

# Staff Report 30

## APPLICANT:

Key Lease Corporation, Inc. dba Spindrift Marina

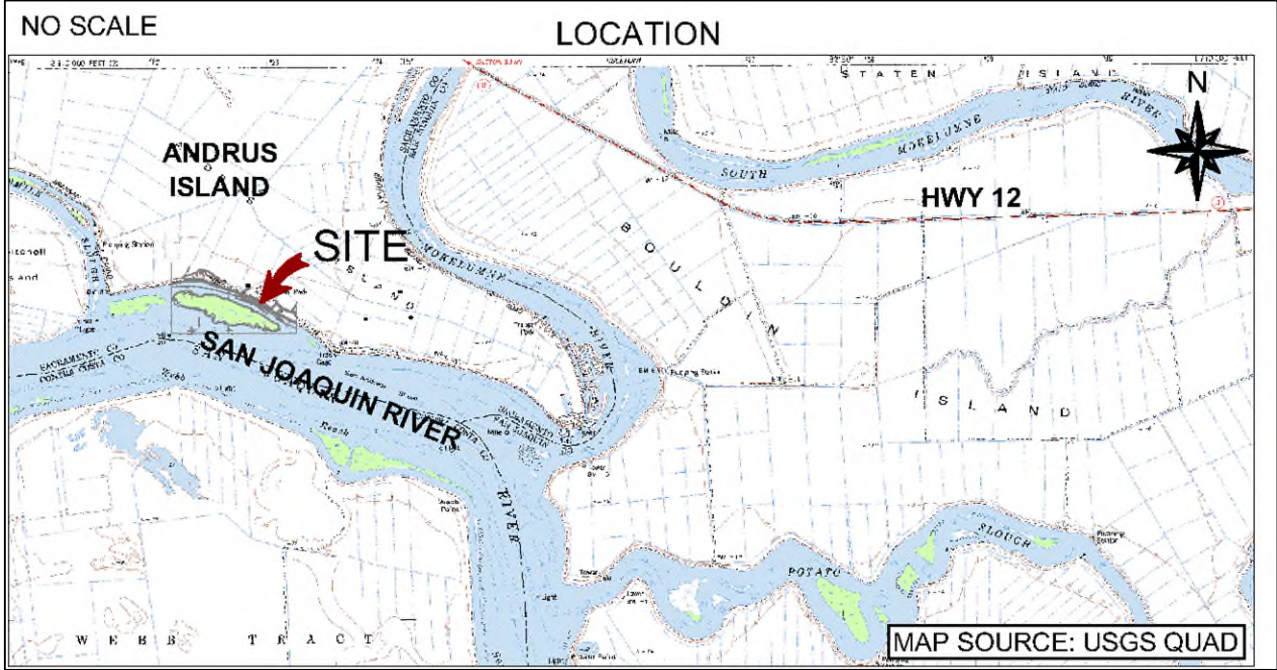
## PROPOSED ACTION:

Waiver of rent, penalty, and interest, void Invoice Numbers 54842, 57548, and 60774; and Issuance of a General Lease – Commercial Use.

## AREA, LAND TYPE, AND LOCATION:

Sovereign land in the San Joaquin River, adjacent to 841 W. Brannan Island Road, near Isleton, Sacramento County (as shown in Figure 1).

