

Staff Report 59

APPLICANT:

Key Lease Corporation, Inc. dba Spindriff Marina

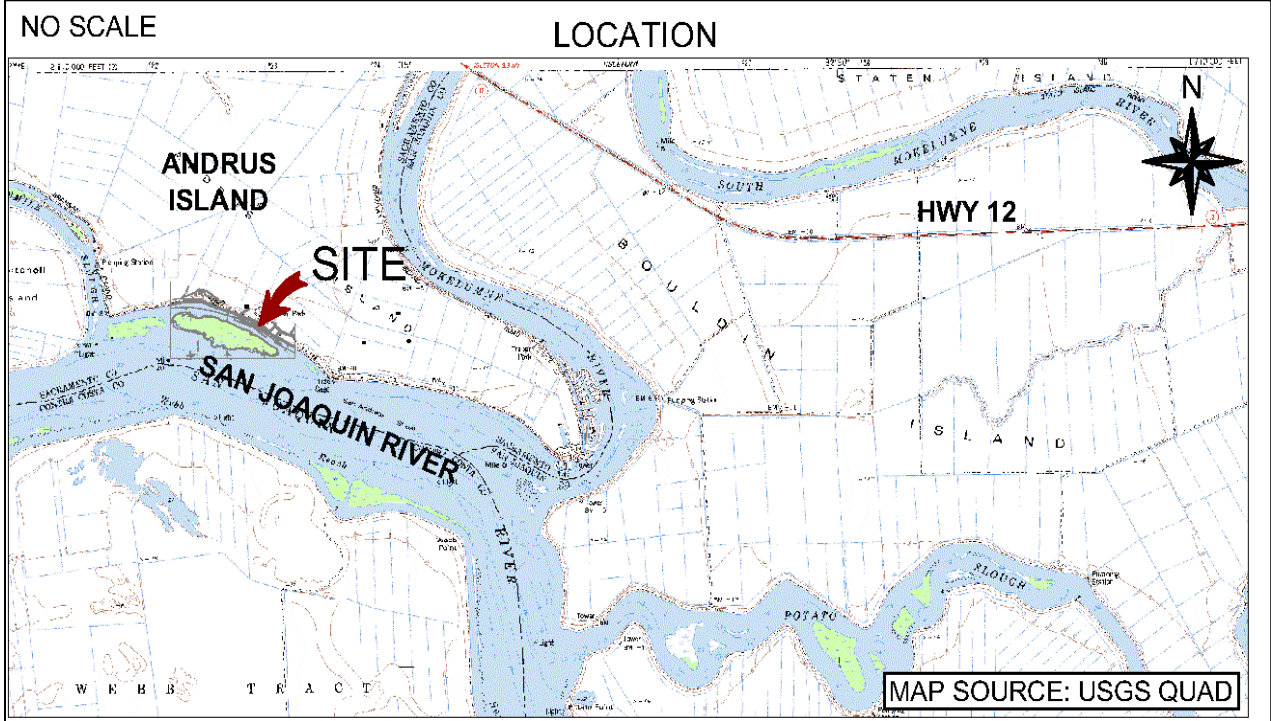
PROPOSED ACTION:

Issuance of a General Lease – Commercial Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in San Joaquin River, adjacent to 841 W. Brannan Island Road, near Isleton, Sacramento County (as shown in Figure 1).

