

Staff Report 25

LESSEE:

Denice A. DeRicco and Gail B. DeRicco, Trustees of the DeRicco Family Revocable Trust

APPLICANT:

David Alexander Cattanach and Marcella Jean Mojibi

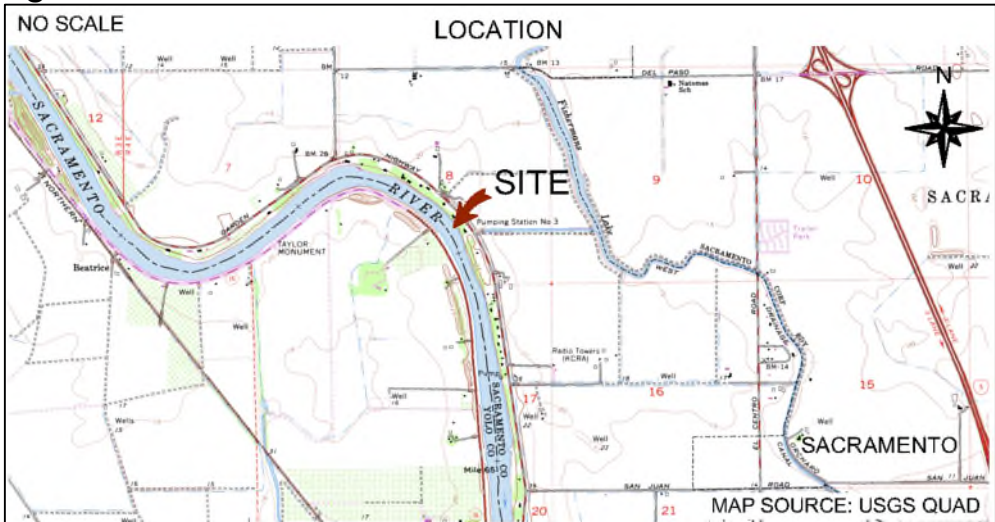
PROPOSED ACTION:

Termination of Lease Number 5126, a General Lease – Recreational and Protective Structure Use; waiver of rent, penalty, and interest, void Invoice Number 58183; and Issuance of a General Lease – Recreational and Protective Structure Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Sacramento River, adjacent to 4075 Garden Highway, near Sacramento, Sacramento County (as shown in Figure 1).

