

Staff Report 26

APPLICANT:

Frank M. Carson, Jr.

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 6057 Garden Highway, near Sacramento, Sacramento County (as shown in Figure 1).

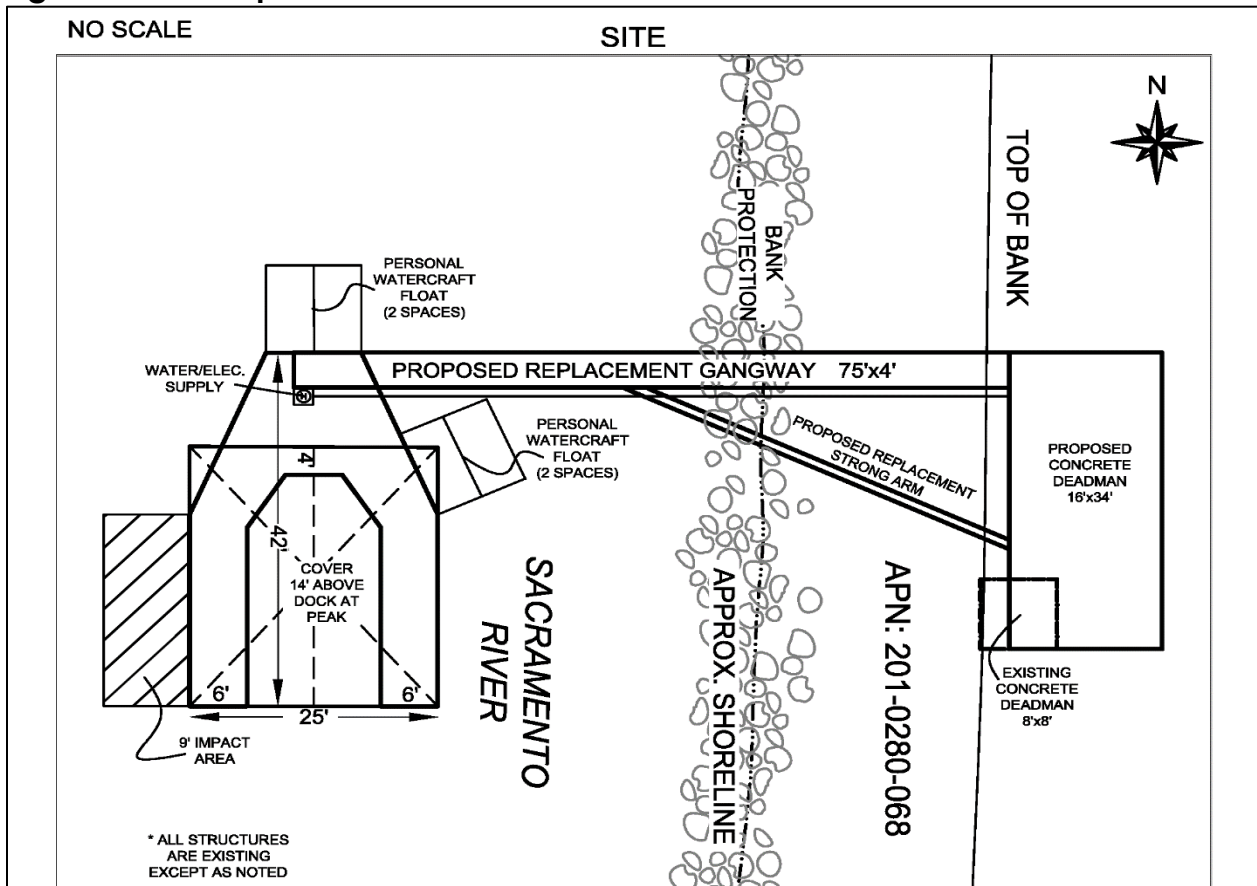
Figure 1. Location



AUTHORIZED USE:

Use of existing bank protection previously authorized by the Commission; and reconstruction of an existing boat dock with gangway, utilities, and strong arm, removal of an existing deck and two pilings, expansion of an existing deadman with installation of two pilings, and existing two personal watercraft floats (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 August 17, 2023.

