

Staff Report 43

APPLICANT:

John O. Wyatt, Trustee of the John O. Wyatt, Jr. Trust, Initially Established on August 14, 2001

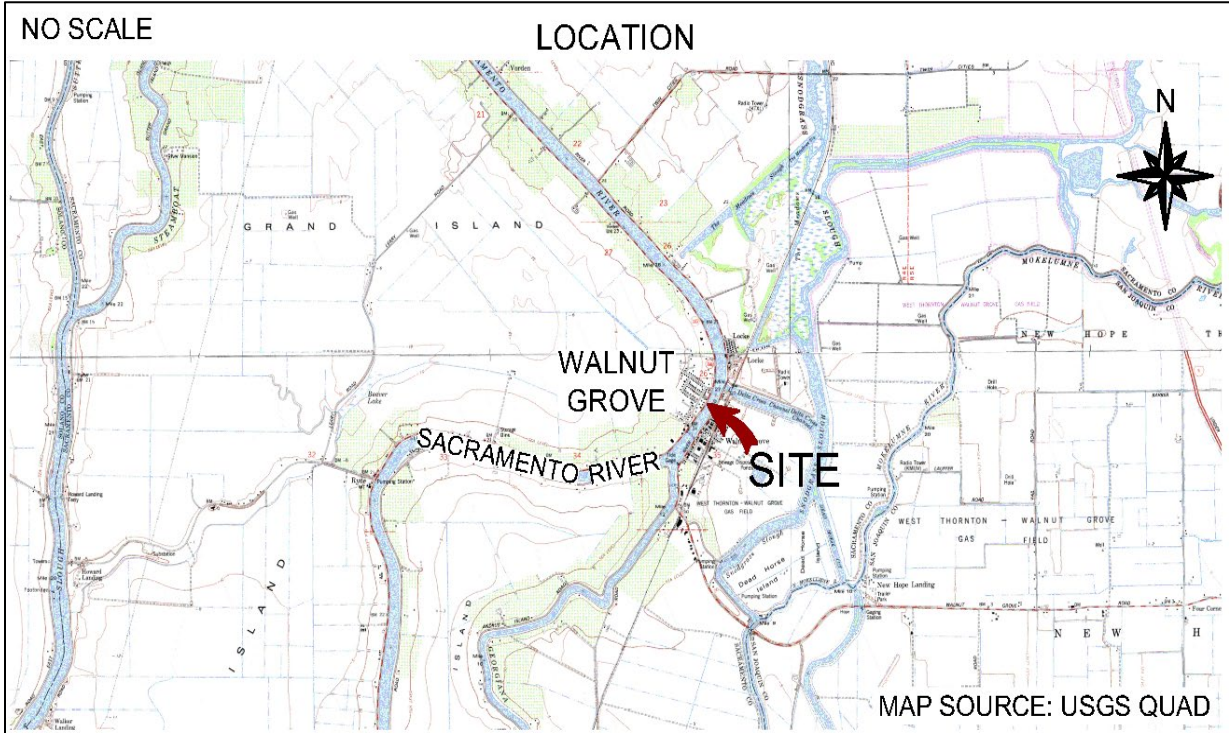
PROPOSED ACTION:

Issuance of a General Lease – Recreational Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Sacramento River, adjacent to 14060 State Highway 160, near Walnut Grove, Sacramento County (as shown in Figure 1).

