

# Staff Report 42

**APPLICANT:**

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Waye A. Nguyen and Kayla Nguyen

**PROPOSED ACTION:**

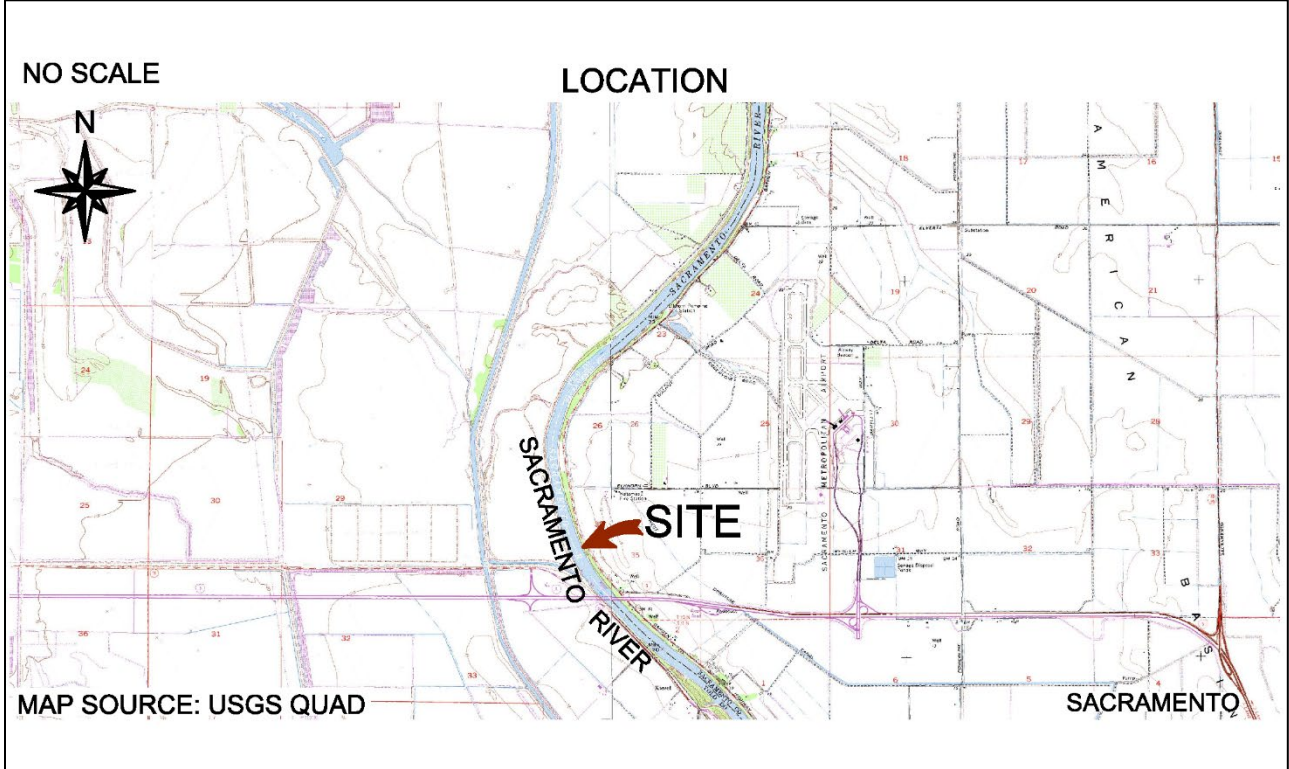
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Issuance of a General Lease – Recreational and Protective Structure Use.

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

Sovereign land in the Sacramento River, adjacent to 6075 Garden Highway, Sacramento, Sacramento County (as shown on Figure 1).

