

Staff Report 39

LESSEE:

Thomas Liebner, as Trustee of Trust "A" created under The Liebner Trust dated June 19, 1999

APPLICANT:

Dean R. Brown and Debra S. Brown Trustees of the Dean R. Brown and Debra S. Brown Family Trust dtd 12-14-2000; and Daniel W. Brown and Megan M. Brown

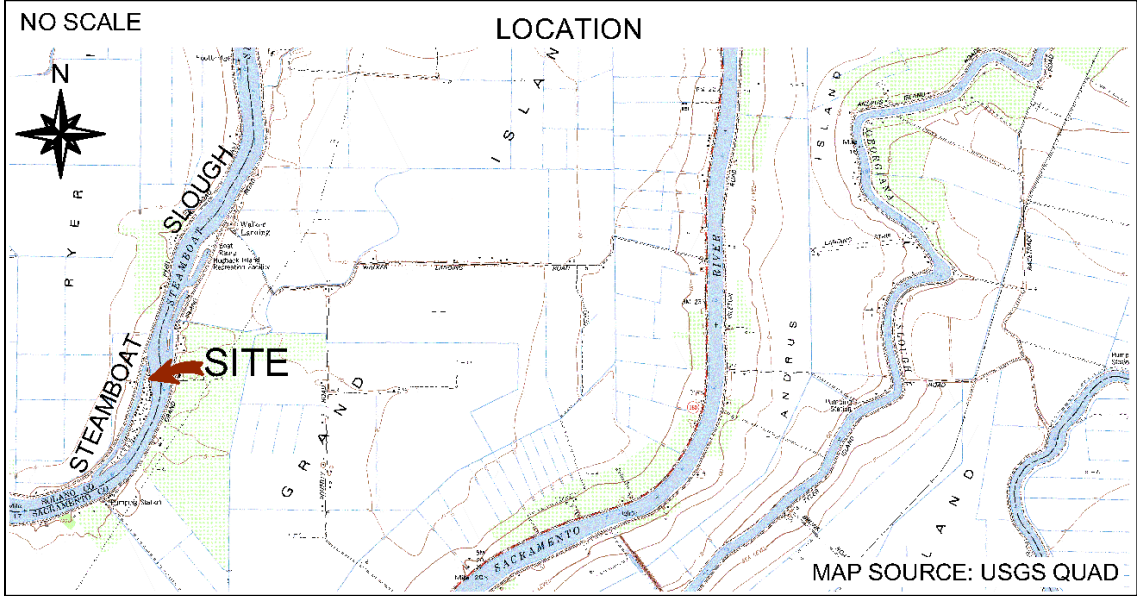
PROPOSED ACTION:

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

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Steamboat Slough, adjacent to Assessor's Parcel Number (APN) 0177-070-020 and 3464 Snug Harbor Drive on Ryer Island, Walnut Grove, Solano County (as shown in Figure 1, below).

Figure 1. Location



AUTHORIZED USE:

Use of an existing boathouse, boat dock, deck, boat lift, ~~four~~ five pilings, ~~two~~ one unattached pilings, gangways, ~~walkway~~, and bank protection (as shown in Figures 2a and 2b, below).