CONSIDERATION:

\$419 per year, with an annual Consumer Price Index adjustment; and \$131 for unauthorized occupation of State land for the period prior to August 17, 2023.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Within 60 days of completing the construction of the authorized improvements, Lessee will provide Lessor with photographs and a set of “as-built” plans that will show where the improvements have been placed. Lessor shall then replace Exhibit A, Land Description, and Exhibit B, Site and Location Map, to the Lease as necessary to accurately reflect the final location of the authorized improvements. Once approved by the Lessor's Executive Officer or designee, and Lessee, the revised Exhibits shall replace the Exhibits incorporated in the Lease at the time of Lease execution. The replaced Exhibits shall be incorporated in the Lease as though fully set forth therein.
- Lessee agrees to obtain permits from all regulatory agencies for the proposed construction activities.
- 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, and 6503.5; California Code of Regulations, title 2, sections 2000, subdivision (b).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On April 26, 2013, the Commission authorized a General Lease – Recreational and Protective Structure Use to Demetrius Barmettler and Paula Barmettler for an existing covered boat dock, two support pilings, strong arm, gangway, electric and water utility outlet, portion of a deck, and bank protection ([Item 9, April 27, 2013](#)). On August 17, 2017, the Commission authorized an assignment of the lease to the Applicant ([Item 32, August 17, 2017](#)). The lease expired on April 25, 2023. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use for the use of the existing bank protection previously authorized by the Commission; and reconstruction of an existing boat dock with gangway, utilities, and strong arm, removal of an existing deck and two pilings, expansion of an existing deadman with installation of two pilings, and existing two personal watercraft floats (each accommodating two personal watercraft).

Staff recommends starting the new lease on August 17, 2023, the day of the Commission meeting. The Applicant will pay \$131 for unauthorized occupation of State lands by the subject bank protection and the existing dock facilities for the period of April 26, 2023 to August 17, 2023. Additionally, the proposed lease will require the Applicant to indemnify the State for the entire period of unauthorized occupation, ensuring the State is protected.

The Applicant's proposes removing the deck and two pilings, expanding the existing deadman with installation of two new pilings, reconstructing the boat dock, and existing two personal watercraft floats. A bridge and spiral staircase located on the upland property outside the Commission's jurisdiction will also be removed. The existing gangway will be removed with a crane and replaced with a newly constructed gangway that will be attached to a strong arm on the expanded deadman. The new dock will be floated upriver to be attached to the new gangway. The placement of additional riprap is not proposed as a part of this project. Work will be completed prior to November 1, 2026 to comply with the approved in-water work window. Duration of construction should last three to five weeks.

The Applicant owns the upland parcel adjoining the lease premises and the existing docking facilities, deck, and bank protection have been under lease for many years. Both the existing and proposed facilities will be used for the docking and mooring of boats 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 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 the boat dock and appurtenant facilities 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 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 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 Francisco¹

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: ¹ Projections are with respect to a 1991 to 2009 baseline.

This effect could increase 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 floating boat docks, personal watercraft floats, and gangway will be adaptable to higher 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 of the facilities. The pilings, deadman, and existing bank protection are fixed and therefore more vulnerable to sea level rise and more frequent flood events. These structures may need additional fortification or repair and maintenance to ensure they do not

become dislodged or degraded, as they could pose risks to public safety and navigation.

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 located 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:

1. Approval or denial of an 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. If the Commission denies the application, the Applicant may not construct the proposed facilities. 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. **Existing Bank Protection and Dock Removal:** 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 14, section 15301.

New Dock and Appurtenant Structures: 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 3, New Construction or Conversion of Small Structures; California Code of Regulations, title 14, section 15303.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300.

APPROVAL OBTAINED:

Central Valley Regional Water Quality Control Board

APPROVALS REQUIRED:

U.S. Army Corps of Engineers
California Department of Fish and Wildlife
Central Valley Flood Protection Board

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Existing Bank Protection and Dock Removal: Find that this 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 14, section 15301.

New Dock and Appurtenant Structures: Find that this activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 3, New Construction or Conversion of Small Structures; California Code of Regulations, title 14, section 15303.

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:

1. Authorize acceptance of compensation from the Applicant in the amount of \$131 for unauthorized occupation of State land for the period prior to August 17, 2023.

2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning August 17, 2023 , for a term of 10 years, for the use of existing bank protection previously authorized by the Commission; and reconstruction of an existing boat dock with gangway, utilities, and strong arm, removal of an existing deck and two pilings, expansion of an existing deadman with installation of two pilings, and existing two personal watercraft floats (each accommodating two personal watercraft); annual rent in the amount of \$419, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.
3. Authorize the Executive Officer or designee to replace Exhibits in the lease upon submission, review, and approval of as-built plans detailing the final location of the improvements following construction.