

**CALENDAR ITEM
C09**

A 5, 9
S 6

12/05/12
PRC 5697.1
V. Caldwell

**TERMINATION AND ISSUANCE OF A GENERAL LEASE –
RECREATIONAL AND PROTECTIVE STRUCTURE USE**

LESSEE:

Tom Soto

APPLICANTS:

Joshua Weiss Harmatz and Leslie Harmatz, Co-Trustees of The Harmatz Family Trust dated December 8, 2009

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Sacramento River, adjacent to 4171 Garden Highway, near the city of Sacramento, Sacramento County

AUTHORIZED USE:

Continued use and maintenance of an existing uncovered single-berth floating boat dock, four steel pilings, gangway, and bank protection previously authorized by the Commission and the use and maintenance of an existing boat lift not previously authorized by the Commission.

LEASE TERM:

10 years, beginning December 5, 2012.

CONSIDERATION:

Uncovered Single-Berth Floating Boat Dock with Boat lift, Four Steel Pilings, and Gangway: \$290 per year, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

Bank Protection: The public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interest.

SPECIFIC LEASE PROVISIONS:

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

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OTHER PERTINENT INFORMATION:

1. Applicants own the uplands adjoining the lease premises.
2. On August 24, 2006, the Commission authorized a 10-year General Lease – Recreational and Protective Structure Use to Tom Soto. The lease will expire on September 25, 2015. On October 22, 2008, the upland was deeded to Josh Harmatz and Leslie Harmatz. On December 23, 2009, the property was placed in the Joshua Weiss Harmatz and Leslie Harmatz, Co-Trustees of The Harmatz Family Trust dated December 8, 2009. The Applicants are now applying for termination of the existing lease and issuance of a new General Lease – Recreational and Protective Structure Use for the continued use and maintenance of an existing uncovered single-berth floating boat dock, four steel pilings, gangway, and bank protection previously authorized by the Commission and the use and maintenance of an existing boat lift not previously authorized by the Commission
3. On October 8, 2011, Chapter 585, Statutes of 2011 became law. The law took effect on January 1, 2012. This new law repeals section 6503.5 of the Public Resources Code, which had allowed rent-free use of State-owned land by certain private parties for their recreational piers. It replaced the former section with a new section 6503.5 which provides that the State Lands Commission “shall charge rent for a private recreational pier constructed on state lands.” The law provides for two exceptions to the imposition of rent. Those exceptions are for:
 - A. A lease in effect on July 1, 2011 through the remaining term of that lease. If a lease in effect on July 1, 2011 expires or is otherwise terminated, any new lease will be subject to rent; and
 - B. A lease for which the lease application and application fees were submitted to the Commission prior to March 31, 2011.

The Applicants do not qualify for an exception and the lease is subject to rent because the application and fees were received after March 31, 2011.

4. The boat lift has existed on site for many years, but was not previously authorized by the Commission. Staff recommends placing the boat lift under lease.
5. The bank protection will mutually benefit both the public and the Applicants. The bank of the Sacramento River will have additional protection from wave action provided at no cost to the public.

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6. **Lease Termination:** The staff recommends that the Commission find that the subject lease termination does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

7. **Issuance of Lease:** The staff recommends that the Commission find that this activity 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 15300 and California Code of Regulations, Title 2, section 2905.

8. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Lease Termination: Find that the subject lease termination is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

Issuance of Lease: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section

CALENDAR ITEM NO. **C09** (CONT'D)

15061 as a categorically exempt project, Class 1, Existing Facilities;
California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

1. Authorize termination, effective December 4, 2012, of Lease No. PRC 5697.9, a General Lease - Recreational and Protective Structure Use, issued to Tom Soto.

2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to Joshua Weiss Harmatz and Leslie Harmatz, Co-Trustees of The Harmatz Family Trust dated December 8, 2009, beginning December 5, 2012, for a term of 10 years, for the continued use and maintenance of an existing uncovered single-berth floating boat dock, four steel pilings, gangway, and bank protection previously authorized by the Commission, and use and maintenance of an existing boat lift not previously authorized by the Commission as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration for the uncovered single-berth floating boat dock with boat lift, four steel pilings, and gangway: \$290 per year, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease; consideration for the bank protection: the public use and benefit with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interest; and liability insurance with coverage of no less than \$1,000,000.

EXHIBIT A

PRC 5697.1

LAND DESCRIPTION

A parcel of tide and submerged land situate in the Sacramento River, lying adjacent to Swamp and Overflow Survey No. 193, patented July 11, 1865, County of Sacramento, State of California, and more particularly described as follows

PARCEL 1 – DOCK

All those lands underlying an existing deck, ramp and single-berth floating boat dock, boat lift, three (3) pilings, and gangway lying adjacent to that Lot as described in Exhibit "A" of that Grant Deed recorded October 22, 2008, as Book 20081022, Page 849 in Official Records of said County.

TOGETHER WITH a 10 foot impact area.

EXCEPTING THEREFROM any portion lying landward of the Ordinary High Water Mark of the right bank of the Sacramento River.