Figure 2. Site Map 1

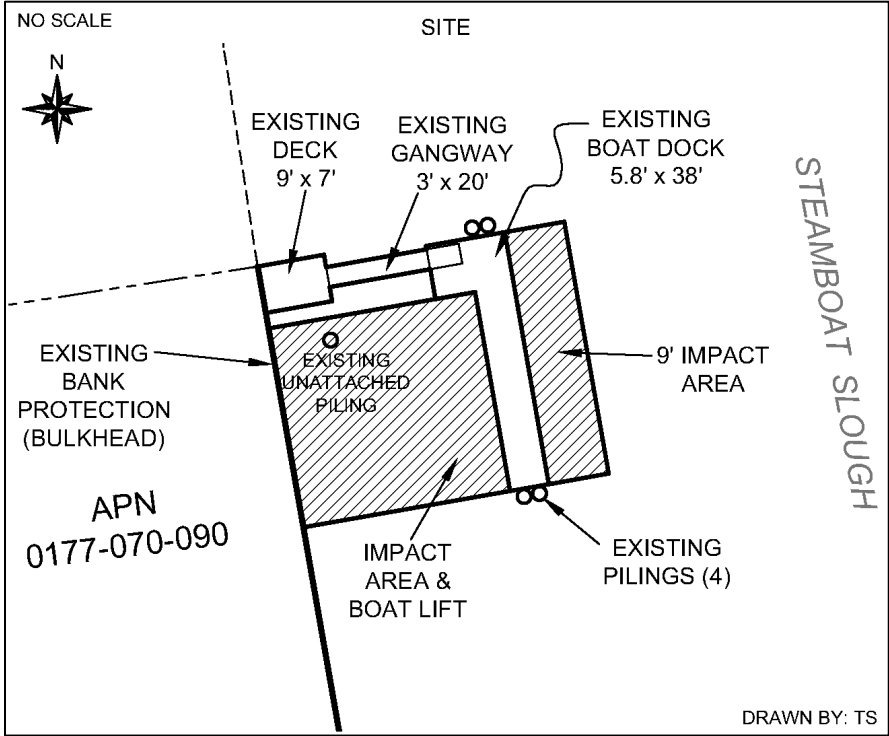
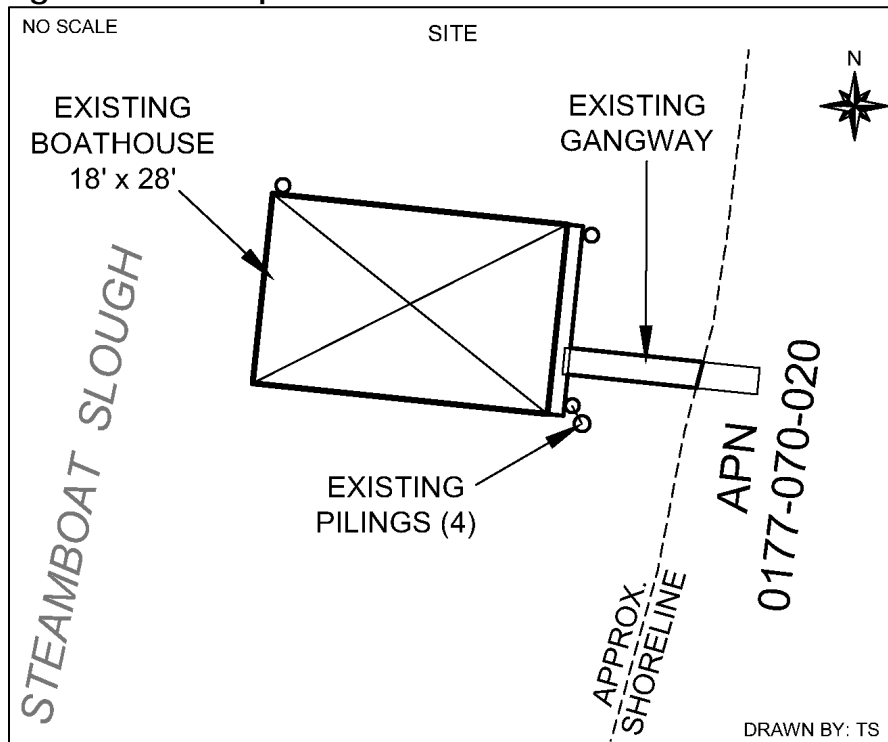


Figure 3. Site Map 2



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 June 7, 2024.

CONSIDERATION:

\$5~~1432~~ per year, with an annual Consumer Price Index adjustment and compensation in the amount of \$~~580-600~~ for the unauthorized use of State land prior to June 7, 2024.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- ~~Lessee agrees to submit an application to the Commission for removal or reuse of the two unattached pilings within 2 years of the lease execution date.~~
- ~~Lessee agrees to submit a repair plan for the dock and boathouse within 120 days of the execution date of this lease.~~

- Lessee agrees that the provisions of Section 3, Paragraph 11 shall also be extended to the period of Lessee's unauthorized occupation of State-owned lands from June 10, 2022 through June 6, 2024.

