

**CALENDAR ITEM  
C09**

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S 6

04/26/13  
W 26239  
V. Caldwell

**GENERAL LEASE – RECREATIONAL AND PROTECTIVE STRUCTURE USE**

**APPLICANTS:**

Demetrius Barmettler and Paula Barmettler

**AREA, LAND TYPE, AND LOCATION:**

Sovereign land located in the Sacramento River, adjacent to 6057 Garden Highway, near the city of Sacramento, Sacramento County.

**AUTHORIZED USE:**

Use and maintenance of an existing covered single-berth floating boat dock, two support pilings, strong arm, gangway, electric and water utility outlet, portion of a deck, and bank protection not previously authorized by the Commission.

**LEASE TERM:**

10 years, beginning April 26, 2013.

**CONSIDERATION:**

Covered Single-Berth Floating Boat Dock, Two Support Pilings, Strong Arm, Gangway, and Electric and Water Utility Outlet: No monetary consideration pursuant to Public Resources Code section 6503.5.

Portion of Deck: \$129 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:**

Insurance:

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

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Other:

The proposed lease contains provisions requiring that:

1. The existing deck with railing cannot be expanded, and if repairs to any portion of the existing deck cost more than 50 percent of the base value of the deck with railing, the deck must be removed from the lease premises.
2. No permanent deck-related improvements are to be constructed or placed on the open dock area, including, but not limited to, wet bars, barbecues, grills, hot tubs, refrigerators, sinks, or sun shades.
3. No permanent enclosure is to be constructed or permitted on the open dock area.
4. Any use of the improvements that could be construed as residential use (e.g. enclosed and covered patio, bathroom, sunroom, office, studio, or apartment) is prohibited.

**OTHER PERTINENT INFORMATION:**

1. The Applicants own the upland adjoining the lease premises.
2. In 1999, the Applicants obtained permits from the Department of Water Resources, the Reclamation Board, and the County of Sacramento for the construction of a single berth floating dock and gangway. In 2002, the dock facilities were constructed without prior Commission authorization.
3. On March 8, 2007, Commission staff performed a site inspection of the Garden Highway area noting several properties with unauthorized docks. On April 2, 2007, staff sent a letter to the Applicants informing them of the need to obtain a lease for the facilities built on State-owned sovereign lands. The Applicants are now applying for a General Lease - Recreational and Protective Structure Use.
4. On October 8, 2011, Chapter 585, Statutes of 2011 became law. The law became effective 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:

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- 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.

Because the application was submitted to the Commission prior to March 31, 2011, the covered boat dock, pilings, strong arm, and utility outlet meet the statutory requirements for an exception to recently-enacted changes to Section 6503.5 of the Public Resources Code for the term of this lease.

The existing deck is used for recreational purposes but does not qualify for rent-free status because it is a facility not constructed for the docking and mooring of boats. Annual rent has been calculated based on the square footage of the portion of deck area located on the Lease Premises.

- 5. On April 24, 2008, the U.S. Army Corps of Engineers issued a letter of permission to the Applicants to retain the unauthorized facilities under the condition that they would mitigate for the loss of 0.036 acre of waters of the United States by purchasing a 0.072 acre credit of shaded riverine aquatic habitat at the Fremont Landing Conservation Bank. Staff has received evidence of this purchase and recommends issuance of a Lease.
- 6. 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.
- 7. The staff recommends 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 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

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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:**

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).

**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:**

Authorize issuance of a General Lease – Recreational and Protective Structure Use to Demetrius Barmettler and Paula Barmettler, beginning April 26, 2013, for a term of 10 years, for the use and maintenance of an existing covered single-berth floating boat dock, two support pilings, strong arm, gangway, electric and water utility outlet, portion of a deck, and bank protection 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 covered floating boat dock, two support pilings, strong arm, gangway, and electric and water utility outlet: no monetary consideration pursuant to Public Resources Code section 6503.5; consideration for a portion of deck: annual rent in the amount of \$129 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 in the amount of no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**W 26239**

**LAND DESCRIPTION**

A parcel of tide and submerged land, situate in the bed of the Sacramento River lying adjacent to Swamp and Overflowed Lands Survey 898 patented January 29, 1868, County of Sacramento, State of California, and more particularly described as follows:

All those lands underlying an existing covered floating dock, gangway and appurtenant structures and deck adjacent to that parcel as described in "Exhibit A" of that Deed of Trust recorded October 5, 2000 as Book 20001006 Page 0175 in Official Records of said County.