PARCEL 2- SINGLE PILING

All those lands underlying one (1) piling lying adjacent to said Lot as designated in said "Exhibit A".

ALSO TOGETHER WITH all those lands underlying existing bank protection lying adjacent to said Lot.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared October 15, 2012 by the California State Lands Commission Boundary Unit.



APN 225-0090-028

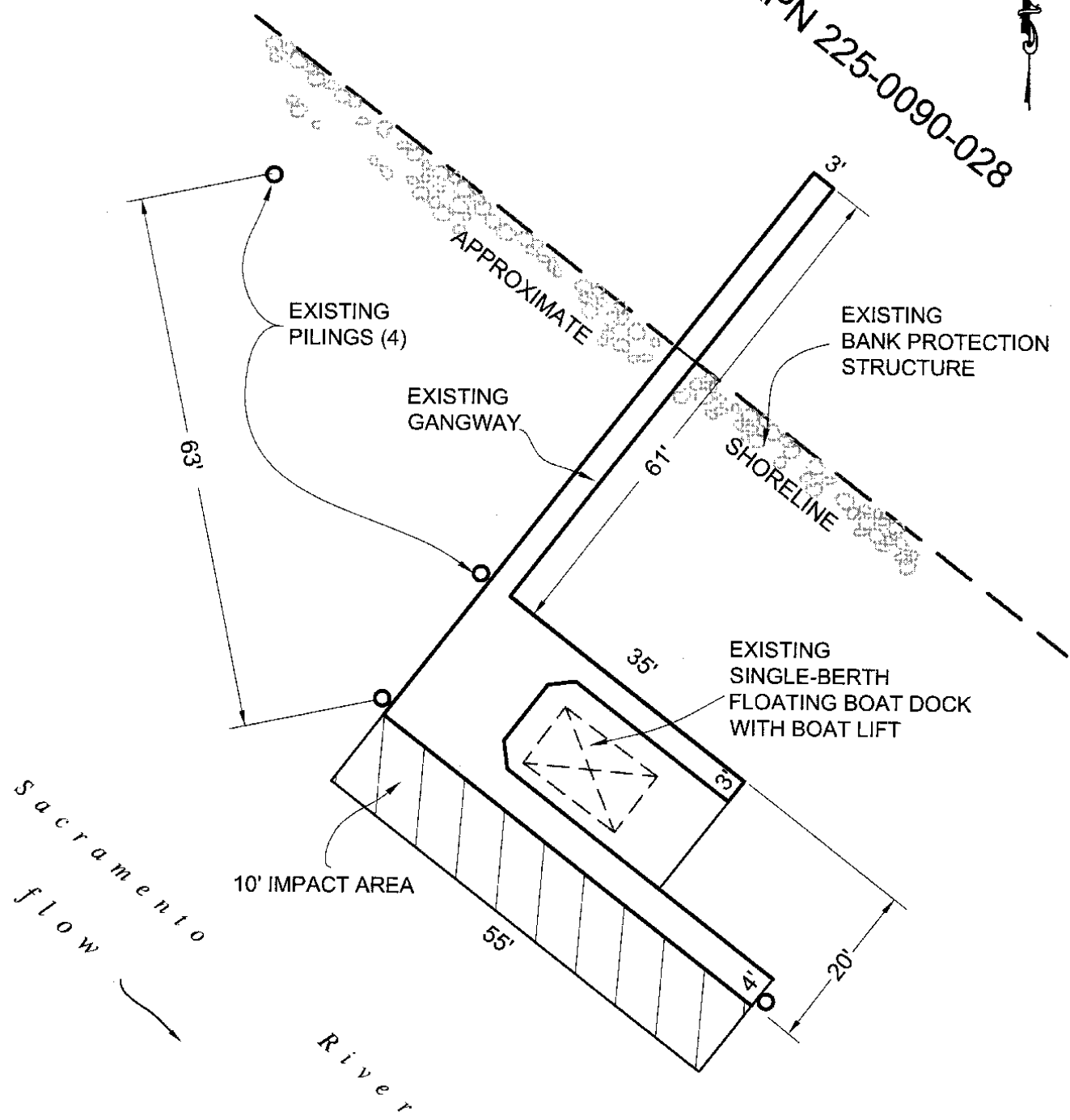


EXHIBIT A

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LAND DESCRIPTION PLAT
PRC 5697.1, HARMATZ
SACRAMENTO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



