

Staff Report 38

APPLICANT:

Peter Vincent McNally

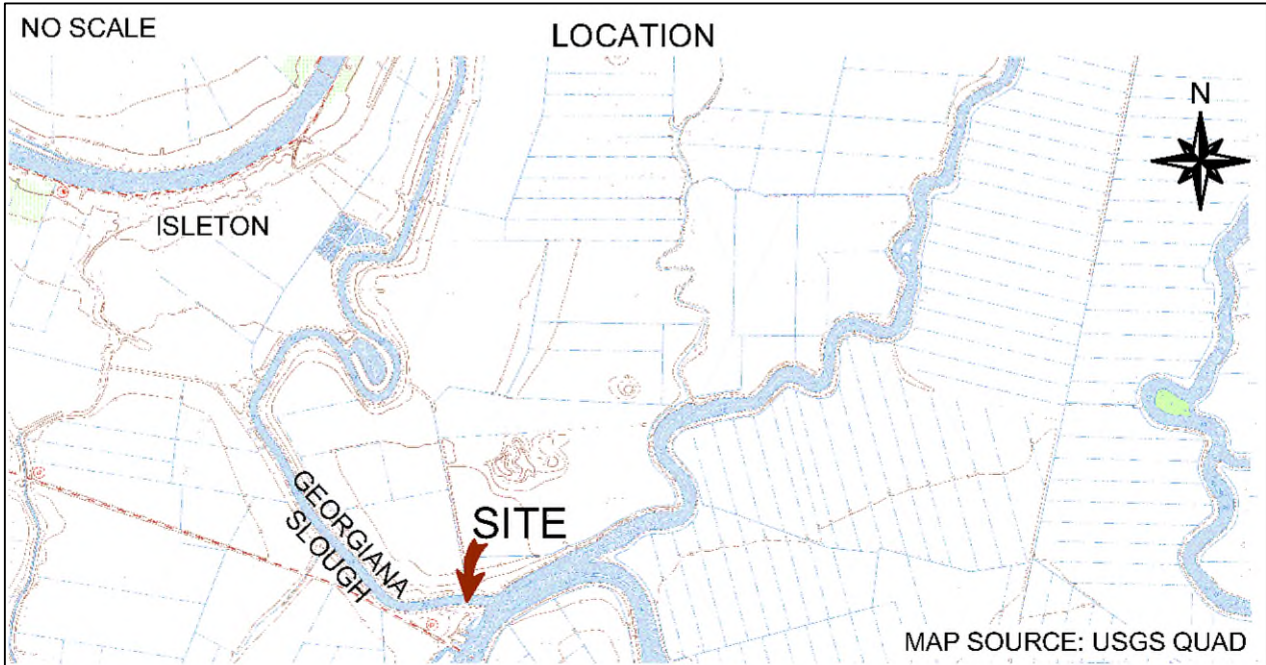
PROPOSED ACTION:

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

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Georgiana Slough, adjacent to 421 West Willow Tree Lane, near Isleton, Sacramento County (as shown in Figure 1).