STAFF ANALYSIS AND RECOMMENDATION:

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 April 23, 2015, the Commission authorized the issuance of a General Lease – Recreational and Protective Structure Use to Thomas Liebner, as Trustee of Trust "A" created under The Liebner Trust dated June 19, 1999, for the use of an existing boathouse and walkway previously authorized by the Commission, and the use of an existing boat dock, deck, boat lift, four wood pilings, one unattached wood piling, gangway, and bank protection not previously authorized by the Commission ([Item 59, April 23, 2015](#)). This lease expires on April 23, 2025.

Unbeknownst to staff, ownership interest in the upland property was obtained by Craig C. Knutsen, as Successor Trustee of The Trust "A" Created Under The Liebner Trust dated June 19, 1991, who deeded their interest to the Applicant, Dean R. Brown and Debra S. Brown Trustees of the Dean R. Brown and Debra S. Brown Family Trust dtd 12-14-2000; and Daniel W. Brown and Megan M. Brown on June 10, 2022. Staff recommends terminating the existing lease as of June 10, 2022, because of the ownership transfers.

The Applicant is now applying for a General Lease – Recreational and Protective Structure Use for the use of the existing boathouse, boat dock, deck, boat lift, ~~four~~ five pilings, ~~two-one~~ unattached pilings, gangway, walkway, and bank protection. In the application, the Applicant indicated an additional existing unattached piling was located near the boathouse. The unattached piling has existed for many years but was never under lease.

On May 29, 2024, the Applicant notified staff that the boathouse had been repaired and attached to the piling. The Applicant also advised that the other unattached piling is used to moor boats, kayaks, and canoes. A repair plan for the

dock has been submitted and the work will be completed within the next two to three months.

Staff recommends accepting compensation in the amount of \$600 for the unauthorized occupation of State land for the period prior to June 7, 2024. Additionally, the proposed lease will require the Applicant to indemnify the State for the entire period of unauthorized occupation, from June 10, 2022 through June 7, 2024.

The Applicant owns the upland adjoining the lease premises. The subject facilities are located directly waterward of the upland property, and these facilities occupy a relatively small area of the river. The docking facilities on the lease premises facilitate the docking and mooring of recreational boats. Recreational boating is water-dependent and 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 lands (Pub. Resources Code, § 6503.5).

~~The two unattached pilings are no longer used for the docking or mooring of boats. The proposed lease requires the Applicant apply to remove the two unattached pilings within two years.~~

The bank protection protects the upland property and maintains the integrity of Steamboat Slough, which will help protect the Public Trust resources for recreational and navigational use by the public.

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 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 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.

Sea level rise 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 pilings,

deck, single berth boathouse, boatlift, walkway, and bulkhead. 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 and gangway 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, deck, single berth boathouse, boatlift, walkway, and bulkhead 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 a bulkhead 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). Additionally, maintaining a wide buffer between the bank and upland improvements (outside the lease area) will minimize potential impacts from flooding and erosion.

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 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:

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 lease, the Applicant may be required to remove the existing improvements 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 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 14, section 15301.

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

RECOMMENDED ACTION:

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 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 boathouse, boat dock, deck, boat lift, ~~four five pilings, two one~~ unattached pilings, ~~and gangways, and walkway,~~ do not substantially interfere with Public Trust needs and values at this location and are consistent with the common law Public Trust Doctrine.
2. Find that the existing and, for a limited period, continuing use of the bank protection ~~and two unattached pilings~~ do not substantially interfere with the Public Trust.
3. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

1. Authorize termination, effective June 10, 2022, of Lease 7785, a General Lease – Recreational and Protective Structure Use, issued to Thomas Liebner, as Trustee of Trust "A" created under The Liebner Trust dated June 19, 1999.
2. Authorize acceptance of compensation from the Applicant in the amount of ~~\$580600~~ for the unauthorized occupation of State land for the period prior to June 7, 2024.
3. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning June 7, 2024, for a term of 10 years, for use of an existing boathouse, boat dock, deck, boat lift, ~~four five pilings, two one~~ unattached pilings, gangways, ~~walkway,~~ and bank protection; annual rent in the amount of \$5~~1432~~, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.