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

ALSO TOGETHER WITH a 10 foot impact area.

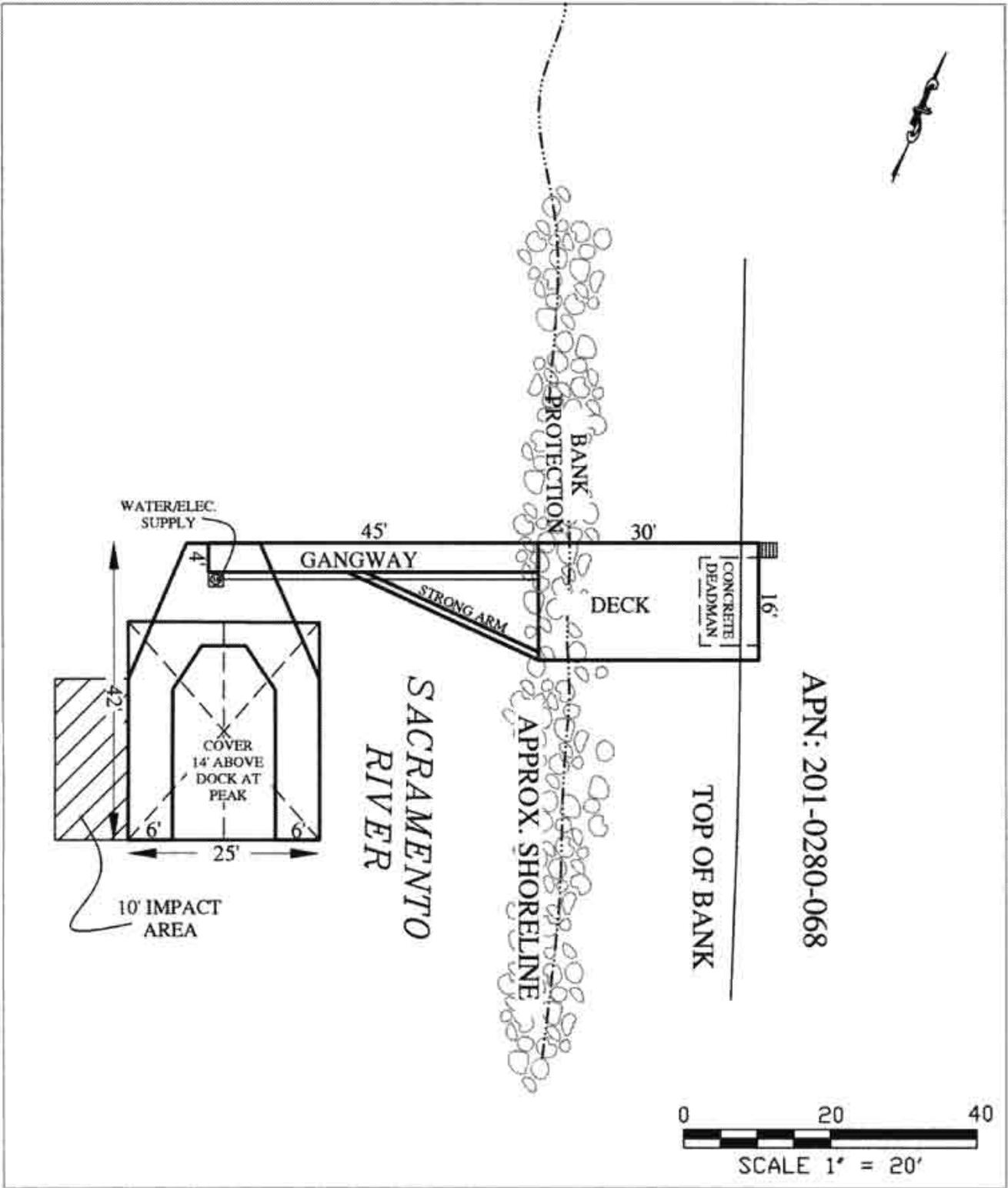
EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of said river

Accompanying plat is hereby made a part of this description.

