

# Staff Report 29

## APPLICANT:

Dan S. Smith, Trustee of the Dan S. and Carla Dillard Smith Living Trust

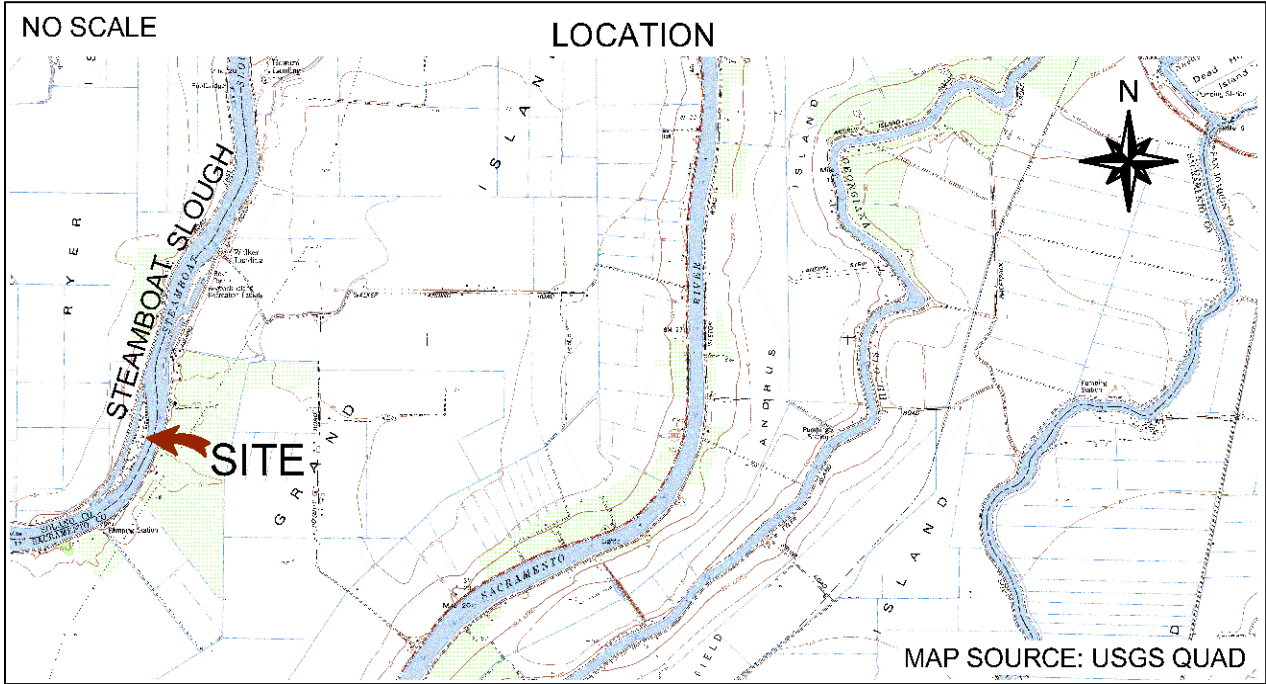
## PROPOSED ACTION:

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

## AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Steamboat Slough, adjacent to 3416 Snug Harbor Drive, near Walnut Grove, Solano County (as shown in Figure 1).