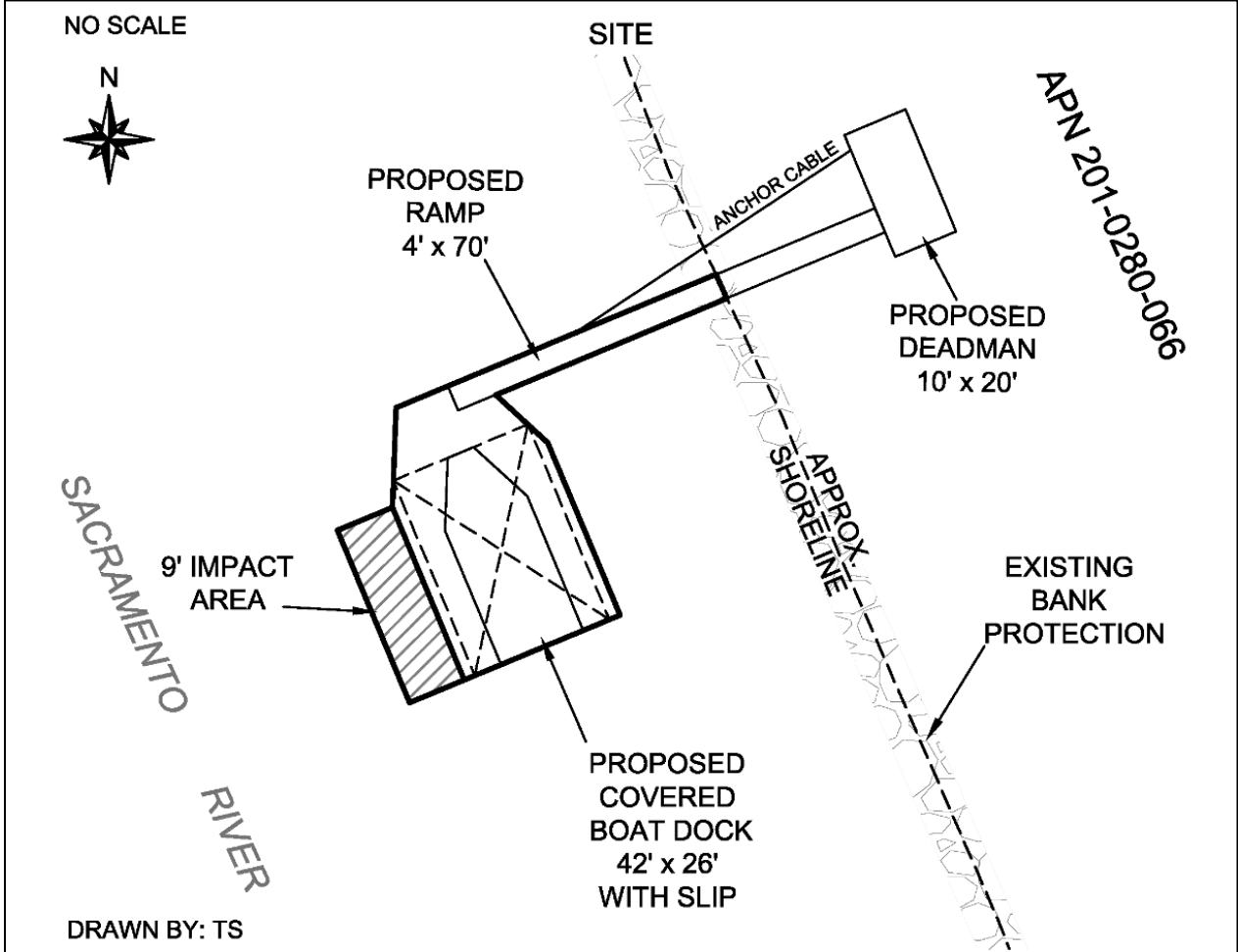
**Figure 1. Location**



**AUTHORIZED USE:**

Construction of a covered boat dock with ramp, and use of existing bank protection previously authorized by the Commission (as shown on 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 June 7, 2024.

**CONSIDERATION:**

\$438 per year, with an annual Consumer Price Index adjustment.

**SPECIFIC LEASE PROVISIONS:**

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee agrees to obtain permits from all regulatory agencies for the proposed construction activities.
- Within 60 days of completing the construction of authorized improvements, Lessee will provide Lessor with photographs and a set of "as-built" plans that will show where the improvements have been placed. Lessor shall then replace Exhibit A (Land Description) and Exhibit B (Site and Location Map) of this Lease as necessary to accurately reflect the final location of the authorized improvements. Once approved by Lessor's Executive Officer or designee and Lessee, the revised Exhibits shall replace the Exhibits incorporated in the Lease at the time of Lease execution. The revised Exhibits shall be incorporated in this Lease as though fully set forth herein.
- Construction may begin upon receipt of all approvals or permits and be completed no later than June 7, 2027.
- Construction may occur only during the work window established by applicable regulatory agencies.

**STAFF ANALYSIS AND RECOMMENDATION:**

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**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 23, 2011, the Commission authorized issuance of a General Lease – Protective Structure Use to Diane J. Hovey, Trustee of the Diane J. Hovey Trust established June 12, 2007, for use and maintenance of existing bank protection previously authorized by the Commission ([Item 40, June 23, 2011](#)). The lease expired June 22, 2021.

Staff recommend issuance of a new lease beginning June 7, 2024.

The Lessee sold the upland property to the Applicant on July 13, 2022. The Applicant is now applying for a General Lease – Recreational and Protective

Structure Use for the construction of a covered boat dock with a ramp and the continued use and maintenance of existing bank protection.

The boat dock will be floated in by barge and will utilize an anchor cable to affix the boat dock to the upland. No new pilings will be driven into the riverbed. The ramp will attach to the upland using brace arms that attach to a proposed concrete deadman that will be located on the upland property outside the Commission's leasing jurisdiction. The ramp will attach to the floating boat dock. The dock will be 42 feet long by 26 feet wide and the gangway will be 4 feet by 70 feet.

The facilities will be used for the docking and mooring of boats and will 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 proposed improvements are located directly waterward of the upland property and will occupy a relatively small area of the Sacramento River. The proposed lease will not interfere with navigation and does not substantially interfere with any Public Trust needs at this time or for the foreseeable future.

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 Sacramento 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 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 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**

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 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 and dock. 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 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 of the facilities. However, the existing riprap and proposed new fixed features 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 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 any exposed portions of the existing 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:

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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 not construct the proposed facilities and may be required to remove the existing bank protection. 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. **Construction of a Boat Dock with Ramp:** 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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1).

**Existing Bank Protection:** Staff recommends that the Commission find that this activity 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.

## APPROVALS REQUIRED:

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- U.S. Army Corps of Engineers
- Central Valley Flood Control Board
- California Department of Fish and Wildlife

## 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 through the combination of the following exemptions: Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2), and Class 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1).

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

1. Find that the proposed and, for a limited period, use of the proposed covered boat dock with ramp, 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 generally associated with Public Trust uses, but the current use does not substantially interfere with Public Trust needs and values at this location, at this time.
3. Find that issuing the proposed lease is in the best interests of the State.

**AUTHORIZATION:**

1. 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 the construction of a covered boat dock with a ramp and use of existing bank protection previously authorized by the Commission; annual rent in the amount of \$438, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.
2. Authorize the Executive Officer or designee to replace Exhibits in the lease upon submission, review, and approval of as-built plans detailing the final location of the improvements following construction.