**END OF DESCRIPTION**

PREPARED 2/5/13 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT





**EXHIBIT A**

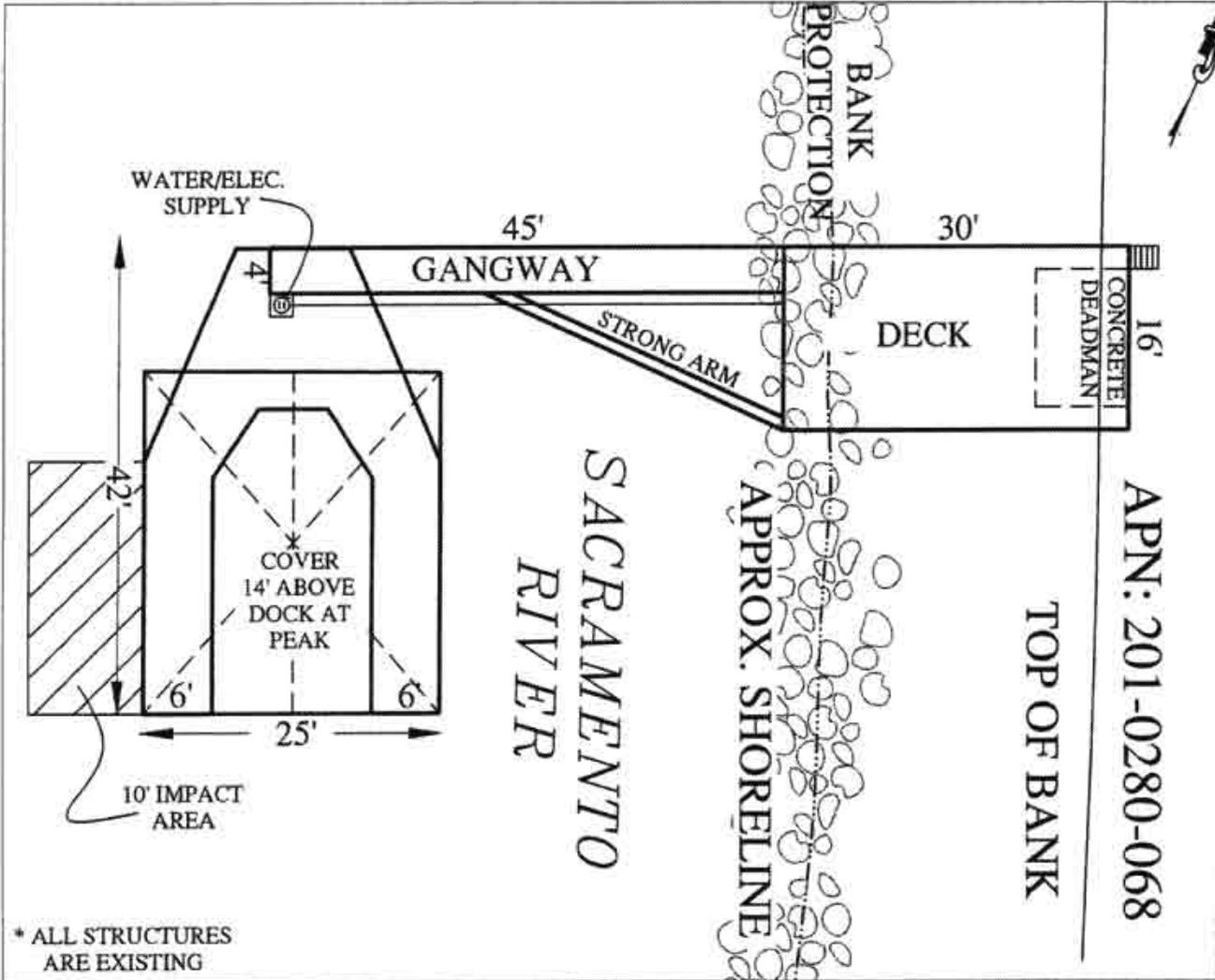
LAND DESCRIPTION PLAT  
 W 26239, BARMETTLER  
 SACRAMENTO COUNTY

CALIFORNIA STATE  
 LANDS COMMISSION



NO SCALE

### SITE



6057 Garden Highway, Sacramento River

NO SCALE

### LOCATION



MAP SOURCE: USGS QUAD

### Exhibit B

W 26239  
 BARMETTLER  
 APN: 201-0280-068  
 GENERAL LEASE -  
 RECREATIONAL & PROTECTIVE  
 STRUCTURE USE  
 SACRAMENTO COUNTY



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.