

Staff Report 31

APPLICANT:

Walter R. Hurlbut, as trustee of the Hurlbut Family Revocable Trust U/A/D June 21, 2006

PROPOSED ACTION:

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

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Sacramento River, adjacent to 7095 Garden Highway, Sacramento, Sacramento County (as shown in Figure 1).

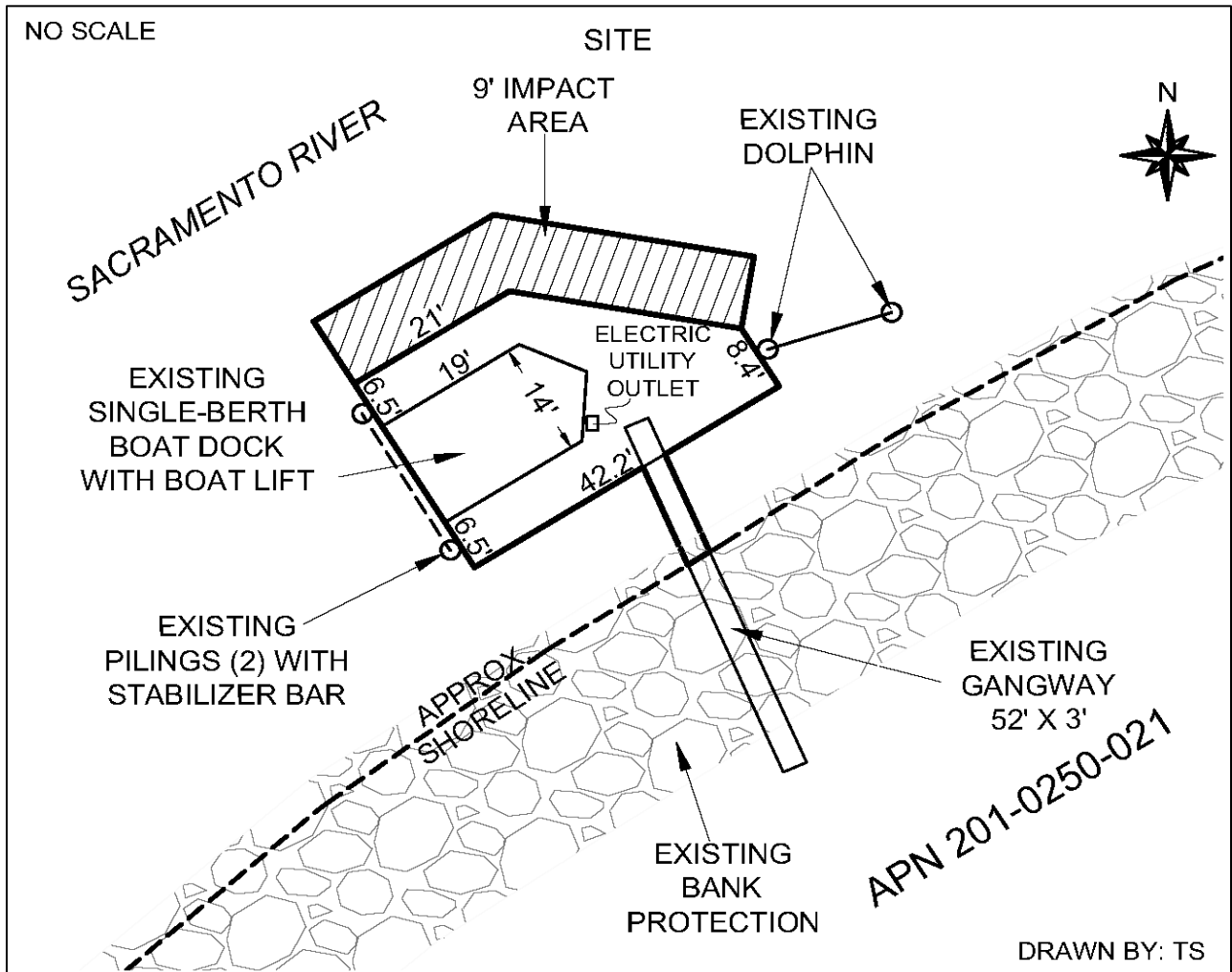
Figure 1. Location



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 March 1, 2025.

CONSIDERATION:

\$477 per year, with an annual Consumer Price Index adjustment; and \$318 for the unauthorized occupation of State land for the period prior to March 1, 2025.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee agrees the provisions of Section 3, Paragraph 11 shall also extend to the period of Lessee's unauthorized occupation of state-owned lands, from February 21, 2024 to February 28, 2025.

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, section 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On February 21, 2014, the Commission authorized issuance of a General Lease – Recreational and Protective Structure Use to Walter R. Hurlbut and Linda H. Hurlbut, Trustees of the Hurlbut Family Revocable Trust U/V/D June 21, 2006, for the continued use and maintenance of existing bank protection previously authorized by the Commission; and use and maintenance of an existing boat dock with boat lift, steel dolphin, two steel pilings with steel stabilizer bar, gangway, and electrical utility outlet not previously authorized by the Commission ([Item 7, June 19, 2014](#)).

One of the Lessees, Linda H. Hurlbut, has since passed away. The Applicant is now applying for issuance of a General Lease – Recreational and Protective Structure Use for the use of an existing boat dock with boat lift, steel dolphin, two steel pilings with a steel stabilizer bar, gangway, electrical utility outlet, and bank protection.

Staff recommend that the Commission accept compensation from the Applicant in the amount of \$318 for the unauthorized occupation of State land for the subject facilities for the period prior to March 1, 2025. Additionally, the lease will require the Applicant to indemnify the State for the entire period of unauthorized occupation, February 21, 2024 to February 28, 2025, ensuring the State is protected.

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 or substantially interfere with any Public Trust needs at this time or for the term of the lease.

The 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 will mutually benefit both the public and the Applicant. The bank of the Sacramento River will have additional protection from wave action provided at no extra cost to the public. The bank protection will protect the upland property and maintain and improve the integrity of the riverbank, which helps protect Public Trust resources for recreational use by the public.

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.

Sea level rise 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 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 dolphin and 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 floating boat dock and gangway with electrical utility outlet 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

two steel pilings with stabilizer bar, dolphin, 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 a small amount of 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 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. The bank may also suffer increased erosion from sea level rise and storm flooding. 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 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 interfere with Public Trust needs at this location, at this time, and for the term of the proposed lease; and is in the best interest of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application is 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, as prior lessee, may be required to remove the subject 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:

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 INTEREST:

1. Find that the existing and, for a limited period, continuing use of the existing boat dock and appurtenant facilities do not substantially interfere 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 the Public Trust Doctrine, but the current use does not substantially interfere with the Trust at this time.
3. Find that issuing the proposed lease is in the best interest of the State.

AUTHORIZATION:

1. Authorize acceptance of compensation from the Applicant in the amount of \$318 for the unauthorized occupation of State land for the period prior to March 1, 2025.

2. Authorize issuance of a General Lease – Recreational Use and Protective Structure Use to the Applicant beginning March 1, 2025, for a term of 10 years, for ~~the construction and~~ use of a boat dock and appurtenant facilities; and bank protection in the Sacramento River; annual rent in the amount of \$477 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.