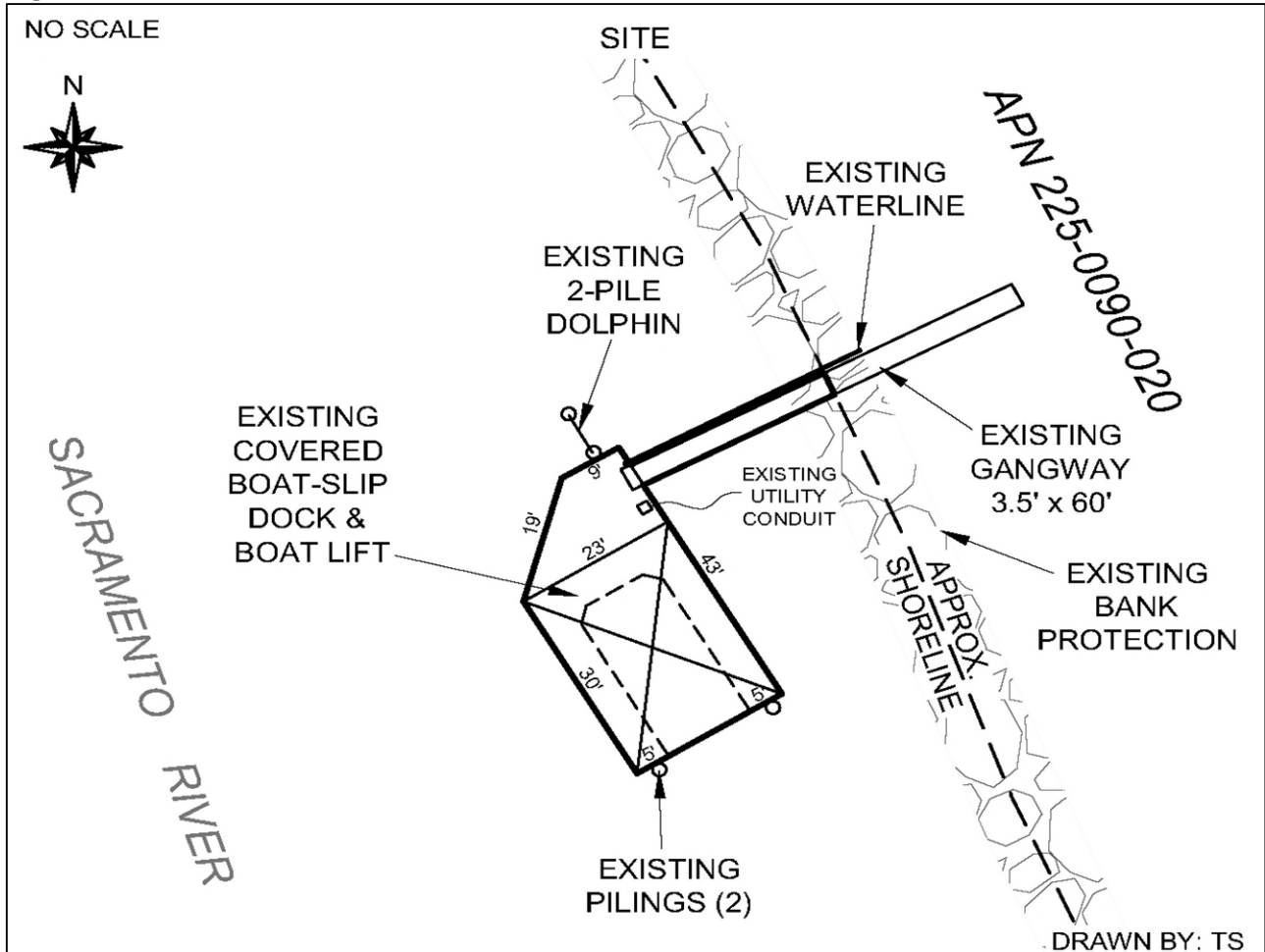
Figure 1. Location



AUTHORIZED USE:

Use of an existing covered boat, appurtenant facilities, 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 August 15, 2024.

CONSIDERATION:

\$382 per year, with an annual Consumer Price Index adjustment, and \$322 to compensate for the unauthorized occupation of state sovereign land prior to August 15, 2024.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee agrees the lease indemnity provisions of Section 3, Paragraph 11 shall also extend to the period of Lessee's unauthorized occupation of state-owned lands prior to August 15, 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 April 27, 2021, the Commission authorized the issuance of a General Lease – Recreational and Protective Structure Use to Denice A. DeRicco and Gail B. DeRicco, Trustees of the DeRicco Family Revocable Trust, for the use of an existing covered floating boat dock, appurtenant facilities, and bank protection ([Item 29, April 27, 2021](#)). The lease expires on June 22, 2031.

On May 9, 2023, the Lessee sold the upland property to Ajay K. Mengi and Ritu Mengi. Ownership interest was again transferred on September 22, 2023, to David Alexander Cattanach and Marcella Jean Mojibi. Staff was not made aware of the change in ownership. Therefore, pursuant to the terms of the existing lease and change in upland ownership, staff recommends terminating the lease with a proposed termination date of September 22, 2023. The Lessee will remain liable for the period up to the date the Applicant purchased the upland. The Applicant is applying for the issuance of a General Lease – Recreational and Protective Structure Use for the use of the existing facilities.

As part of staff's recommendation to authorize the proposed lease to the Applicant, the lease provisions regarding indemnity will be extended back to September 22, 2023, to coincide with the date the Applicant took ownership of the upland property adjoining the lease premises. Staff further recommends the Applicant pay \$322 for the unauthorized occupation of state land for the existing facilities for the period prior to August 15, 2024. Staff recommend waiving any rent, penalty, and interest associated with Invoice Number 58183 due from the Lessee and voiding the invoice. This invoice pertains to the prior upland owner who sold

the property without notification to the Commission and abandoned the lease premises in the Sacramento River. Further, staff believe that the long-term cost of collection measures will exceed the rental balance due.

The subject improvements 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 bank protection will protect the upland property and maintain and improve the integrity of the river, which helps protect 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 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 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 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 floating dock, gangway, boat lift, and utility lines 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 two pilings, dolphin, 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 vegetation, but is at risk of scouring, loss of backfill, slope failure, and accelerated deterioration from sea level rise, currents, floods, and increased precipitation. As sea levels rise, the bank protection will also provide less protection against flood waters, increasing the vulnerability of the 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 will minimize potential impacts from flooding and erosion.

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.

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:

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 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. 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, sections 15060, subdivision (c)(3), and 15378, subdivision (b)(5).

4. Staff recommends that the Commission find that issuance of the new 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 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15061 and California Code of Regulations, title 2, section 2905.

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the new 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 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 existing covered boat dock and appurtenant facilities 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 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 termination, effective September 22, 2023, of Lease Number 5126, a General Lease – Recreational and Protective Structure Use, issued to Denice A. DeRicco and Gail B. DeRicco, Trustees of the DeRicco Family Revocable Trust.
2. Waive rent, penalty, and interest due from the Lessee for the period of June 23, 2023, to September 21, 2023, and void annual rent Invoice Number 58183 issued for Lease 5126.
3. Accept compensation from the Applicant in the amount of \$322 for the unauthorized occupation of State land for the period prior to August 15, 2024.
4. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning August 15, 2024, for a term of 10 years, for use of an existing covered boat dock, appurtenant facilities, and bank protection; annual rent in the amount of \$382 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.