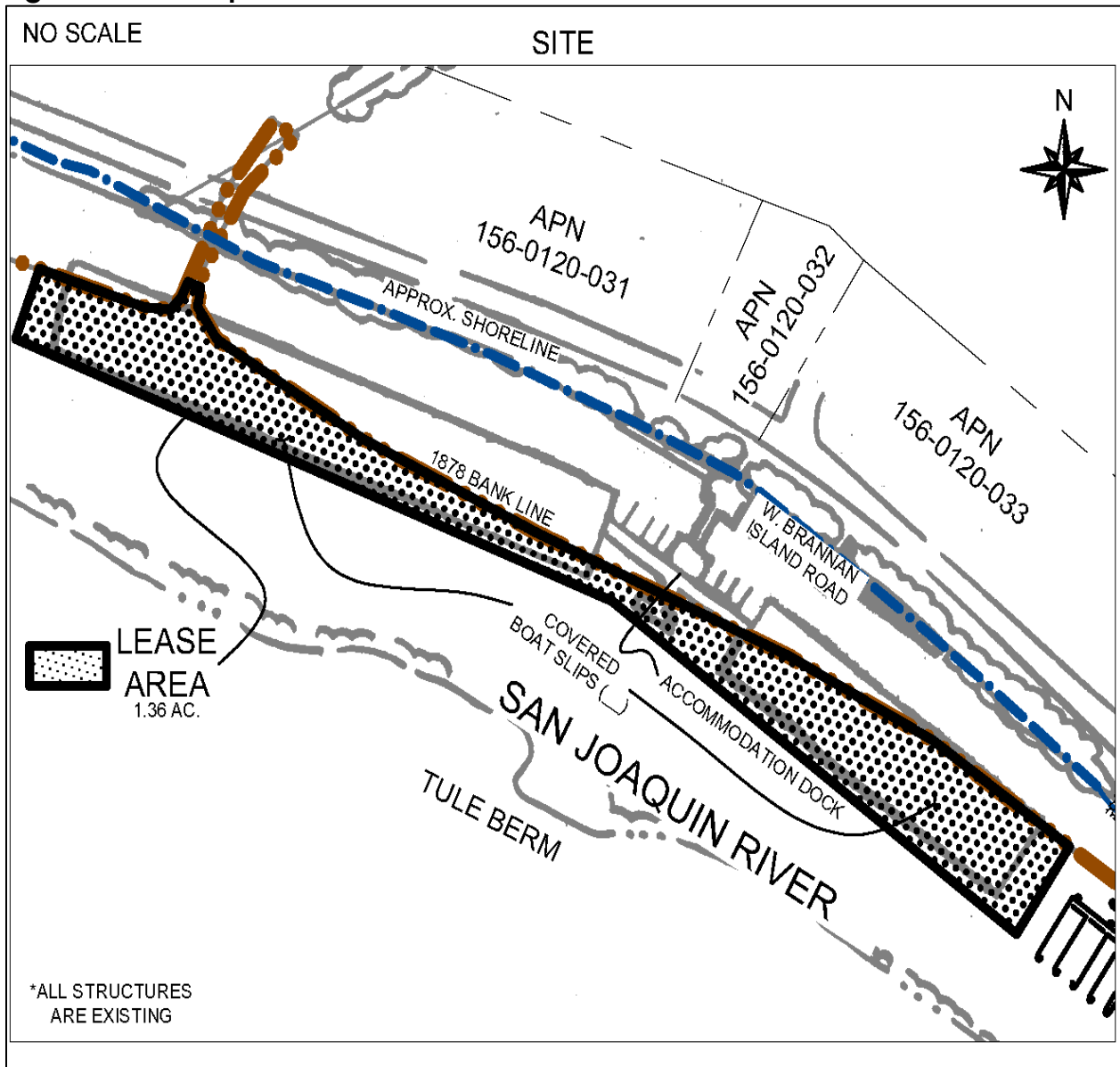
Figure 1. Location



AUTHORIZED USE:

Use and operation of an existing commercial marina, known as the Spindrift Marina, consisting of 93 covered berths, 23 uncovered berths, pilings, walkways, and fuel dock previously authorized by the Commission and two existing restrooms with shower facilities not previously authorized by the Commission (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 April 1, 2024.

CONSIDERATION:

\$4,721 per year, with an annual Consumer Price Index adjustment; and the State reserving the right to fix a different rent periodically during the lease term, as provided for in the lease; and \$9,452 to compensate for the unauthorized occupation of state sovereign land for the existing facilities for the period prior to April 1, 2024.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$3,000,000 per occurrence.
- Surety in an amount no less than \$40,000.
- 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. Further, Lessee agrees to conduct a structural assessment of the authorized improvements within 180 days of the 3rd lease anniversary date, including an assessment of impacts thus far and those reasonably foreseeable over the remainder of the lease term due to sea level rise. The structural assessment shall be submitted to the Commission for review and comment and may require the development of a remedial action plan if the structural integrity of the authorized improvements poses a risk to public health and safety or the environment.
- The lease contains provisions requiring implementation of the Commission's "Best Management Practices for Marina Owners/Operators" and encouraging implementation of the Commission's "Best Management Practices for Berth Holders and Boaters," including additional Best Management Practices (BMPs) the Commission subsequently deems appropriate for either of the above categories.
- Lessee or its operators may issue, without Lessor's prior approval, individual berthing subleases in conjunction with normal commercial marina subleasing practices for terms of one year or less.
- Lessee shall sign, notarize and return the lease in duplicate within 60 days of Commission authorization of said lease. If the lease is not returned within 60 days, the authorization for the lease shall be rescinded.

- Waive rent, penalty, and interest due by Lessee for the period of April 1, 2022 to March 31, 2024, and void annual rent invoice numbers 54842 and 57548 issued for Lease 2409.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On April 26, 1989, the Commission authorized a 30-year General Lease – Commercial Use to Harry C. Schilling and Harry W. Schilling, for the operation and maintenance of a commercial marina known as the Spindriff Marina ([Item 3, April 26, 1989](#)). On July 10, 1989, the Commission authorized assignment of lease and agreement and consent to encumbrance of the lease to Key Lease Corporation, Inc. ([Item 74, July 10, 1989](#)).

On December 17, 2009, the Commission authorized a revision of rent to revise the annual rent from a flat annual rent of \$3,150 to a minimum annual rent of \$5,033 against a percentage of gross ([Item 11, December 17, 2009](#)). On April 23, 2015, the Commission authorized a revision of rent from \$5,033 per year to \$4,721 per year ([Item 48, April 23, 2015](#)). The lease expired on March 31, 2019. The Applicant is now applying for a new lease.

