

**CALENDAR ITEM
C21**

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02/09/16
PRC 6053.1
G. Asimakopoulos

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

LESSEE:

John Orosz and Diana Orosz

APPLICANT:

Talbert Denney and Barbara Denney

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Sacramento River, adjacent to 2365 Garden Highway, city of Sacramento, Sacramento County.

AUTHORIZED USE:

Continued use and maintenance of an existing covered floating boat dock, boat lift, gangway, anchors and cables, and bank protection.

LEASE TERM:

10 years, beginning July 21, 2015.

CONSIDERATION:

Covered Floating Boat Dock, Boat Lift, Gangway, and Anchors and Cables:
\$451 per year, with an annual Consumer Price Index adjustment.

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 to be in the State's best interests.

SPECIFIC LEASE PROVISIONS:

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

STAFF ANALYSIS AND RECOMMENDATION:

Statutory Authority:

Public Resources Code sections 6005, 6216, 6301, and 6503.5; California Code of Regulations, Title 2, section 2000, subdivision (b).

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Public Trust and State's Best Interests Analysis:

The subject dock and appurtenant facilities are for the docking and mooring of boats. Recreational boating is a water-dependent activity and 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 lands (Public Resources Code, § 6503.5). The subject structures are privately owned and maintained. The adjacent upland parcel is privately owned and developed with a residence.

The proposed lease includes certain provisions protecting the public use of the proposed lease area, including a limited lease term of 10 years, a non-exclusive use provision, and a reservation to the people of the State of California of an easement for access to and across the lease area.

The dock and appurtenant facilities have existed for many years at this location; they do not significantly alter the land, do not alienate the State's fee interest, 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. Based on the foregoing, Commission staff believes that the dock and appurtenant facilities will not substantially interfere with public trust needs, at this location and at this time and for the foreseeable term of the proposed lease.

The bank protection is consistent with the common law public trust doctrine because it serves as an aid to navigation by providing reinforced structural support to the banks of the waterway and limiting potentially harmful erosion of the bank into the waterway. The bank protection also confers benefits to the upland owner by ensuring sufficient sub-lateral support to the adjoining property. Like the dock and appurtenant facilities, the bank protection has existed for many years at this location and does not significantly alter the land or alienate the State's fee interest. Based on the foregoing, Commission staff believes that the bank protection is consistent with the public trust doctrine. In the alternative, Commission staff believes that the bank protection will not substantially interfere with the public trust needs at this location for the foreseeable term of the proposed lease.

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. For all the reasons above, Commission staff believes the

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issuance of this lease is consistent with the common law public trust doctrine and in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Applicant owns the upland adjoining the lease premises.
2. On February 22, 2013, the Commission authorized a 10-year General Lease – Recreational and Protective Structure Use with John Orosz and Diana Orosz. That lease will expire on February 21, 2023. On July 21, 2015, interest in the upland parcel was deeded to Talbert Denney and Barbara Denney. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use.
3. Staff recommends termination of the existing lease because the Lessee abandoned the lease by selling the upland parcel without executing a quitclaim deed.
4. The bank protection will mutually benefit both the public and the Applicant. The bank of the Sacramento River will have additional protection for the river channel from wave action provided at no cost to the public.
5. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
6. Termination of the lease is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378, subdivision (b)(5).

7. The 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 15300 and California Code of Regulations, Title 2, section 2905.

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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:

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 interfere with the public's public trust needs and values at this location, is consistent with the common law public trust doctrine, and is in the best interests of the State.

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 July 20, 2015, of Lease No. PRC 6053.1, a General Lease - Recreational and Protective Structure Use, issued to John Orosz and Diana Orosz.
2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to Talbert Denney and Barbara Denney beginning July 21, 2015, for a term of 10 years, for the continued use and maintenance of an existing covered floating boat dock, boat lift, gangway, anchors and cables, and bank protection, as described in Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof;

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consideration for the existing covered floating boat dock, boat lift, gangway, and anchors and cables: \$451 per year with an annual Consumer Price Index adjustment; 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 interests; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 6053.1

LAND DESCRIPTION

A parcel of tide and submerged land situate in the bed of the Sacramento River lying adjacent to Swamp and Overflow Survey 828 patented April 5, 1869, Sacramento County, State of California, more particularly described as follows:

PARCEL 1 – DOCK

All those lands underlying an existing covered floating boat dock, boatlift, gangway, and anchor cables lying adjacent to that Parcel as described in Exhibit “A” of that Grant Deed recorded July 21, 2015, in Book 20150721 at Page 0253 in Official Records of said County.

TOGETHER WITH any applicable impact area(s).

