

Staff Report 41

APPLICANT:

Brennan Michael Rose, Trustee of the Brennan Michael Rose Irrevocable Family Trust; and Ragen Rachelle Ortland, Trustee of the Ragen Rachelle Ortland Irrevocable Family Trust

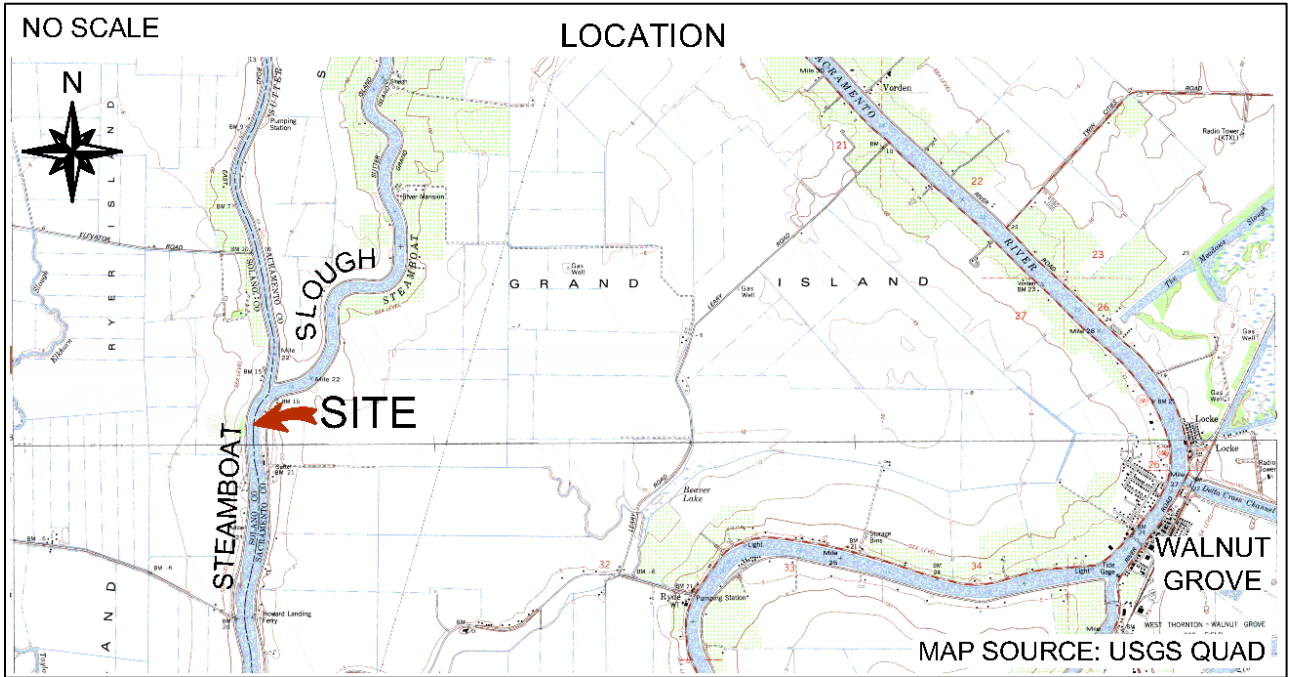
PROPOSED ACTION:

Issuance of a General Lease – Recreational and Protective Structure Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Steamboat Slough, adjacent to 13914 Grand Island Road, Walnut Grove, Sacramento County (as shown in Figure 1).