Annual rent was paid through March 31, 2022. Staff recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$9,452 for the period prior to April 1, 2024, the day the proposed new lease would become effective. Staff recommends voiding Invoice Number's 54842 and 57548, each in the amount of \$4,721. Further, staff request waiving any penalty and interest associated with the invoices. The proposed lease will require the Applicant to indemnify the State for the entire period of occupation through March 31, 2024, ensuring the State is protected. In addition, the compensation ensures that the state is made whole for the Lessee's occupation.

The subject commercial marina directly promotes Public Trust uses. The marina facilities accommodate, promote, and foster the public's need for maritime

services and the public's enjoyment of the State's waterways. Recreational boating is a water-dependent use that is generally consistent with the common law Public Trust Doctrine. The adjacent upland is developed as a commercial marina.

The Spindrift Marina is a large commercial marina covering nearly 3 acres. The state's ownership in this location is an unclear boundary, and the Commission has charged rent against a lease area of only about 1 acre. The Harbor Master's office is located outside of the leasing area. Approximately 40 percent of the marina facilities fall within the leasing area. The facilities include two restrooms with showers that have existed for several years but were not previously authorized by the Commission. The marina has not sold fuel since May 2012. The Sacramento County Environmental Management Department confirmed the aboveground storage tank has been removed and the gas lines were cut and covered. The gas pump continues to be in place on the fuel dock.

Staff has worked with the Applicant since expiration of the lease. Initially, the Applicant proposed a land exchange. Staff reviewed the proposal and determined it was not feasible as staff could not make the findings required by law for an exchange of Public Trust lands. The Applicant indicated the lease is expensive due to the increase in liability insurance and surety amount. Staff advised the Applicant to reduce costs they can remove some or all of the marina improvements from State lands. Staff continues to contact the Applicant, but the Applicant has not been responsive.

The proposed lease includes certain provisions and BMPs intended to protect the public use of the proposed lease area, including a limited lease term of 20 years. The facilities have existed for many years at this location; they do not significantly alter the land, they do not permanently alienate the State's fee simple interest in the underlying land, and they do not permanently impair public rights. Upon termination of the lease, the lessee may be required to remove any improvements and restore the lease premises to their original condition. Furthermore, the lease requires that the lessee insure the lease premises and a performance surety in the amount of \$40,000. 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 San Joaquin 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

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 San Joaquin River’s inundation levels within the lease area. In addition, as stated in the [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 facilities within the lease area. 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 marina walkways are 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 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 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.

ENVIRONMENTAL JUSTICE:

The [Commission's Environmental Justice Policy](#) reaffirms its commitment to an informed and open process in that all people are treated equitably and with dignity. Among other goals, the policy commits to “strive to minimize additional burdens on and increase benefits to marginalized and disadvantaged communities resulting from a proposed project or lease.” As part of its commitment to environmental justice, staff reviewed data that indicated high pollution burdens to the surrounding community. These burdens may result in health impacts such as asthma, cardiovascular disease, and low birth rate. In addition, the same data showed high burdens related to groundwater threats and impaired waters.

As part of an environmental justice outreach and engagement effort, staff contacted community-based organizations in Sacramento County on January 10, 2023. The outreach included a brief description of the lease and conveyed a strong desire to learn from the perspectives of the local community. As of the posting of this staff report, no responses to the outreach have been received.

CONCLUSION:

For all the reasons stated above, staff believes that issuance of 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 term of the proposed lease; is consistent with the Public Trust Doctrine; 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. 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," Prioritizing Social, Economic, and Environmental Justice," and "Leading Climate Activism" Strategic Focus Area 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. Waive rent, penalty, and interest due by Lessee for the period of April 1, 2022 to March 31, 2024, and void annual rent invoice numbers 54842 and 57548 issued for Lease 2409.
2. Authorize acceptance of compensation from the Applicant in the amount of \$9,452 for the unauthorized occupation of state sovereign land for the period prior to April 1, 2024.
3. Authorize issuance of a General Lease – Commercial Use to the Applicant beginning April 1, 2024, for a term of ~~20~~-10 years, for the use and operation of an existing commercial marina known as the Spindrift Marina, consisting of 93 covered berths, 23 uncovered berths, pilings, walkways, and fuel dock previously authorized; and two existing restrooms with shower facilities not previously authorized; annual rent in the amount of \$4,721, with an annual Consumer Price Index adjustment and the State reserving the right to fix a different rent periodically during the lease term, as provided for in the lease; liability insurance in an amount no less than \$3,000,000 per occurrence; and a surety in the amount of no less than \$40,000.
4. Lessee shall sign, notarize, and return the lease in duplicate within 60 days of Commission authorization of said Lease. If the Lease is not returned within 60 days, these authorizations shall be rescinded.
5. Authorize Commission staff and the Office of the Attorney General to take all action necessary and appropriate, including litigation, to remove unauthorized improvements from State land if the Applicant does not sign the lease or fails to provide compensation as specified in the lease.