

# Staff Report 47

## APPLICANT:

Nhan Phan Thien and Kim Thoa Duong, as Co-Trustees of The Thien-Duong Trust Agreement Dated 10/8/2007

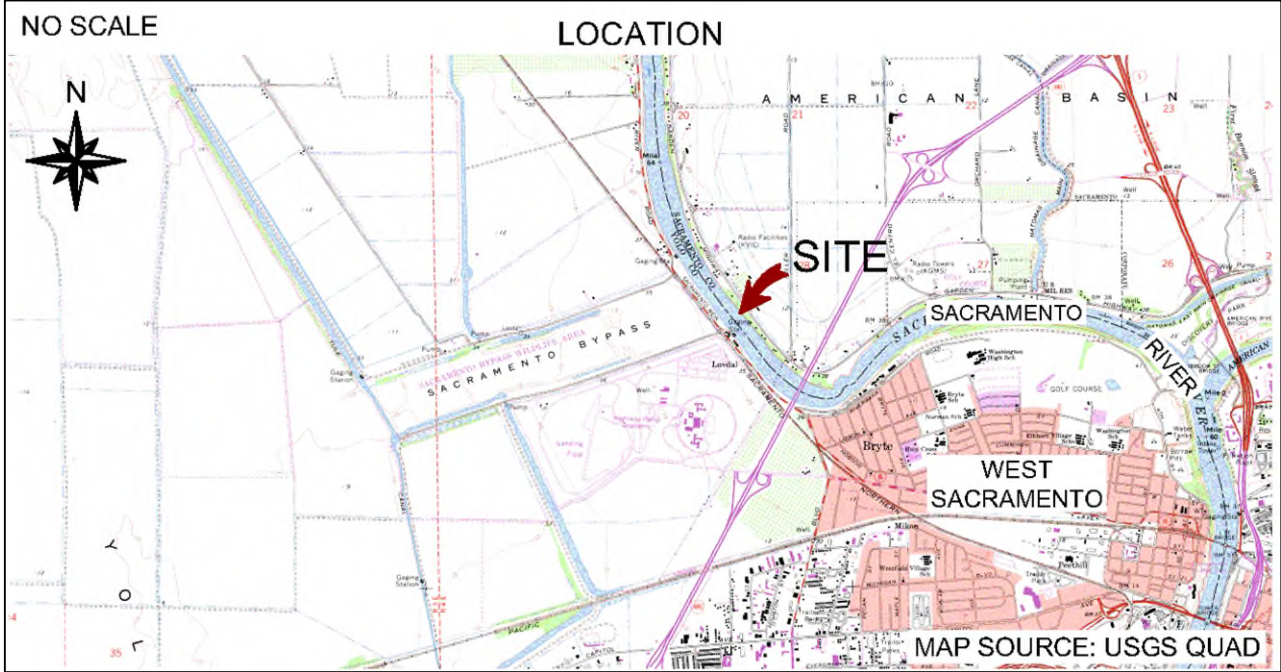
## PROPOSED ACTION:

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

## AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Sacramento River, adjacent to 2345 Garden Highway, near Sacramento, Sacramento County (as shown in Figure 1).