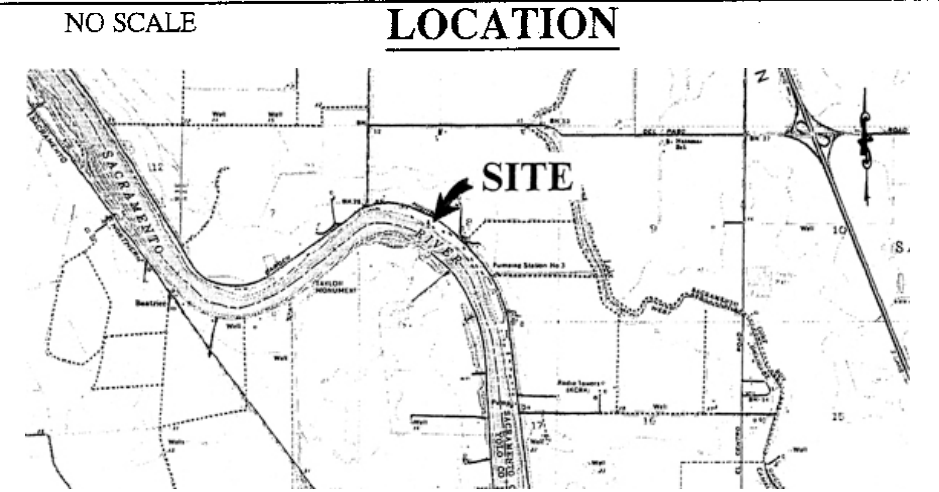
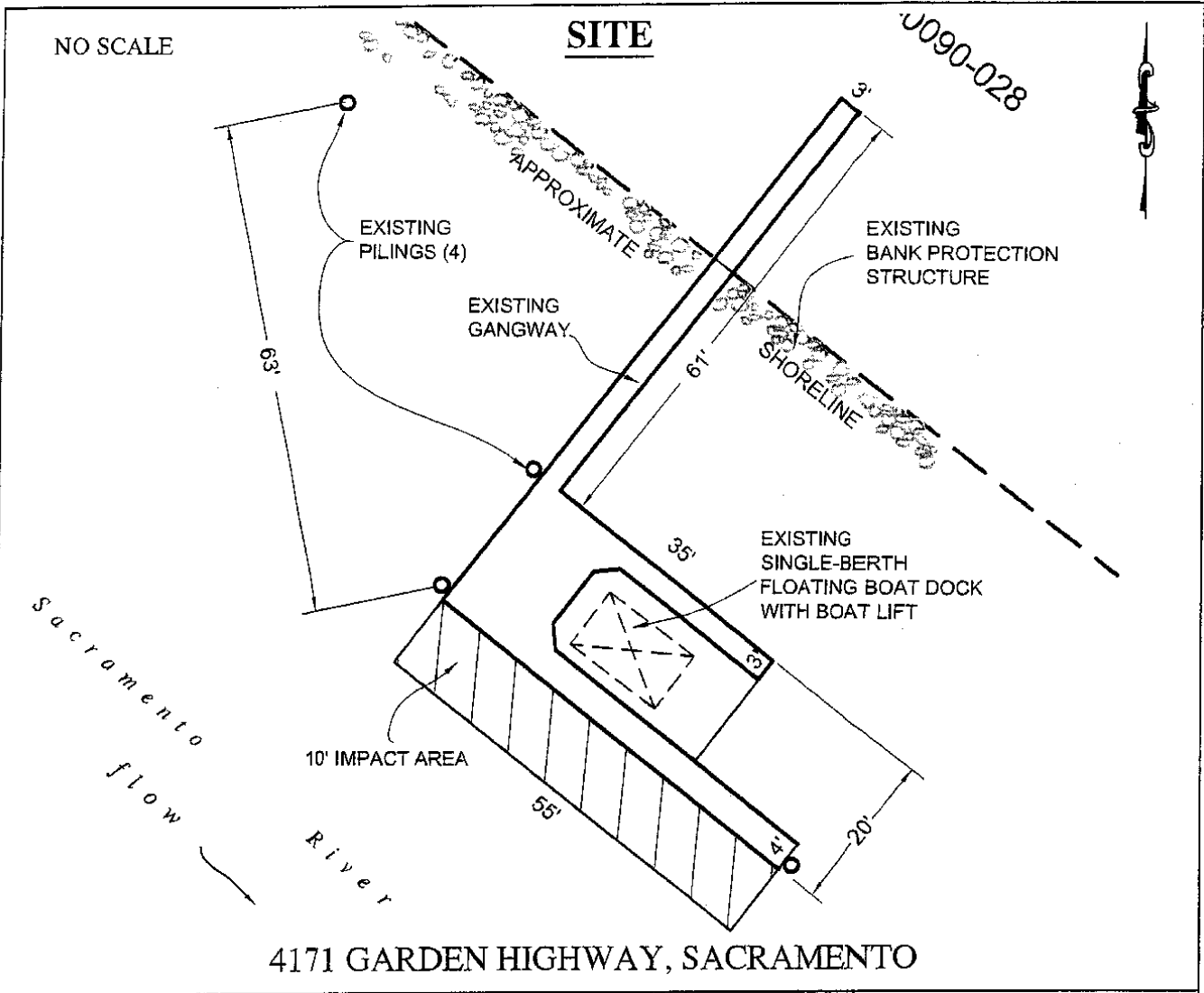


Exhibit B
 PRC 5697.1
 HARMATZ
 APN 225-0090-028
 GENERAL LEASE -
 RECREATIONAL AND
 PROTECTIVE STRUCTURE USE
 SACRAMENTO COUNTY



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

MJJ 10/11/12