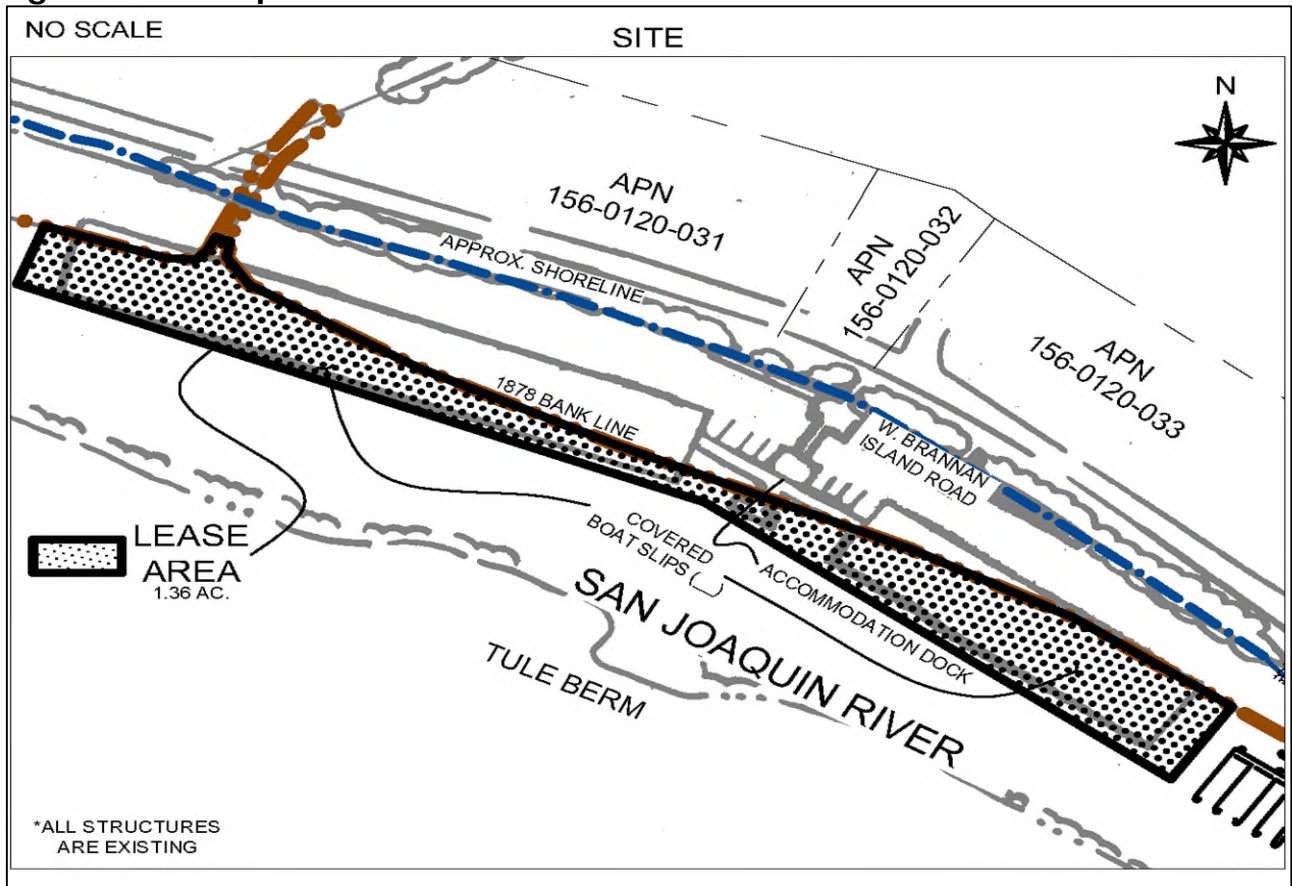
Figure 1. Location



**AUTHORIZED USE:**

Use and operation of an existing commercial marina, known as Spindrift Marina, consisting of 93 covered berths, 23 uncovered berths, pilings, walkways, and fuel dock previously authorized by the Commission and two existing restrooms with shower facilities not previously authorized by the Commission (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:**

15 years, beginning October 17, 2024.

**CONSIDERATION:**

\$4,721 per year, with an annual Consumer Price Index adjustment; and the State reserving the right to fix a different rent periodically during the lease term, as provided for in the lease.

**SPECIFIC LEASE PROVISIONS:**

- Liability insurance in an amount no less than \$3,000,000 per occurrence.
- Surety in an amount no less than \$40,000.
- Lessee agrees to submit an annual summary of repairs and maintenance performed and list repairs and maintenance planned for the coming year. The summary shall identify planned repairs and maintenance that were not completed in the prior year.
- The lease contains provisions requiring implementation of the Commission’s “Best Management Practices for Marina Owners/Operators” and encouraging implementation of the Commission’s “Best Management Practices for Berth Holders and Boaters,” including additional Best Management Practices (BMPs) the Commission subsequently deems appropriate for either of the above categories.
- Lessee or its operators may issue, without Lessor’s prior approval, individual berthing subleases in conjunction with normal commercial marina subleasing practices for terms of one year or less.

