

Staff Report 27

APPLICANT:

Reginald G. Boone Jr., Lei-Wey Sun, Robert Frey, and Malia Frey

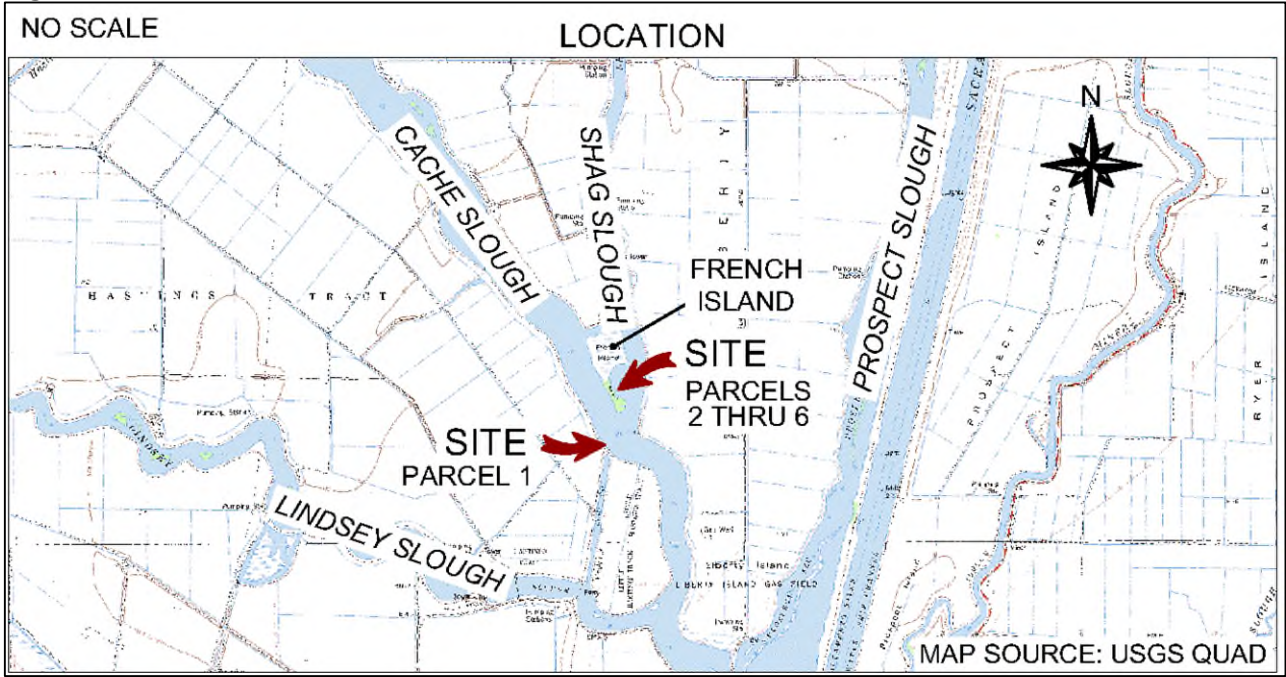
PROPOSED ACTION:

Issuance of a General Lease – Other.

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Shag Slough, adjacent to Solano County Assessor's Parcel Number (APN) 0042-210-060, and in Cache Slough, adjacent to APN 0042-160-160, near Rio Vista, Solano County (as shown in Figure 1).

