

# Staff Report 53

**LESSEE/ASSIGNOR:**

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Vicki A. Pfingst, as Trustee of the Vicki A. Pfingst Trust, U.D.T., dated March 3, 1998

**APPLICANT/ASSIGNEE:**

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Larry Bracco

**PROPOSED ACTION:**

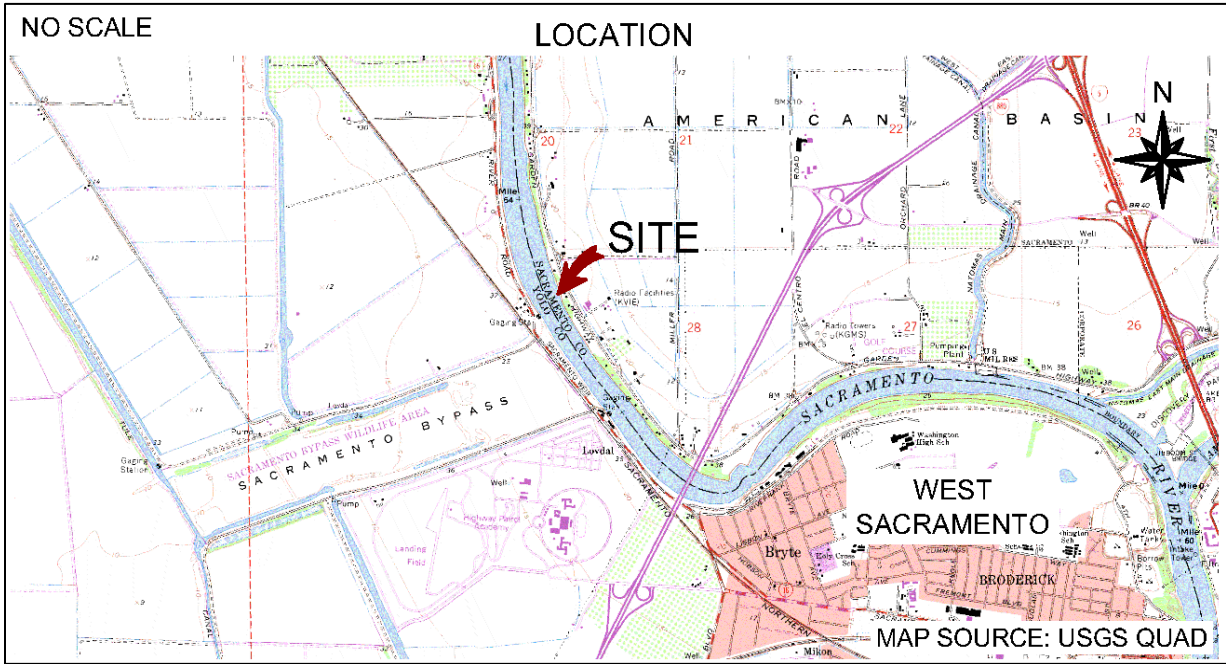
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Assignment and Amendment of a General Lease – Recreational and Protective Structure Use

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

Sovereign land located in the Sacramento River, adjacent to 2521 Garden Highway, near Sacramento, Sacramento County (as shown in Figure 1).

