

# Staff Report 28

## APPLICANT:

Devil's Isle, Inc.

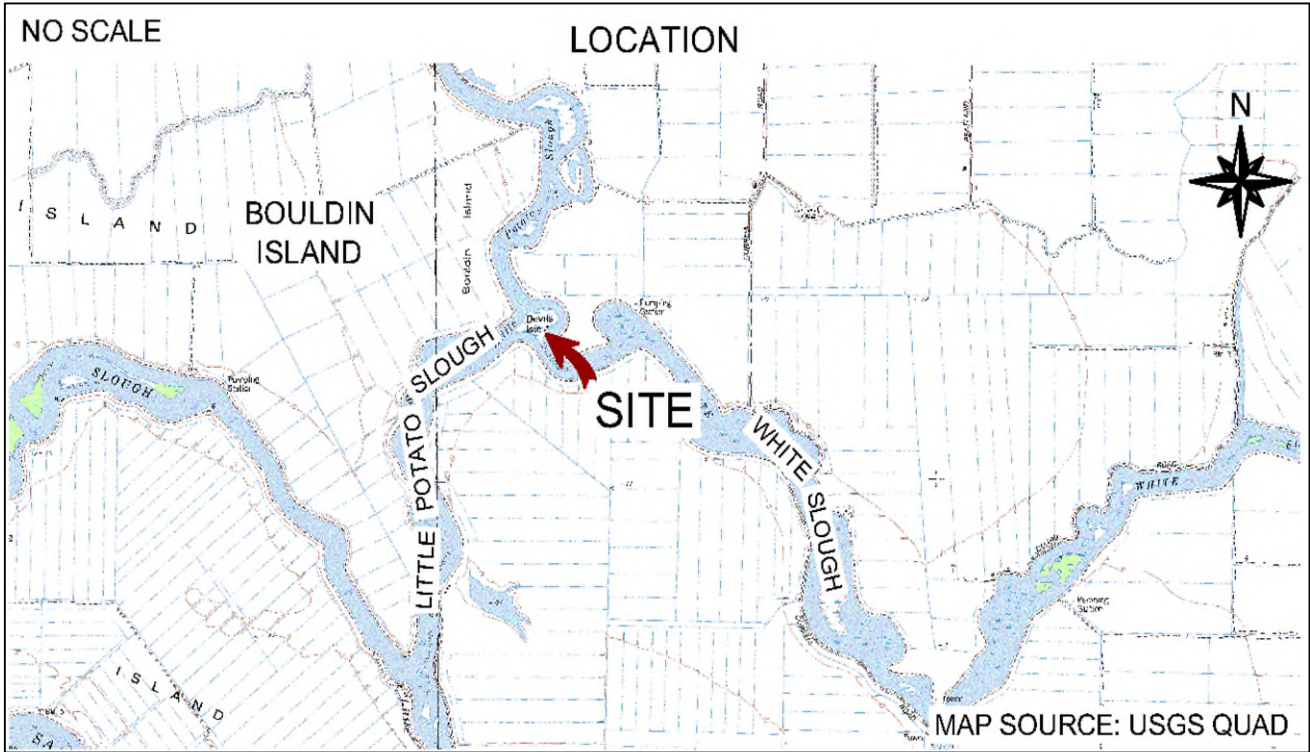
## PROPOSED ACTION:

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

## AREA, LAND TYPE, AND LOCATION:

Sovereign land located in White Slough and Little Potato Slough adjacent to 14501 West Eight Mile Road, near Stockton, San Joaquin County (as shown in Figure 1).