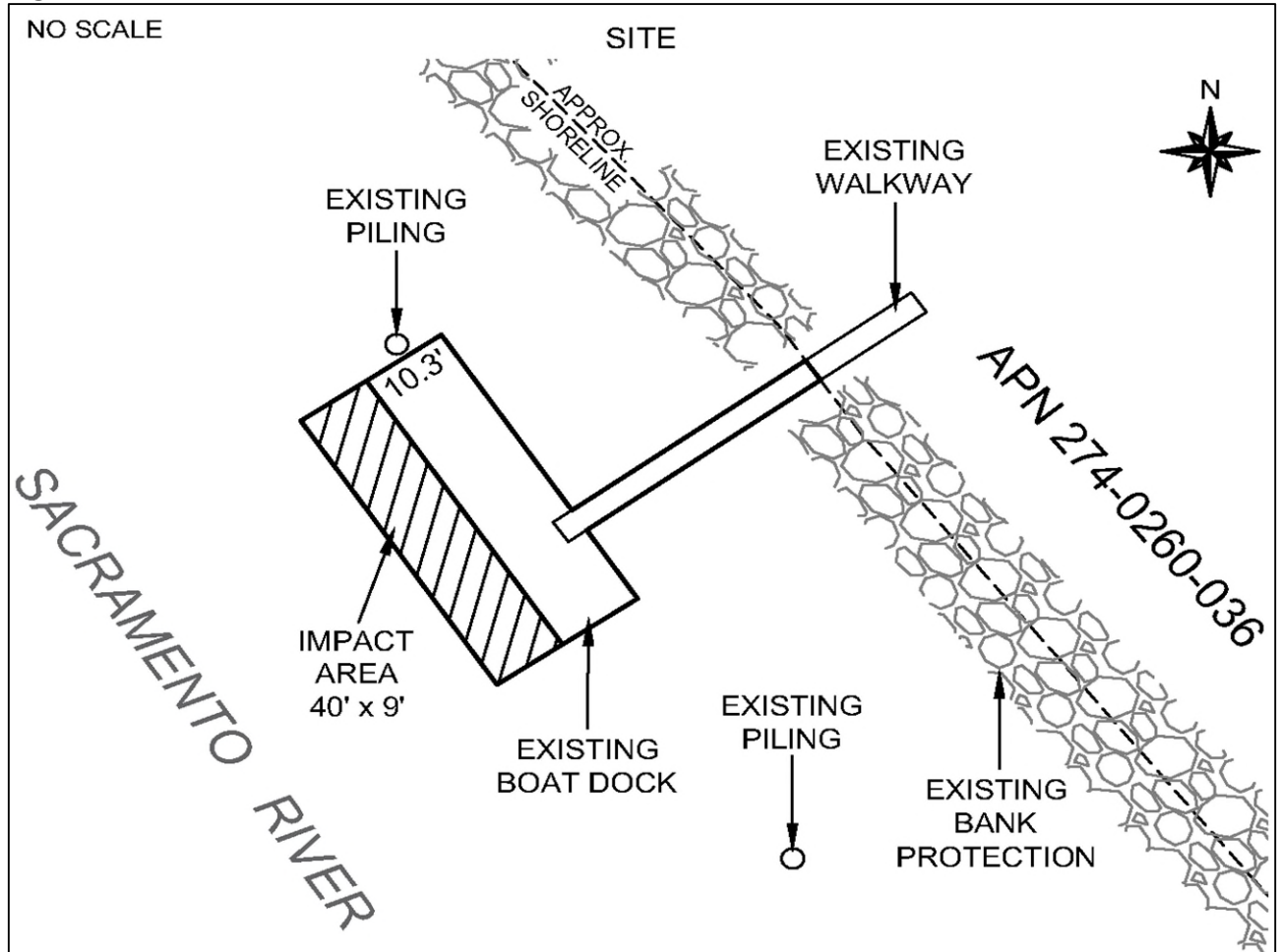
Figure 1. Location



**AUTHORIZED USE:**

Use of an existing boat dock, walkway, one unattached piling, 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:**

\$520 per year, with an annual Consumer Price Index adjustment, and \$806 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 to submit an application to the Commission for removal or reuse of the existing unattached piling within 2 years of the lease execution date.
- 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:**

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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 April 27, 2021, the Commission authorized the issuance of a General Lease – Recreational and Protective Structure Use to Ryan Hughes, for the use of an existing boat dock, appurtenant facilities, and bank protection ([Item 8, April 27, 2021](#)). The lease expired on June 18, 2024.

On June 1, 2021, the Lessee sold the upland property, which was subsequently exchanged multiple times without staff being made aware of the change in ownership. During this time, the watercraft float was also removed. On November 28, 2022, ownership interest of the upland property was transferred to Nhan Phan Thien and Kim Thoa Duong, as Co-Trustees of The Thien-Duong Trust Agreement Dated 10/7/2007. The Applicant is applying for the issuance of a General Lease – Recreational and Protective Structure Use for the use of an existing boat dock, walkway, one unattached piling, and bank protection.

Accounting records show rent was last paid through June 18, 2021, and the prior Lessee abandoned the lease premises and submitted no further payments for the time between June 19, 2021 and November 27, 2022. Staff believe that costs associated with acquiring past due rent would exceed the rent payments sought after. As part of staff's recommendation to authorize the proposed lease to the Applicant, the lease provisions regarding indemnity will be extended back to November 28, 2022, to coincide with the date the Applicant bought the upland

property adjoining the lease premises. Staff further recommends acceptance of compensation in the amount of \$806 for unauthorized occupation of State lands.

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 unattached piling is no longer used for the docking or mooring of boats. The proposed lease requires the Applicant apply to remove the existing unattached piling within two years.

The bank protection currently protects the integrity of the levee, the upland property, and maintains and improves 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 floating dock and walkway 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. However, the pilings and bank protection are fixed and therefore more vulnerable to sea level rise and 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 covered with riprap along some of its exposure and contains scant to moderate vegetation in other areas, which would limit any protection against erosion and scour pressure experienced during future events. As such, the bank remains at risk of accelerated deterioration from currents and floods, and the

exposed protective structure could be vulnerable to future events. An alternative bank protection strategy, such as bank restoration, 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).

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:**

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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. 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 the 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:**

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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, Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

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

Find that the proposed lease will not substantially impair the public's 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.

### **AUTHORIZATION:**

1. Accept compensation from the Applicant in the amount of \$806 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 use of an existing boat dock, walkway, unattached piling, and bank protection; annual rent in the amount of \$520 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.