**BACKGROUND:**

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On April 26, 1989, the Commission authorized a 30-year General Lease – Commercial Use, Lease Number PRC 2409, beginning on April 1, 1989, to Harry C. Schilling and Harry W. Schilling, for the operation and maintenance of a commercial marina known as Spindrift Marina ([Item 3, April 26, 1989](#)).

Spindrift Marina is a large commercial marina covering nearly 3 acres. The upland boundary of the state’s ownership in this location is unclear, and the Commission has charged rent against a lease area of only about 1 acre that is clearly within the Commission’s leasing jurisdiction. The Harbor Master’s office is located outside of the leasing area. Approximately 40 percent of the marina facilities fall within the leasing area. The facilities include two restrooms with showers that have existed for several years but were not previously authorized by the Commission. The marina does not currently sell fuel and has not sold fuel since May 2012. The Sacramento County Environmental Management Department confirmed the aboveground storage tank has been removed, and the gas lines were cut and covered. However, the non-functional gas pump is still in place on the fuel dock.

The lease expired on March 31, 2019. In 2019, Key Lease Corporation, Inc. dba Spindrift Marina (Spindrift Marina) submitted Application Number A4444 for a General Lease – Commercial Use. Initially, the Applicant proposed a land exchange. Staff reviewed the proposal and determined an exchange was not feasible, as staff could not make the findings required by law for an exchange of Public Trust lands. The Applicant indicated the proposed lease was expensive due to the increase in liability insurance and surety amount. Staff advised the Applicant that to reduce costs they could remove some or all of the marina improvements from State lands. The Applicant stopped communicating with staff in 2020 but submitted payments to compensate for the unauthorized occupation of state land through March 31, 2022.

On February 26, 2024, the Commission authorized a 10-year General Lease – Commercial Use to Spindrift Marina beginning on April 1, 2024 ([Item 59, February 26, 2024](#)). The Commission also authorized staff and the Office of the Attorney General to remove unauthorized improvements from State land if Spindrift Marina did not return a signed and notarized lease within 60 days of Commission authorization or failed to provide compensation for the period prior to April 1, 2024. The Commission did not receive the signed and notarized lease or compensation during that period, placing Spindrift Marina in default for failure to pay rent and placing the improvements in trespass. Consequently, the Commission’s authorization for a new lease automatically terminated.

Staff sent a letter on June 19, 2024, to demand Spindrift Marina quit the premises, pay past-due costs, and begin preparing to remove improvements. Spindrift Marina does not wish to remove the improvements within the Commission’s jurisdiction and resumed conversations with staff to pay the past-due costs and seek authorization from the Commission for a newly proposed General Lease – Commercial Use for the previously authorized improvements.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

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

Staff recommends issuance of a new General Lease – Commercial Use beginning October 17, 2024 for an existing commercial marina, known as Spindrift Marina, consisting of 93 covered berths, 23 uncovered berths, pilings, walkways, and fuel dock previously authorized by the Commission and two existing restrooms with shower facilities not previously authorized by the Commission.

The Applicant agreed to indemnify the State to ensure the State is protected for the period between the expiration of the previously signed lease and the proposed lease, April 1, 2019 through October 16, 2024; and signed the General Lease – Commercial Use under consideration at this meeting. The Applicant also paid \$12,029 in compensation for the unauthorized occupation of state sovereign land for the existing facilities covering the period between the last payment made through the day before the proposed lease begins, April 1, 2022 through October 16, 2024, and for staff costs to process the unsigned General Lease – Commercial Use authorized in February 2024.