ALSO TOGETHER WITH all those lands underlying existing bank protective structure lying adjacent to said Parcel.

EXCEPTING THEREFROM any portion(s) lying landward of the Ordinary High Water Mark of the left bank of the Sacramento River.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared October 27, 2015 by the California State Lands Commission Boundary Unit.



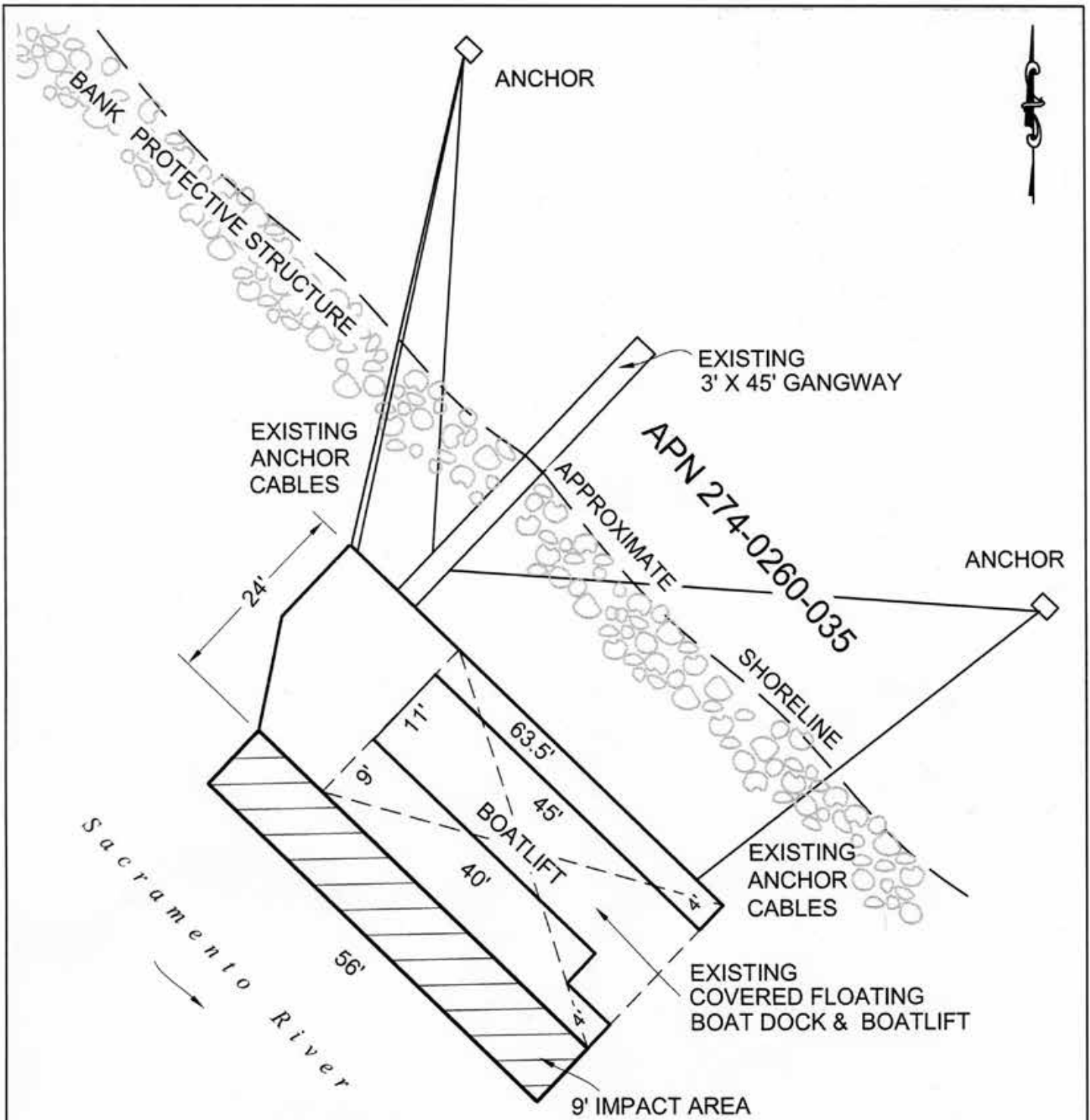


EXHIBIT A