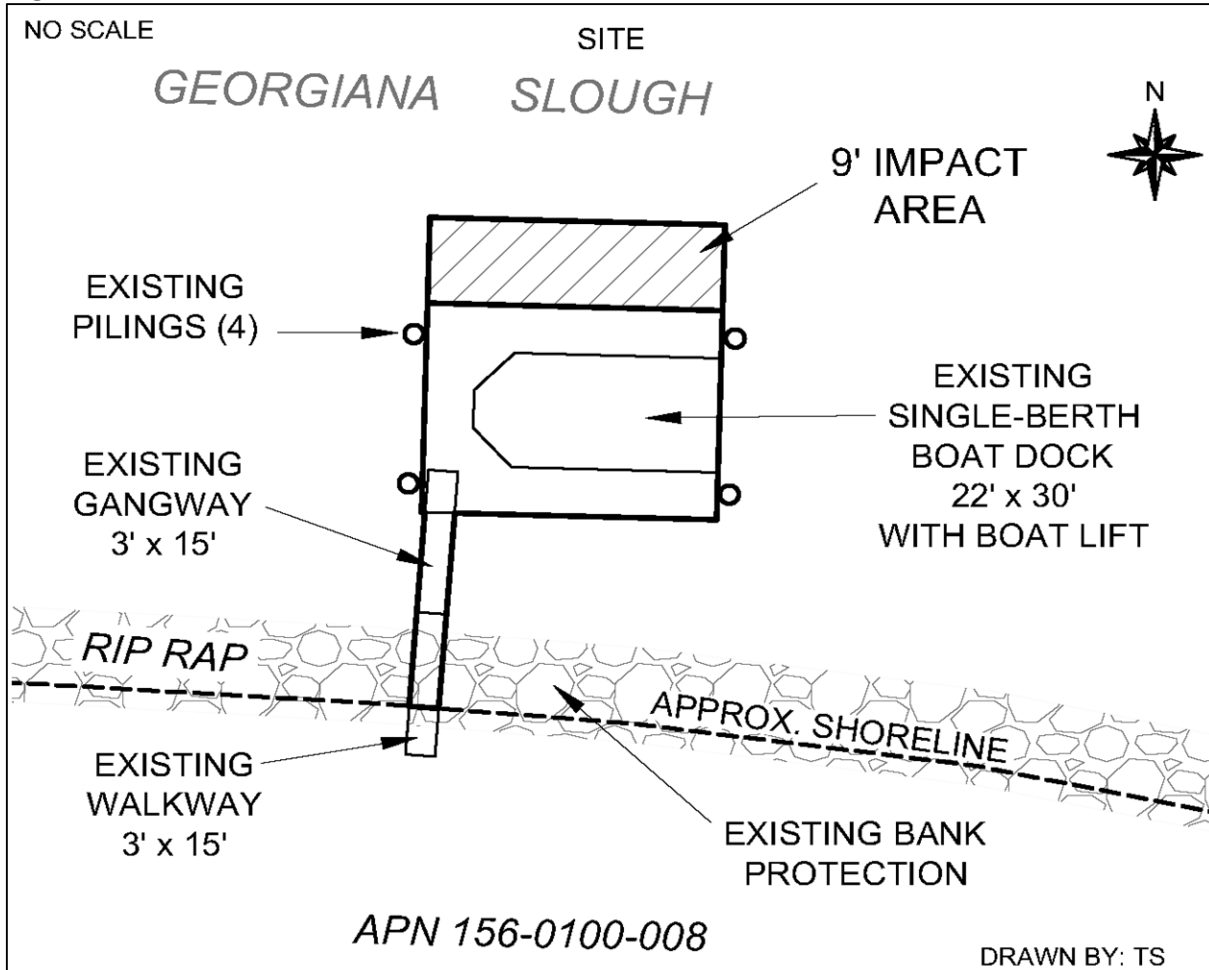
Figure 1. Location



AUTHORIZED USE:

Use of an existing boat dock, 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:

\$379 per year, with annual Consumer Price Index adjustment, and \$457 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.

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, section 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On December 2, 2013, the Commission authorized the issuance of a General Lease – Recreational and Protective Structure Use to Peter Vincent McNally, for the use of a boat dock, appurtenant facilities, and bank protection ([Item 4, December 02, 2013](#)). The lease expired May 2, 2023.

The Applicant is now applying for a General Lease – Recreational and Protective Structure Use, for the use of the boat dock, appurtenant facilities, and bank protection. The Applicant owns the uplands adjoining the lease premises. The subject facilities are located directly waterward of this upland property, and the facilities occupy a relatively small area of the river. The subject boat dock and appurtenant facilities 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).

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

The proposed lease will not interfere with navigation, nor substantially interfere with any Public Trust needs at this time or for the foreseeable future. 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. Staff recommend accepting compensation for the unauthorized occupation of State lands in the amount of \$457 for the period prior to the start date of the proposed lease. The indemnity provisions for the new lease will also be extended to apply from May 3, 2023, when the prior lease expired, through August 14, 2024, the day before the beginning of the new lease.

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 Georgiana 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 the Georgiana Slough's inundation levels within the lease area. Using the Delta Stewardship Council's [flood explorer map](#), staff observed flood risk that could likely be mitigated by protective strategies at the location with 1 foot of sea level rise, and flood risk by 2 feet of sea level rise that could be adapted to, but not mitigated.

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, walkway, 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 with boat lift 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, walkway, and bank protection are fixed and therefore more vulnerable to sea level rise and more frequent flood events. These structures may need more frequent repair and maintenance to ensure they do not become dislodged or degraded and reduce risks to public safety and navigation. They may also need to be relocated in the event of significant exposure to flood risk or erosion.

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 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 effective approaches 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 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 approval of this lease will not substantially interfere with Public Trust needs at this location, at this time, or 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 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 boat dock and appurtenant facilities will not substantially impair the public's right to navigation and fishing or substantially interfere with Public Trust needs and values at this location, at this time, and for term of the lease; is consistent with the common law Public Trust Doctrine.
2. Find that the existing and, for the term of the lease, continuing use of the bank protection does not substantially interfere with the trust.
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 \$457 for the unauthorized occupation of State land for the period prior to August 15, 2024.
2. 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 the use of an existing boat dock, appurtenant facilities, and bank protection; annual rent in the amount of \$379, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.