

# Staff Report 31

**LESSEE:**

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Jay Michael Uhalt and Marla M. Uhalt, Co-Trustees of the Jay and Marla Uhalt 1998 Trust

**APPLICANT:**

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Jack Baker II and Cheryl Baker

**PROPOSED ACTION:**

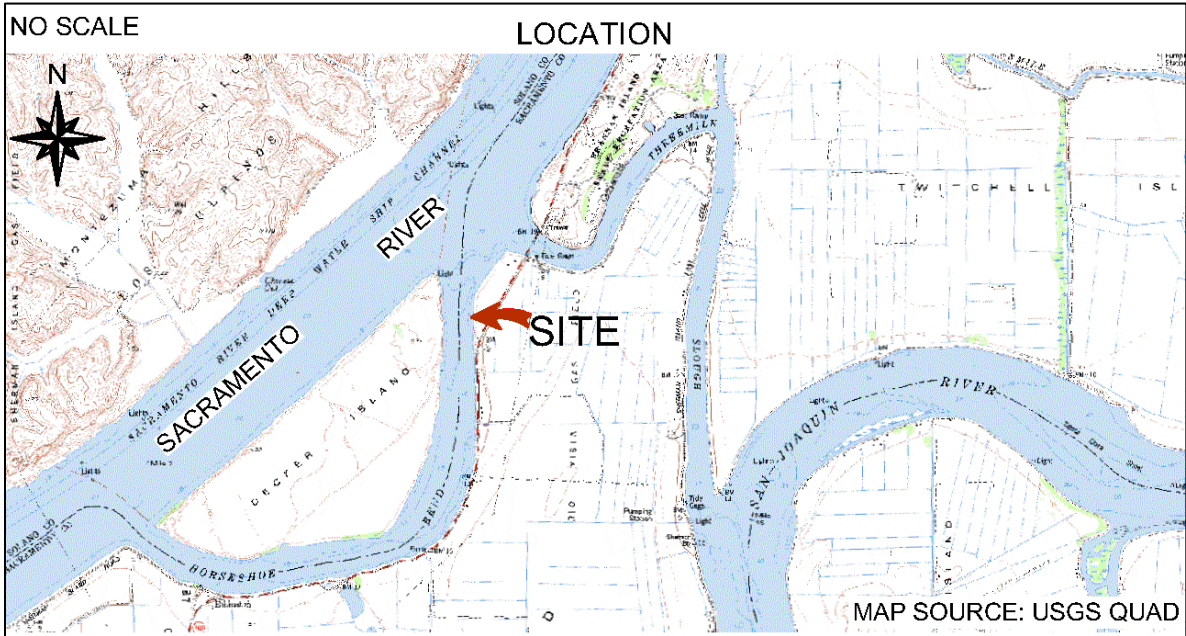
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Termination and Issuance of a General Lease – Recreational Use.

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

Sovereign land in the Sacramento River, adjacent to 18075 State Highway 160, Rio Vista, Sacramento County (as shown in Figure 1).