Staff recommends voiding Invoice Numbers 54842 and 57548 and waiving any associated penalty and interest for compensation due for the period between the last payment made through the day before the proposed lease begins, April 1, 2022 to October 16, 2024. Staff further recommends voiding Invoice Number 60774 and waiving any associated penalty and interest for the annual rent due under the unsigned lease, for April 1, 2024 through March 31, 2025.

The subject commercial marina directly promotes Public Trust uses. The marina facilities accommodate, promote, and foster the public’s need for maritime services and the public’s enjoyment of the State’s waterways. Recreational boating is a water-dependent use that is generally consistent with the common law Public Trust Doctrine. The adjacent upland is developed as a commercial marina and mobile home park.

The proposed lease includes certain provisions and BMPs intended to protect the public use of the proposed lease area, including a limited lease term of 15 years. The facilities have existed for many years at this location; they do not significantly alter the land, they do not permanently alienate the State’s fee simple interest in the underlying land, and they do not permanently impair public rights. Upon termination of the lease, the lessee may be required to remove any improvements and restore the lease premises to their original condition. Furthermore, the lease requires that the lessee insure the lease premises and a performance surety in the amount of \$40,000. 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 San Joaquin 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 San Joaquin 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 pilings and other supports for 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 marina walkways 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 pilings are fixed and therefore more vulnerable to sea level rise and more frequent flood events. These structures may need maintenance, due to increased flood exposure and more frequent storm events, to ensure they do not become dislodged or degraded and to reduce risks to public safety and navigation.

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.

#### **ENVIRONMENTAL JUSTICE:**

The [Commission's Environmental Justice Policy](#) reaffirms its commitment to an informed and open process in that all people are treated equitably and with dignity. Among other goals, the policy commits to “strive to minimize additional burdens on and increase benefits to marginalized and disadvantaged communities resulting from a proposed project or lease.” As part of its commitment to environmental justice, staff reviewed data that indicated high pollution burdens to the surrounding community. These burdens may result in health impacts such as asthma, cardiovascular disease, and low birth rate. In addition, the same data showed high burdens related to groundwater threats and impaired waters.

As part of an environmental justice outreach and engagement effort, staff contacted community-based organizations in Sacramento County on January 10, 2023. The outreach included a brief description of the lease and conveyed a strong desire to learn from the perspectives of the local community. As of the posting of this staff report, no responses to the outreach have been received.

**CONCLUSION:**

For all the reasons stated above, staff believes that issuance of the proposed lease will not substantially impair the public rights to navigation and fishing; or substantially interfere with the Public Trust needs and values at this location, at this time, and for the term of the lease; is consistent with the Public Trust Doctrine; 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. The lessee has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Meeting Evolving Public Trust Needs", "Prioritizing Social, Economic, and Environmental Justice", and "Leading Climate Activism" Strategic Focus Areas of the [Commission's 2021-2025 Strategic Plan](#).
3. Staff recommends that the Commission find that issuance of the 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:**

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It is recommended that the Commission:

### **CEQA FINDING:**

Find that issuance of the 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:**

Find that the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, at this time, and for the term of the lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

### **AUTHORIZATION:**

1. Waive rent, penalty, and interest due by Lessee for the period from April 1, 2022 to March 31, 2025; and void invoice numbers 54842, 57548, and 60774 issued for Lease 2409.
2. Authorize acceptance of compensation from the Applicant in the amount of \$12,029 for the unauthorized occupation of state sovereign land through October 17, 2024.
3. Authorize issuance of a General Lease – Commercial Use to the Applicant beginning October 17, 2024, for a term of 15 years, for the use and operation of an existing commercial marina known as Spindrift Marina, consisting of 93 covered berths, 23 uncovered berths, pilings, walkways, and fuel dock previously authorized; and two existing restrooms with shower facilities not previously authorized; annual rent in the amount of \$4,721, with an annual Consumer Price Index adjustment and the State reserving the right to fix a different rent periodically during the lease term, as provided for in the lease; liability insurance in an amount no less than \$3,000,000 per occurrence; and a surety in the amount of no less than \$40,000.