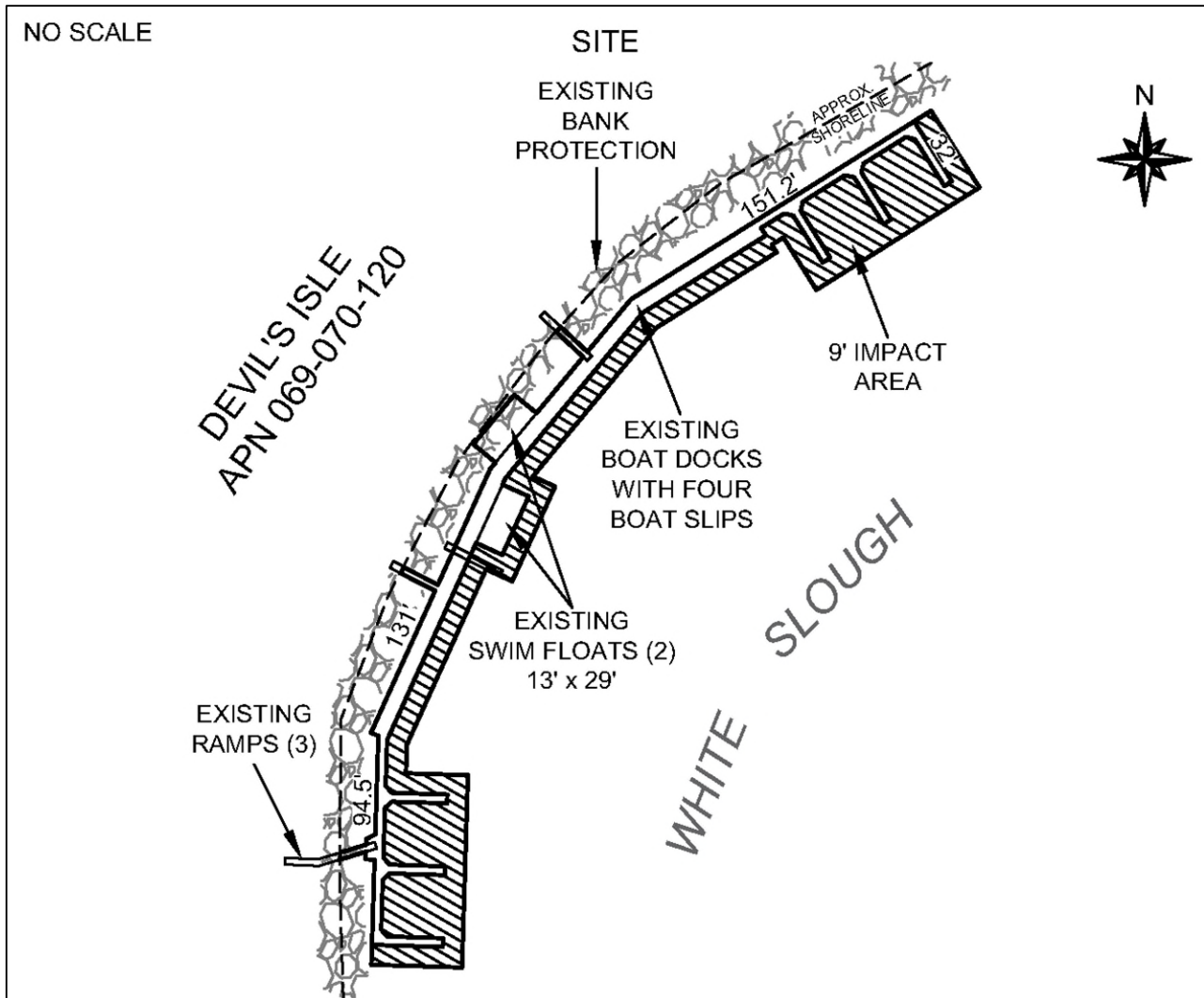
Figure 1. Location



**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 November 23, 2024.

**CONSIDERATION:**

\$2,440 per year, with an annual Consumer Price Index adjustment.

**SPECIFIC LEASE PROVISIONS:**

- Liability insurance in the amount of no less than \$1,000,000.

**STAFF ANALYSIS AND RECOMMENDATION:**

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**AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 6501.1, 6503, 6503.5, 6505.5; California Code of Regulations, title 2, sections 2000 and 2003.

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

On April 6, 2010, the Commission authorized the issuance of a General Lease – Recreational and Protective Structure Use to Devil's Isle Inc. for the use of an existing boat dock with four single berth slips, three ramps, covered swimming float, and bank protection ([Item 16, April 06, 2010](#)).

On October 19, 2017, the Commission authorized an amendment of lease and revision of rent that increased the annual rent from \$1,992 per year to \$2,140 per year ([Item 36, October 19, 2017](#)). The lease expired November 22, 2024.

The Applicant is now applying for a General Lease – Recreational and Protective Structure Use, for the use of the existing boat dock with four single berth slips, three ramps, two covered swimming floats, and bank protection. The Applicant is a private non-commercial, members-only organization formed to provide social and recreational boating activities to its members, their families, and guests.

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 slough. 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 the slough, which helps protect Public Trust resources for recreational and navigational use by the public.

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 the improvements and return 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 White Slough and Little Potato Slough, near the city of Stockton, 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 sloughs’ 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 steel pilings that protect and keep the dock in position on the riverbed. 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 berth slips, ramps, and two covered swimming floats 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 and bank protection 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.

The bank is protected with riprap and is at risk of scouring, loss of backfill, slope failure, and accelerated deterioration from sea level rise, currents, floods, and increased precipitation. However, it is also heavily 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. Nevertheless, as sea levels rise, the bank protection will provide less defense against flood waters, increasing the vulnerability of the upland parcel. Maintaining a wide buffer between the bank and upland improvements will minimize potential impacts

from flooding and erosion. In the future, if erosion of the bank protection requires modifications to the bank, Commission staff suggest the lessee consider nature-based solutions such as additional native vegetation to stabilize the sediment. Any future construction or activities on State land would require a separate authorization from the Commission.

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 believe the issuance of this lease 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 proposed lease; and is in the best interests of the State.

### **OTHER PERTINENT INFORMATION:**

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1. Approval or denial of an application is a discretionary action by the Commission. Each time the Commission approves or rejects the 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 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. Staff recommend 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:**

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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:**

1. Find that the existing and, for a limited period, continuing use of the existing boat dock and appurtenant facilities does 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 the Public Trust Doctrine uses, at this time.
3. Find that issuing the proposed lease is in the best interests of the State.

### **AUTHORIZATION:**

Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning November 23, 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 \$2,440 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.