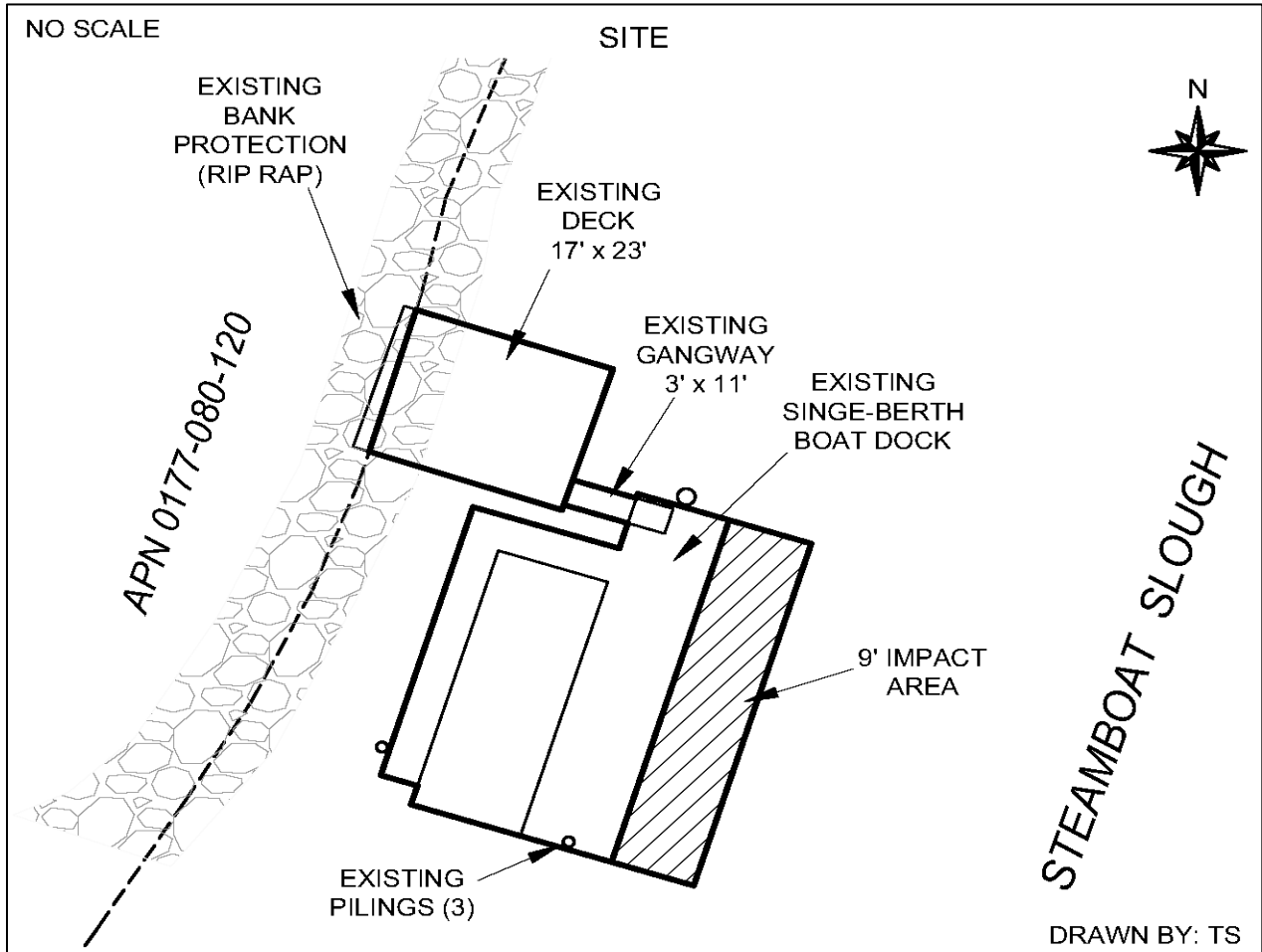
Figure 1. Location



**AUTHORIZED USE:**

Use of an existing boat dock, three pilings, gangway, and deck previously authorized by the Commission and bank protection 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 4, 2024.

**CONSIDERATION:**

\$427 per year, with an annual Consumer Price Index adjustment; and \$395 for unauthorized occupation of State land for the period prior to April 4, 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 climate change may require additional maintenance or protection strategies regarding the improvements on the lease premises.

**STAFF ANALYSIS AND RECOMMENDATION:**

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**AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 6501.1, 6503, and 6503.5; California Code of regulations, title 2, sections 2000 and 2003.

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

On December 18, 2013, the Commission authorized a General Lease – Recreational Use to Dan S. Smith, Trustee of the Dan S. and Carla Dillard Smith Living Trust for the use and maintenance of an existing boat dock, three pilings, gangway, and deck ([Item 21, August 15, 2014](#)). The lease expired on December 17, 2023.

Accounting records show that the Applicant paid for the authorized improvements through December 17, 2023. The Commission has not been compensated for the unauthorized bank protection. Therefore, staff recommends that the Applicant pay \$395 for the unauthorized occupation of state land for the existing facilities for the period prior to April 4, 2024. Additionally, the proposed lease will require the Applicant to indemnify the State for the entire period of unauthorized occupation, ensuring the State is protected.

The Applicant is applying for a General Lease – Recreational Use for use of an existing boat dock, three pilings, gangway, and deck previously authorized by the Commission and bank protection not previously authorized by the Commission. During the term of the Lease, the Applicant installed bank protection without authorization from the Commission. The Applicant is in the process of securing a permit for the bank protection from the U.S. Army Corps of Engineers. The subject improvements are located directly waterward of the upland property and occupy a relatively small area of the slough.

The boat dock, pilings and gangway are privately owned and maintained 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 deck is not generally consistent with the Public Trust, but takes up a small area and does not substantially interfere with trust uses at this location.

The bank protection protects the upland property and maintains the integrity of the slough, 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 slough.

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 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, 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 Steamboat Slough'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 three pilings and bank protection. 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 boat dock, gangway, and deck 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. However, the pilings and bank

protection 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 is protected with rock riprap and minimal vegetation and is at risk of scouring, loss of backfill, slope failure, and accelerated deterioration from currents, floods, and increased precipitation. As sea levels rise, the bank protection will provide decreasing protection against flood waters, increasing the vulnerability of the bank protection and upland parcel. Alternative bank protection strategies, such as bank restoration and revegetation, 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 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 interfere with Public Trust needs 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:**

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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 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 14, section 15301.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300.

## **RECOMMENDED ACTION:**

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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 14, section 15301.

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

1. Find that the existing and, for a limited period, continuing use of the existing boat dock, three pilings, and gangway do 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 deck and existing bank protection do not substantially interfere with the Public Trust uses at this location.
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 \$395 for unauthorized occupation of State Land for the period prior to April 4, 2024.
2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning April 4, 2024, for a term of 10 years, for the use of an existing boat dock, three pilings, gangway, deck, and bank protection; annual rent in the amount of \$427, with an annual Consumer Price Index

adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.