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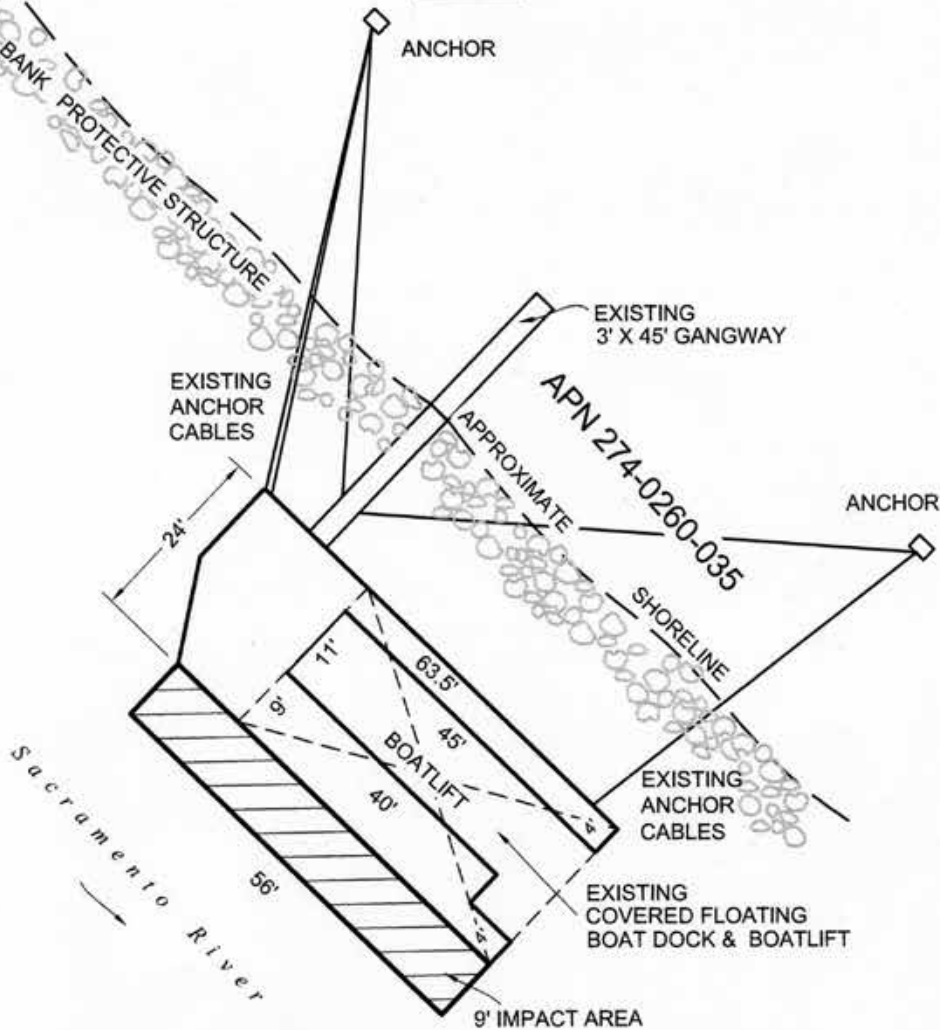
LAND DESCRIPTION PLAT
 PRC 6053.1, DENNEY
 SACRAMENTO COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

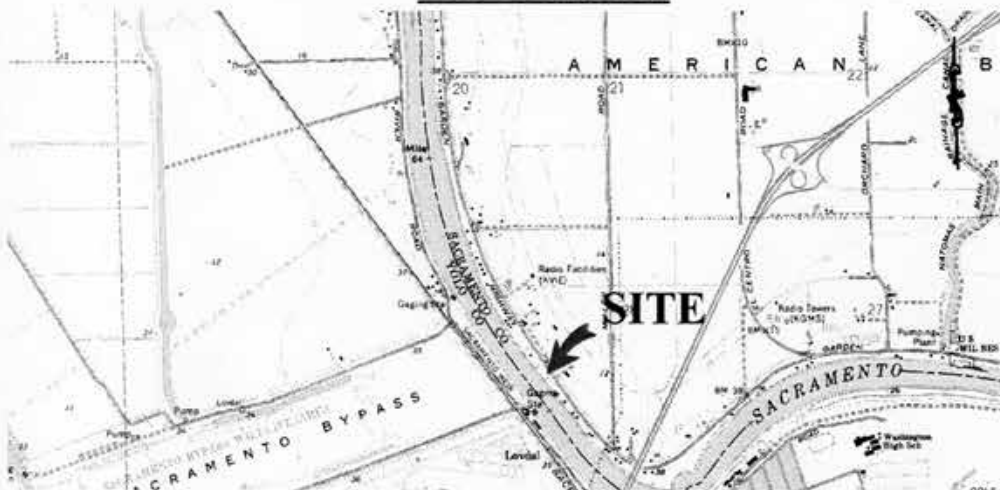
SITE



2365 GARDEN HWY., SACRAMENTO

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 6053.1
 DENNEY
 APN 274-0260-035
 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.