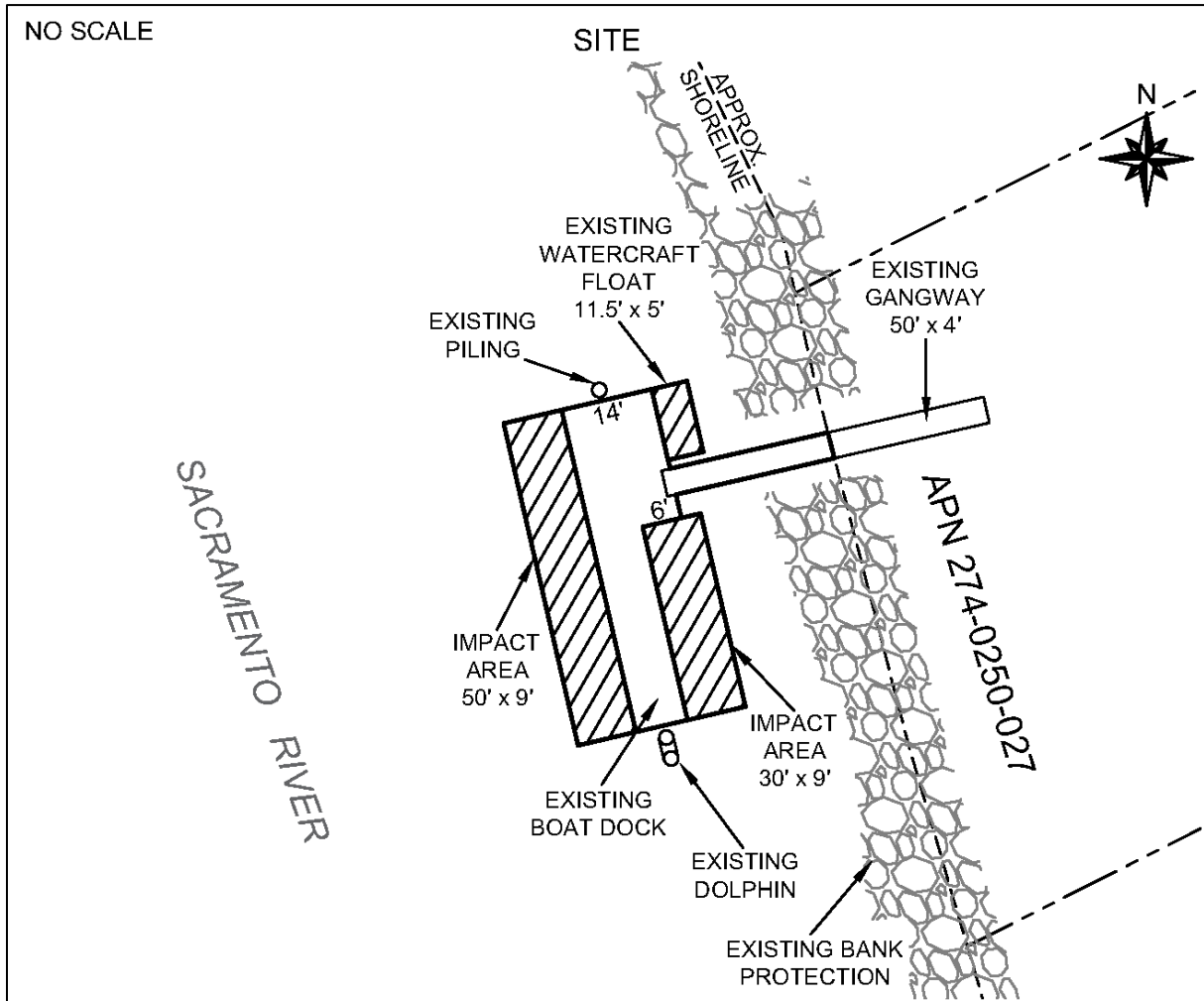
**Figure 1. Location**



**AUTHORIZED USE:**

Use of an existing boat dock, one piling, gangway, dolphin, 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 24, 2018

**CONSIDERATION:**

**Boat dock, one piling, gangway, and dolphin:** \$219 per year, with an annual Consumer Price Index adjustment.

**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.

**PROPOSED AMENDMENT:**

1. Section 1, CONSIDERATION, revise the annual rent from \$219, with an annual Consumer Price Index adjustment, to \$430, with an annual Consumer Price Index adjustment, effective December 6, 2021.
2. Section 1, AUTHORIZED IMPROVEMENTS, is amended to include: Floating boat dock, one piling, gangway, dolphin, and bank protection previously authorized by the Commission; and an existing watercraft float not previously authorized by the Commission.
3. Replace the existing Lease Exhibit A, Land Description, and Exhibit B, Site and Location Map (for reference purposes only).

All other terms and conditions of the lease shall remain in effect without amendment.

**STAFF ANALYSIS AND RECOMMENDATION:**

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**AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, 6503.5, 6321, 6321.2, and 6505.5; California Code of regulations, title 2, sections 2000 and 2003.