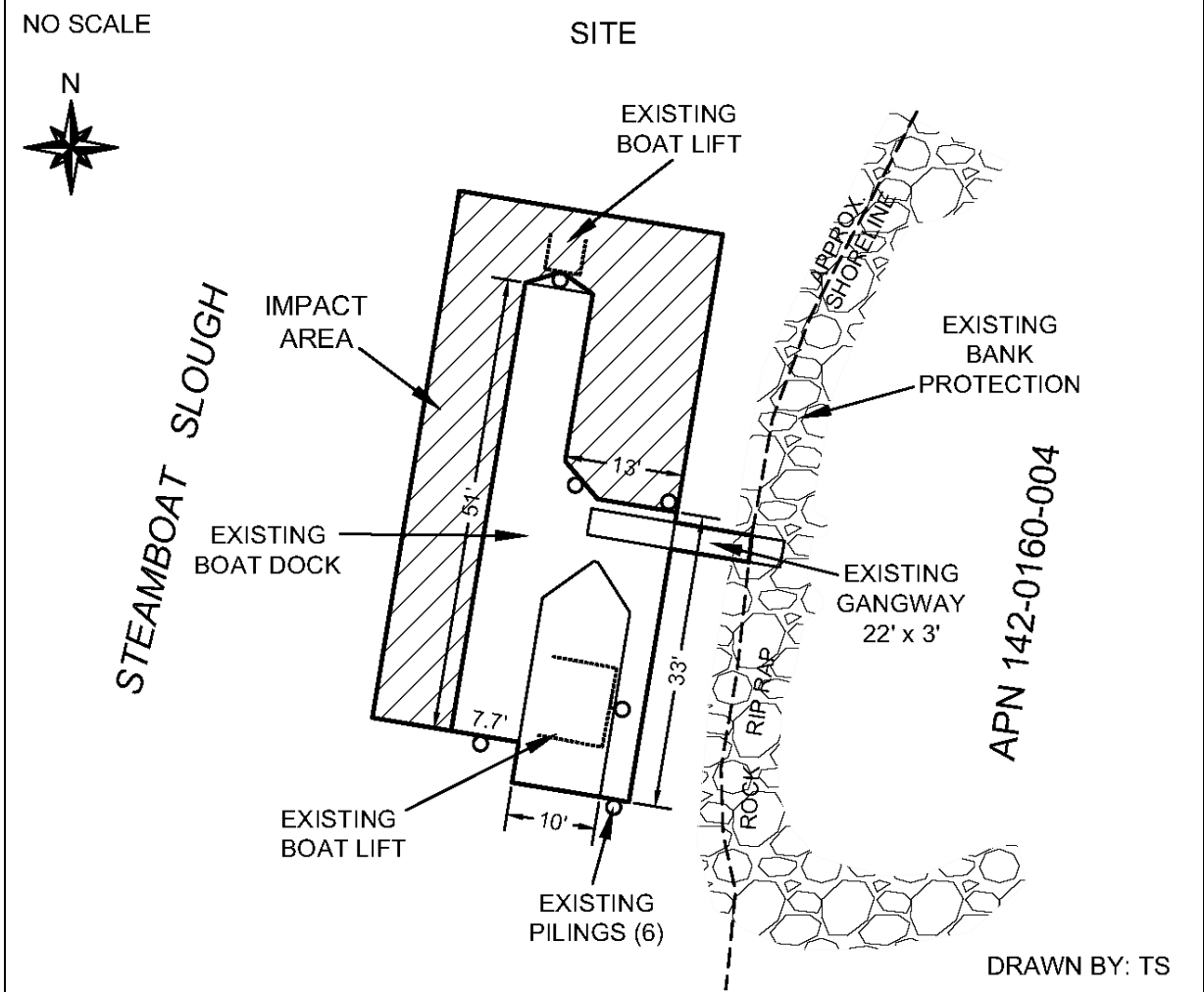
Figure 1. Location



AUTHORIZED USE:

Use of an existing boat dock, gangway, two boat lifts, six pilings, 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 21, 2023.

CONSIDERATION:

\$544 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 the provisions of Section 3, Paragraph 8 shall also extend to the period of Lessee's unauthorized occupation of state-owned lands, from February 11, 2021 through June 20, 2023.