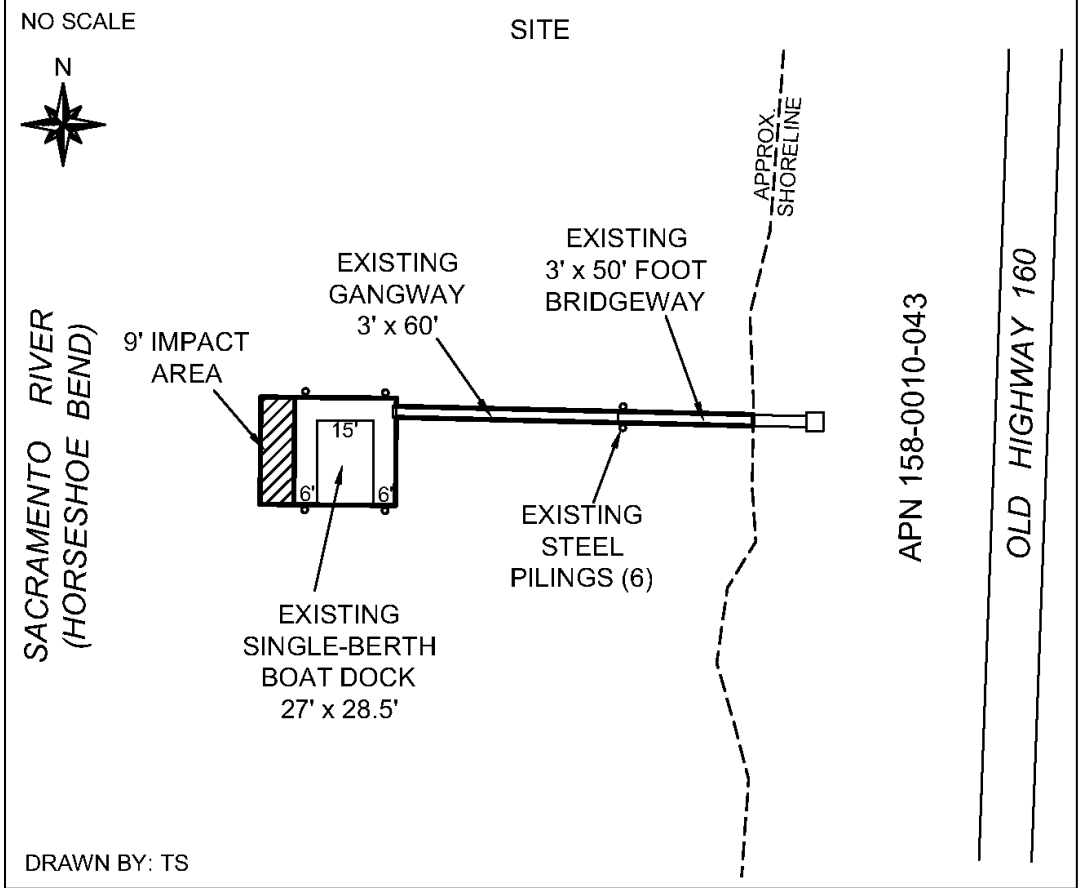
**Figure 1. Location**



**AUTHORIZED USE:**

Use of an existing boat dock, gangway, six steel pilings, and a foot bridgeway with removable railings anchored to a concrete landing (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 December 5, 2023.

**CONSIDERATION:**

\$220 per year, with annual Consumer Price Index adjustment; compensation in the amount of \$473 for the unauthorized use of State land for the period prior to December 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 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 October 8, 2021 through December 5, 2023.

**STAFF ANALYSIS AND RECOMMENDATION:**

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**AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503.5 and 6505.5; California Code of Regulations, title 2, section 2000.

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

On August 19, 2015 the Commission authorized the issuance of a General Lease – Recreational Use to Jay Michael Uhalt and Marla M. Uhalt, Co-Trustees of the Jay and Marla Uhalt 1998 Trust for the use of an existing boat dock, gangway, six steel pilings, and a foot bridgeway with removable railings anchored to a concrete landing ([Item C40, August 19, 2015](#)). This lease expires on July 31, 2025.

On October 8, 2021, ownership interest in the upland property was transferred to the Applicant, Jack Baker II and Cheryl Baker. The Applicant is now applying for a General Lease – Recreational Use for the use of the existing boat dock and appurtenant facilities. Because ownership of the upland property has been transferred since the issuance of the previous lease, staff recommends the termination of the previous lease.

Staff is requesting compensation in the amount of \$473 for the unauthorized use of State land for the period prior to December 5, 2023. Additionally, the proposed lease will require the applicant to indemnify the State for the entire period of unauthorized occupation, from October 8, 2021 through December 4, 2023.

The subject facilities are privately owned and maintained by the Applicant. The boat dock and appurtenant facilities are used for 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 subject 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 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 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 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.

This effect could increase the 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 existing uncovered single-berth 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 of the facilities. The steel pilings and anchored foot bridgeway 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.

The bank (not under lease) is 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, the bank remains at risk of accelerated deterioration from currents and floods and 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 and dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland are in an area that may be subject to the 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, and for the term of the proposed 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 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 and appurtenant facilities, and return 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 "Leading Climate Activism" and "Meeting Evolving Public Trust Needs" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. Termination of the lease is not a project as defined by the California Environmental Quality Act (CEQA) 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, subdivision (b)(5).

4. Staff recommends that the Commission find that the 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 and 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:**

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:**

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 term of the lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

**AUTHORIZATION:**

1. Terminate, effective December 5, 2023, Lease 8626, a General Lease – Recreational Use, issued to Jay Michael Uhalt and Marla M. Uhalt, Co-Trustees of the Jay and Marla Uhalt 1998 Trust.
2. Authorize acceptance of compensation from the Applicant in the amount of \$473 for the unauthorized occupation of State land for the period prior to December 5, 2023.
3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning December 5, 2023, for a term of 10 years, for the use of an existing boat dock, gangway, six steel pilings, and a foot bridgeway with removable railings anchored to a concrete landing; annual rent in the amount of \$220 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.