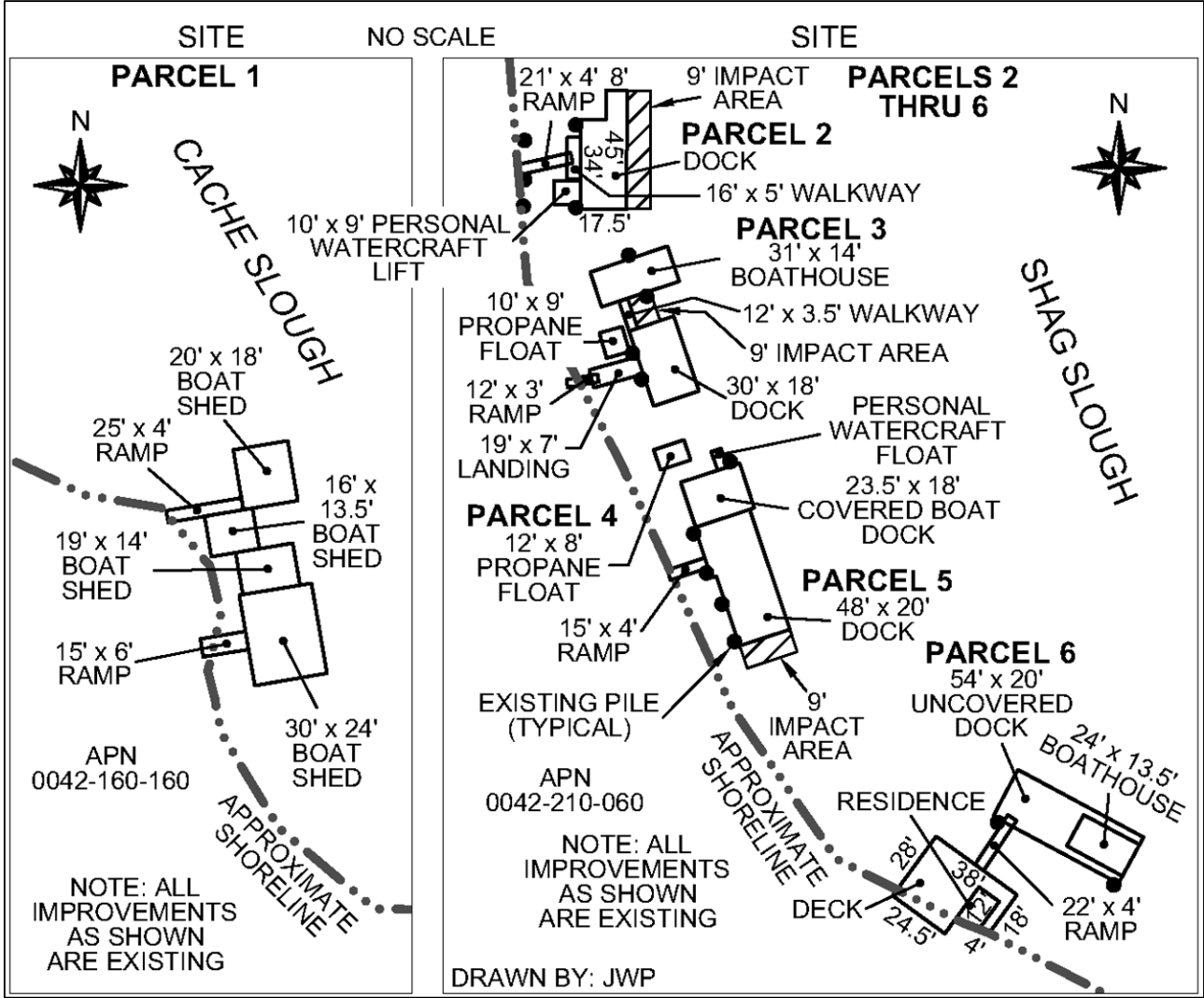
Figure 1. Location



AUTHORIZED USE:

Use of four existing recreational dock facilities and a portion of a residence and attached deck in Shag Slough within Parcels Two through Six; and four boat sheds and appurtenant facilities in Cache Slough within Parcel One (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 August 15, 2024.

CONSIDERATION:

\$2,239 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 shall not store any personal items or construct any improvements in the Public Trust easement which may impair the public's right of access for navigation, fishing, and Public Trust-consistent recreational uses.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 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 September 20, 2013, the Commission authorized issuance of a General Lease – Recreational Use to Christopher Lunardi and Joanne Lunardi; Tab Stiles and Charlene Stiles as Trustees of the Tab and Charlene Stiles Family Trust dated October 15, 2007; Reginald G. Boone, Jr. and Lei-Wey Sun; and Robert M. Frey and Malia M. Frey for the use four existing recreational dock facilities in Shag Slough and four boat sheds in Cache Slough previously authorized by the Commission and an existing portion of a residence and attached deck in Shag Slough not previously authorized by the Commission ([Item 32, September 20, 2013](#)). This lease expired on September 19, 2023.

