

Staff Report 57

APPLICANT:

Marilyn A. O'Brien, Trustee of the Marilyn A. O'Brien Trust

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 1715 Garden Highway, Sacramento, Sacramento County (as shown in Figure 1).

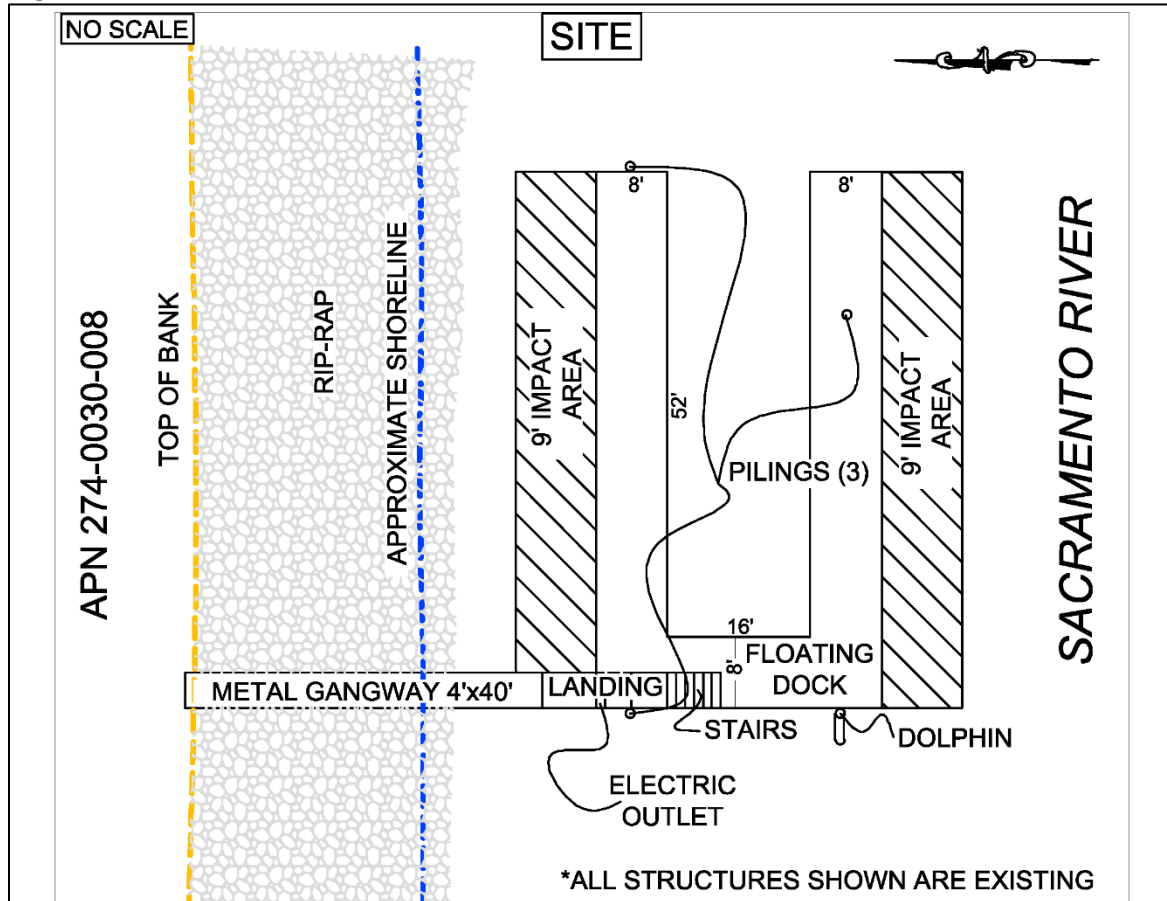
Figure 1. Location



AUTHORIZED USE:

Use of an existing boat dock, three pilings, dolphin, gangway, 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 February 1, 2024.

CONSIDERATION:

\$791 per year, with an annual Consumer Price Index adjustment; and \$265 for unauthorized occupation of State land for the period prior to February 1, 2024.

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 sea level rise 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 be extended to the period of Lessee's unauthorized occupation of State-owned lands from October 1, 2023 through January 31, 2024.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 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 June 21, 2013, the Commission authorized issuance of a General Lease - Recreational and Protective Structure Use to Mark T. O'Brien, Trustee of the Mark O'Brien Family Trust, dated January 27, 2004, and Marilyn A. O'Brien, Trustee of the Marilyn O'Brien Trust, dated February 12, 2004, for the continued use and maintenance of an existing uncovered existing boat dock, three pilings, dolphin, gangway, and bank protection ([Item 24, June 21, 2013](#)). On June 24, 2013, the upland was deeded to Mark T. O'Brien, Trustee of the Mark O'Brien Family Trust as to an undivided 50% interest, and Marilyn A. O'Brien Trust, as to an undivided 50% interest. The property was further transferred on December 1, 2016, when Mark T. O'Brien, Trustee of the Mark O'Brien Family Trust, granted its interests to the Applicant. The lease expired September 30, 2023. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use for the docking facilities and bank protection.

Staff recommends issuance of a new lease beginning February 1, 2024. Therefore, staff recommends the Applicant pay \$265 for the unauthorized occupation of state land for the existing facilities for the period prior to February 1, 2024.

The Applicant owns the upland parcel adjoining the lease premises, and the existing docking facilities and bank protection have been under lease for many years. 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 bank protection protects the upland property and maintains the integrity of the Sacramento River, which will help protect the Public Trust resources for recreational and navigational use by the public. The facilities are located directly adjacent to the upland property and occupy a relatively small area of the river.

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 below.

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 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 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. However, the dolphins and bank protection are fixed and therefore more vulnerable to sea level rise and 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 is covered with riprap and contains scant vegetation, which would not reduce the amount of erosion and scour pressure experienced during future events. As such, the bank remains at risk of accelerated deterioration from currents and floods and the exposed protective structure could be vulnerable to future events. 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 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 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 be required to remove the improvements 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 "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 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:

1. Find that the existing and, for a limited period, continuing use of the boat dock, three pilings, dolphin, and gangway does not substantially interfere with Public Trust needs and values at this location and is consistent with the common law Public Trust Doctrine.
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.
3. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of compensation from the Applicant in the amount of \$265 for unauthorized occupation of State land for the period prior to February 1, 2024.
2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning February 1, 2024, for a term of 10 years, for the use of an existing boat dock, three pilings, dolphin, gangway and bank protection; annual rent in the amount of \$791, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.