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

On February 4, 2019, the Commission authorized a General Lease - Recreational and Protective Structure Use to Vicki A. Pfingst, as Trustee of the Vicki A. Pfingst Trust, U.D.T., dated March 3, 1998, for the use and maintenance of an existing boat dock, one piling, gangway, dolphin, and bank protection in the Sacramento River, located adjacent to 2521 Garden Highway, near Sacramento, Sacramento County ([Item 44, February 4, 2019](#)).

On December 6, 2021, ownership interest in the upland parcel was transferred to Larry Bracco. The Applicant, in coordination with the Lessee, is now applying for an amendment and assignment of Lease Number 4939, for the use of the existing boat dock, one piling, gangway, dolphin, and bank protection, previously authorized by the Commission, and use of an existing watercraft float not previously authorized by the Commission.

According to the Lessee, the existing watercraft float was secured to the existing dock prior to the ownership change. Staff also recommend adding impact area alongside the dock for the increased usage observed through aerial imagery. The effective date of the assignment will be December 6, 2021, to coincide with the Applicant's acquisition of the upland property.

Staff recommends the lease be amended to include revision of the annual rent from \$219, with an annual Consumer Price Index adjustment to \$430, with an annual Consumer Price Index adjustment, effective December 6, 2021, the date of ownership. Based on the Commission's accounting records, the Lessee paid rent for the authorized improvements through June 23, 2023.

The Applicant is qualified to hold the lease, and staff has not discovered any information that would provide a basis for withholding the amendment and assignment. Thus, staff believes that amending and assigning the lease is in the State's best interest to ensure that a capable lessee is committed to managing the improvements and fulfilling the lease obligations. The proposed amendment and assignment do not alienate the State's fee simple interest or permanently impair public rights.

**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**

<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.

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.

The lease is a 10-year General Lease – Recreational and Protective Structure Use that began on June 24, 2018, and may be subject to the climate change effects of the projected sea level rise scenario provided above. Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation or dislodgement. Further climate change impact analyses on the leased facilities will be assessed at the time the lease is up for renewal in 2028 and would be based on projected sea level rise scenarios at that time.

## **CONCLUSION:**

For all the reasons above, staff believes approval of this lease amendment and assignment will not substantially interfere with Public Trust needs at this location, at this time, nor for the remaining term of the 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 the application for an amendment and assignment 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 lease would not be assigned or amended.
2. The Applicant/Assignee meets the legal qualifications to hold the lease and staff has not discovered any information that would provide a basis for withholding the assignment. The Assignor will be released from any further performance of the lease, and upon expiration or prior termination of the lease, neither the assignor nor the assignee has any right to a new lease or to renewal of any previous lease.
3. This action is consistent with the "Meeting Evolving Public Trust Needs" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
4. Assignment of the lease is not a project as defined by the California Environmental Quality Act because it is an administrative action 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.

5. **Existing Watercraft Float:** Staff recommends that the Commission find that this activity 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, 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:**

**Existing Watercraft Float:** 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 assignment and amendment of the lease will not substantially interfere with Public Trust needs and values at this location, at this time, and for the remaining term of the lease; and is in the best interests of the State.

**AUTHORIZATION:**

1. Authorize the assignment of Lease Number 4939, a General Lease – Recreational and Protective Structure Use of sovereign land, from Vicki A. Pfingst, as Trustee of the Vicki A. Pfingst Trust, U.D.T., dated March 3, 1998, to Larry Bracco, effective December 6, 2021, to coincide with the Applicant’s acquisition of the upland property.
2. Authorize the amendment to include Section 1, CONSIDERATION, to revise the annual rent from \$219, with an annual Consumer Price Index adjustment, to \$430, with an annual Consumer Price Index adjustment, effective December 6, 2021, the date ownership transferred.
3. Authorize the amendment to include Section 1, AUTHORIZED IMPROVEMENTS, which is amended to include: Boat dock, one piling, gangway, dolphin, and bank protection previously authorized by the Commission; and an existing watercraft float not previously authorized by the Commission.