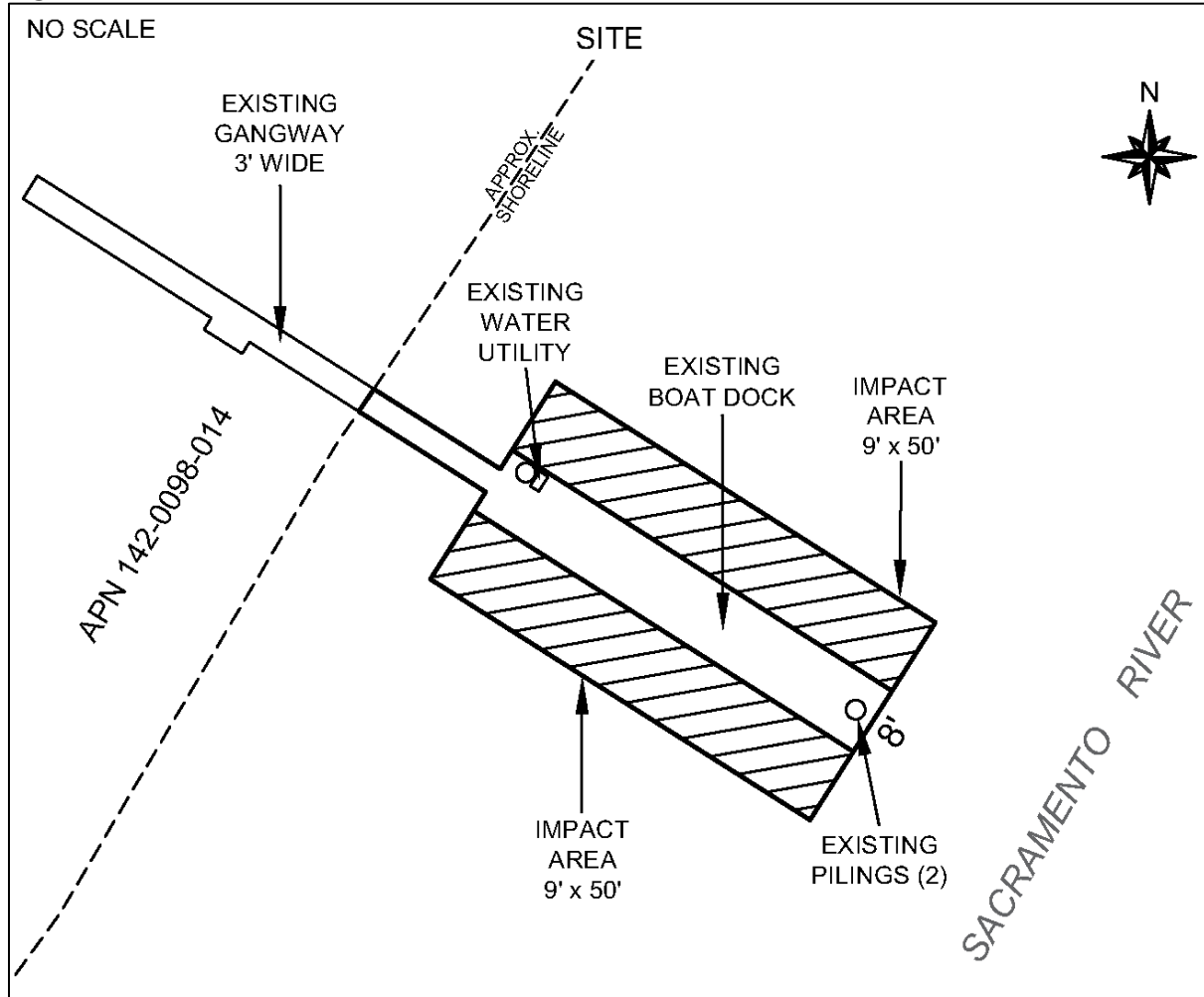
Figure 1. Location



AUTHORIZED USE:

Use of an existing boat dock, two pilings, water utility, and gangway (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:

\$289 per year, with an annual Consumer Price Index adjustment; and \$156 for the unauthorized occupation of state land from January 31, 2023 through August 16, 2023.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee acknowledges that the hazards associated with climate change 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, 6501.1, 6503, and 6505.5; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On February 22, 2013, the Commission authorized a General Lease – Recreational Use to John O. Wyatt, Trustee of the John O. Wyatt, Jr. Trust Initially Established on August 14, 2001, for the use of a boat dock, two pilings, water utility, and gangway in the Sacramento River (River) adjacent to 14060 State Highway 160, near Walnut Grove, Sacramento County ([Item 4, February 22, 2013](#)).

On November 29, 2017, the Commission authorized a revision of rent, as specified in the lease term provided in the lease. This resulted in the modification of annual rent from \$233 to \$290 ([Item 35, November 29, 2017](#)). This lease expired January 30, 2023.

The Applicant is applying for a General Lease – Recreational Use for the use of an existing boat dock, two pilings, water utility, and gangway. Staff recommends issuance of a General Lease – Recreational Use to the Applicant, to take effect on August 17, 2023.

The subject facilities are privately owned and maintained by the Applicant 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 facilities are located directly waterward of the upland property and occupy a relatively small area of the River. The proposed lease will not interfere with navigation and does not substantially interfere with any Public Trust needs at this time or in the foreseeable future.

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 the State land and restore the lease premises to their original condition.

Staff recommends the Commission accept compensation from the applicant in the amount of \$156 for the unauthorized occupation of State land for the existing boat dock, two pilings, water utility, and gangway. The proposed lease will require the Applicant to indemnify the State for the entire period of unauthorized occupation, ensuring the State is protected. The lease provisions regarding indemnity will apply from January 31, 2023, when the prior lease expired, through August 16, 2023, the day before the beginning of the new lease.

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 lease area is located in the Sacramento River in a tidally influenced site vulnerable to flooding at current sea levels and at a higher risk of flood exposure given future projection 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 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. 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 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 uncovered floating boat dock and adjustable 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, including the two pilings and water utility piping, may need reinforcement and possibly replaced to withstand higher levels of flood exposure and more frequent storm events.

The vegetation on the bank (not under lease) provides additional stability and could reduce the amount of erosion and scour pressure experienced during future events because of the vegetation's underground root system. However, the bank remains at risk of accelerated deterioration from currents and floods.

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 in an area that may be subject to the effects of climate change, including sea level rise.

CONCLUSION:

Based on the above information, staff believes 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 proposed lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

For all the reasons above, staff believes the issuance of this lease will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; is consistent with the common law Public Trust Doctrine; and is in the best interest 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 existing boat dock, two pilings, water utility, and part of the gangway 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 "Meeting Evolving Public Trust Needs" and the "Leading Climate Activism" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. 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 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:

It is recommended that the Commission:

CEQA FINDING:

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 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 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 \$156 for the unauthorized occupation of State lands for the period from January 31, 2023 to August 17, 2023.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning August 17, 2023, for a term of 10 years, for the use of an uncovered floating boat dock, two pilings, water utility, and gangway; with annual rent in the amount of \$289, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.