On July 26, 2019, partial ownership interest of the upland parcel was transferred from Tab Stiles and Charlene Stiles as Co-Trustees of Tab and Charlene Stiles Family Trust to Reginald G. Boone Jr. and Lei-Wey Sun. On January 15, 2021, partial ownership interest of the upland parcel was transferred from Joanne Lunardi to Reginald G. Boone Jr. and Lei-Wey Sun.

Due the conveyance of partial ownership interest, Christopher Lunardi and Joanne Lunardi; and Tab Stiles and Charlene Stiles as Trustees of the Tab and Charlene Stiles Family Trust, dated October 15, 2007, are not applicants to the current lease application. Typically, conveyance of property interest of the upland property that is subject to a lease is grounds for lease termination, but because the conveyance

is among existing individual applicants in the 2013 lease, staff believes termination is unnecessary as all individual original applicants continued to indemnify the State for the period from the date of the conveyance until the expiration of the lease. The parties to the current application (heretofore "Applicant") are Reginald G. Boone Jr., Lei-Wey Sun, Robert Frey, and Malia Frey.

The Applicant is now applying for a General Lease – Other, for the use of four existing recreational dock facilities, a portion of a residence and attached deck in Shag Slough; and four boat sheds and appurtenant facilities in Cache Slough.

Due to the Applicant's previous lease expiring on September 19, 2023, staff recommends that the Commission accept compensation from the Applicant for unauthorized occupation of State land in the amount of \$2,023, to compensate for the period of unauthorized occupancy prior to August 15, 2024.

The lease provisions regarding indemnity will be extended to apply from September 20, 2023, when the Applicant's previous lease expired, through August 14, 2024, the day before the beginning of the new lease.

The subject facilities have existed for several years, are privately owned, and maintained by the Applicant. The four recreational dock facilities in Shag Slough and four boat sheds in Cache Slough all serve to 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)

Although the portion of a residence and attached deck in Shag Slough is public property leased for private use, the limited water-related recreational value of this area and the relatively small portion of the existing private use encroaching onto State-owned lands indicate the proposed lease for the subject facilities would not substantially interfere with Public Trust needs and values at this time and for a limited term. The proposed lease will not result in a change in the use of or impact to Public Trust resources. Based upon the particular facts at this location, staff recommends the Commission find that the proposed lease would not result in a substantial interference with Public Trust needs and values at this time and in this location.

The subject facilities are located directly waterward of the upland property and occupy a relatively small area of the river. The proposed lease will not interfere with

navigation nor substantially interfere with any Public Trust needs at this time or for the term of the lease.

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 Shag Slough and Cache Slough, in tidally influenced sites 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 area 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 the Shag Slough and Cache 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 foundations and supports/pilings for the docks, portion of residence, residence deck, and boat sheds. 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 docks and ramps 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 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 (not under the Commission's jurisdiction) is vegetated, which provides additional stability and will reduce the amount of erosion and scour pressure experienced during future events because of the 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 as well as the upland parcel 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 leased structures 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:

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. If the Commission denies the application, the Applicant may be required to remove the 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. 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 15061 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:

1. Find that the four recreational dock facilities in Shag Slough, the four boat sheds, and appurtenant facilities, in Cache Slough 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 lease; and is in the best interests of the State.
2. Find that the existing and continuing use of a portion of a residence and attached deck in Shag Slough 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. Accept compensation from the Applicant in the amount of \$2,023, for the unauthorized occupation of State land for the period prior to August 15, 2024.
2. Authorize issuance of a General Lease – Other to the Applicant beginning August 15, 2024, for a term of 10 years, for the use of four existing recreational dock facilities, a portion of a residence and attached deck in Shag Slough and four boat sheds and appurtenant facilities in Cache Slough; annual rent in the amount of \$2,239, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.