STAFF ANALYSIS AND RECOMMENDATION:

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 a General Lease – Recreational and Protective Structure Use to Michael T. Rose and Laurel K. Rose for the use of an existing uncovered floating boat dock with two boat lifts, a gangway, six pilings, and bank protection previously authorized by the Commission and one existing boat lift not previously authorized by the Commission, in Steamboat Slough, adjacent to 13914 Grand Island Road, Walnut Grove, Sacramento County ([Item 32, April 26, 2013](#)). This lease expired on June 20, 2023.

On February 11, 2021, ownership interest in the upland parcel was transferred to Brennan Michael Rose, Trustee of the Brennan Michael Rose Irrevocable Family Trust; and Ragen Rachelle Ortland, Trustee of the Ragen Rachelle Ortland Irrevocable Family Trust. Commission staff was not notified of this transfer of ownership, nor was an assignment of lease sought.

Now the Applicant is applying for a General Lease – Recreational and Protective Structure Use for the use of the existing boat dock, gangway, two boat lifts, six pilings, and bank protection in Steamboat Slough, adjacent to 13914 Grand Island Road, Walnut Grove, Sacramento County. Staff recommends issuance of a General Lease – Recreational and Protective Structure Use to the Applicant, to take effect on June 21, 2023.

The Applicant has occupied State land without authorization since taking ownership of the adjacent upland property on February 11, 2021. However,

Commission records indicate that the previous Lessee has continued to pay annual rent for the lease since this date. Therefore, the State has already been compensated for the full period of unauthorized occupation. As such, the Applicant will not be charged compensation for the unauthorized occupation of State land. Nevertheless, the proposed lease will still require the Applicant to indemnify the State for the entire period of unauthorized occupation, from February 11, 2021 through June 20, 2023, ensuring the State is protected.

Additionally, it should be noted that the previous lease authorized a third boat lift on the lease premises; however, recent photographs indicate that this boat lift has since been removed and there are currently only two boat lifts present. The proposed lease will only be authorizing the use of the two boat lifts currently present on the lease premises. Should the Applicant choose to add another boat lift, or any other improvements, in the future then they will need to apply for an amendment of the lease to authorize the additional improvements.

The Applicant owns the uplands adjoining the lease premises, the subject facilities are located directly waterward of the upland property, and these facilities occupy a relatively small area of the slough. The boat dock, gangway, boat lifts, and pilings on the lease premises facilitate the docking and mooring of recreational boats. Recreational boating is water-dependent and 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 lands (Pub. Resources Code, § 6503.5).

The existing bank protection on the lease premises serves to stabilize the bank and support the integrity of the slough and the upland property. Loss or degradation of this structure could result in property damage and adverse impacts to Public Trust resources in the lease area and the surrounding waterway. As such, the bank protection provides a benefit to the public and does not negatively impact the Public Trust uses in this location.

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 are located on Steamboat 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 lease 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 Steamboat Slough’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. For example, the pilings appear to be at a sufficient height to withstand projected changes in water levels, but additional fortification may be needed, especially if pilings anchor any electric utility outlets needed for the boat lifts; damage to these pilings could lead to a public safety hazard. While the exposed bank protection provides stability, it may not reduce the amount of erosion and scour pressure experienced during future events and could, therefore, remain at risk of accelerated deterioration from currents and floods. The existing protective structure could be vulnerable to future events, and an alternative bank protection strategy, such as bank restoration, may be required 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 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 believe approval of this lease will not substantially interfere with Public Trust needs at this location, at this time, nor for the remaining term of the lease; 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, gangway, two boat lifts, six pilings, and bank protection and return the lease 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 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, 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:

Find that 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, for a limited period, continuing use of the existing boat dock, gangway, two boat lifts, and six pilings does not substantially interfere with Public Trust needs and values at this location and is consistent with the common law Public Trust Doctrine; and
2. Find that the existing and, for a limited period, continuing use of the existing bank protection is not inconsistent with the Public Trust Doctrine and does not substantially interfere with the trust; and
3. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning June 21, 2023, for a term of 10 years, for the use of an existing boat dock, gangway, two boat lifts, six pilings, and bank protection; annual rent in the amount of \$544, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.