporary and will be replaced with a prefabricated steel gangway of the same dimensions as shown in Figure 2. The proposed lease is recommended to start June 5, 2023, the date of the Commission meeting.

The proposed lease for this application requires the Applicant to pay \$2,083 in compensation for the unauthorized occupation of State land for the period, through June 4, 2023, and to apply the lease provisions regarding indemnity during the period of the Applicant's unauthorized occupation of State-owned lands prior to June 5, 2023.

The subject improvements are privately owned and maintained and facilitate recreational boating. The existing boat dock, one steel piling, gangway, two-pile steel dolphin, and personal watercraft float 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, personal watercraft float, 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; is consistent with the Public Trust Doctrine; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

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, piling, gangway, two-pile dolphin, and personal watercraft lift, 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 application is one of two applications appearing on this agenda submitted by Mark Chodos. The Applicant owns adjacent properties on the Sacramento River, 2181 and 2191 Garden Highway.
3. 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.
4. **Existing Two-Pile Dolphin, Dock, Piling, Watercraft Float, and Bank Protection:** 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).
5. **Proposed Gangway:** Staff recommends that the Commission find that the activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 2, Replacement or Reconstruction; California Code of Regulations, title 2, section 2905, subdivision (b).

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:

It is recommended that the Commission:

CEQA FINDING:

Existing Two-Pile Dolphin, Dock, Piling, Watercraft Float, and Bank Protection: 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).

Proposed Gangway: 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 2, Replacement or Reconstruction; California Code of Regulations, title 2, section 2905, subdivision (b).

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 lease; is consistent with the 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 \$2,083 for the unauthorized occupation of state sovereign land during the period prior to June 5, 2023.
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, steel piling, gangway, personal watercraft float, and bank protection not previously authorized by the Commission; and a two-pile dolphin previously authorized by the Commission; annual rent in the amount of \$557, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.