

**CALENDAR ITEM
C34**

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04/05/16
PRC 5612.1
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GENERAL LEASE – RECREATIONAL AND PROTECTIVE STRUCTURE USE

APPLICANT:

Jason C. Markstein, As Trustee of the Markstein Trust, Dated December 16, 2015

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Sacramento River, adjacent to 1841 Garden Highway, near the city of Sacramento, Sacramento County.

AUTHORIZED USE:

Continued use and maintenance of an existing uncovered floating boat dock, gangway, one piling, three-piling dolphin and bank protection.

LEASE TERM:

10 years, beginning April 1, 2016.

CONSIDERATION:

Uncovered floating boat dock, gangway, one piling, and three-piling dolphin: \$195 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 action 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 water-dependent 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 (Pub. 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, and a non-exclusive use provision.

A dock and appurtenant facilities have existed for many years at this location. The facilities do not significantly alter the land, the lease does not alienate the State's fee simple interest, and neither permanently impairs 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, at this time, and 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. The bank protection will maintain and improve the integrity of the river channel, which will help protect the public trust resource of the river for recreational and navigational purposes by the public. For all the reasons above, Commission staff believes the 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 April 17, 2006, the Commission authorized a 10-year General Lease – Recreational and Protective Structure Use to Michael A. Mariani and Christopher A. Mariani. That lease expired on March 31, 2016. On June 28, 2013, the upland was deeded to Jason Markstein, and subsequently, on December 24, 2015, transferred to the Applicant, Jason C. Markstein, As Trustee of the Markstein Trust, Dated December 16, 2015. The

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Applicant is now applying for a General Lease – Recreational and Protective Structure Use.

3. The proposed 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.
4. 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.

5. 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:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with the public trust needs and values at this location at this time, is consistent with the common law public trust doctrine, and is in the best interests of the State.

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).

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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 Jason C. Markstein, As Trustee of the Markstein Trust, Dated December 16, 2015, beginning April 1, 2016, for a term of 10 years, for an existing uncovered floating boat dock, gangway, one piling, three-piling dolphin, and bank protection, as described on Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof; consideration for the uncovered floating boat dock, gangway, one piling, three-piling dolphin: \$195 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 5612.1

LAND DESCRIPTION

One parcel of tide and submerged land situated in the bed of the Sacramento River, lying adjacent to Swamp and Overflow Lands survey 264, patented February 1, 1866, County of Sacramento, State of California, more particularly described as follows:

All those lands underlying an existing uncovered floating boat dock, gangway, one wood piling, and three piling dolphin lying adjacent to that parcel described in Quitclaim Deed recorded June 28, 2013 as Document Number 20130628 at Page 0071 in Official Records of Sacramento County.

TOGETHER WITH any applicable impact area.

ALSO TOGETHER WITH that land lying immediately beneath any bank protection structure lying adjacent to said deed.

EXCEPTING THEREFROM any portion 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 03/02/2016 by the California State Lands Commission Boundary Unit.





APN 274-0021-003

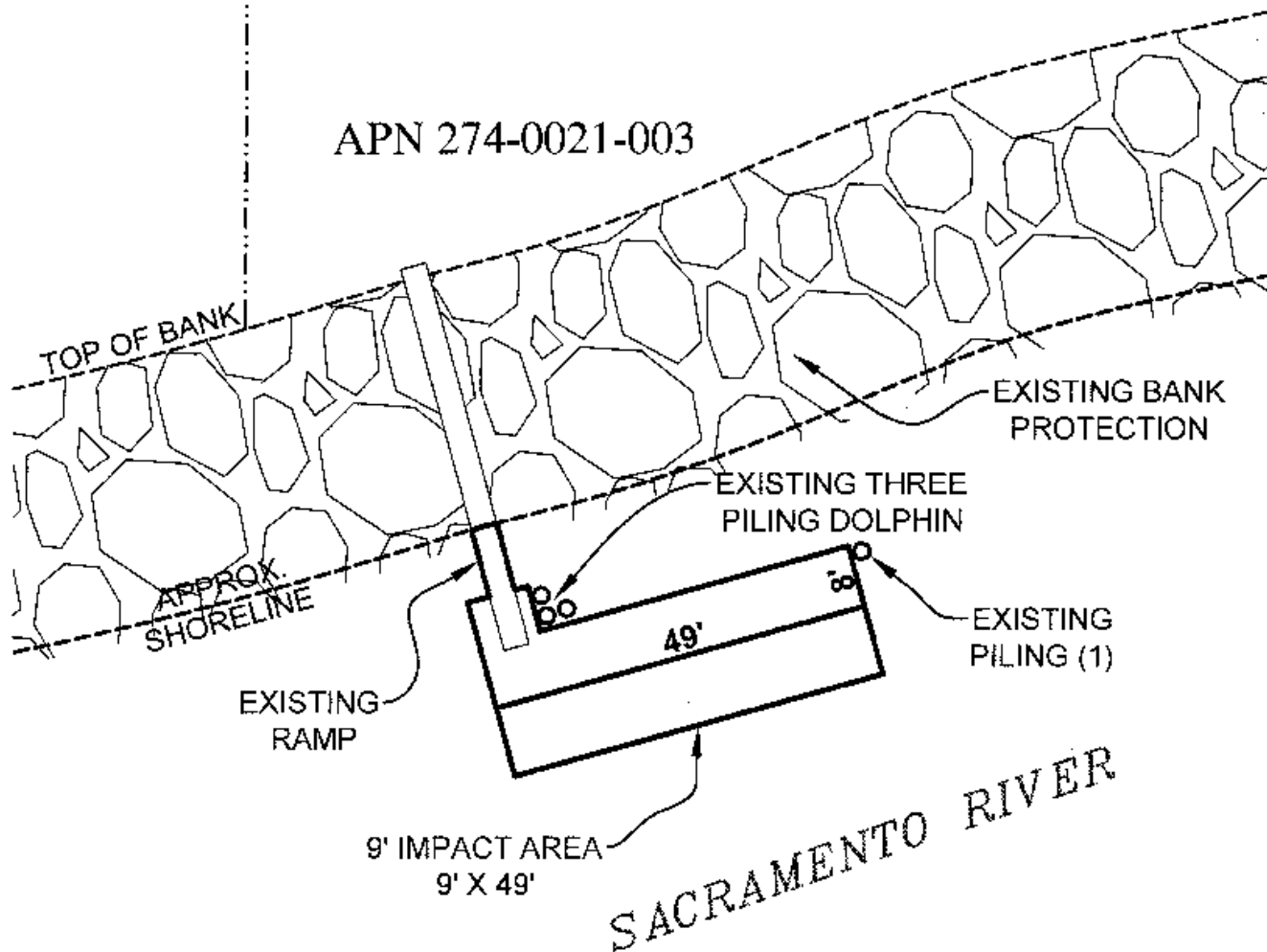


EXHIBIT A

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LAND DESCRIPTION PLAT
 PRC 5612.1, MARKSTEIN TRUSTEE
 SACRAMENTO COUNTY

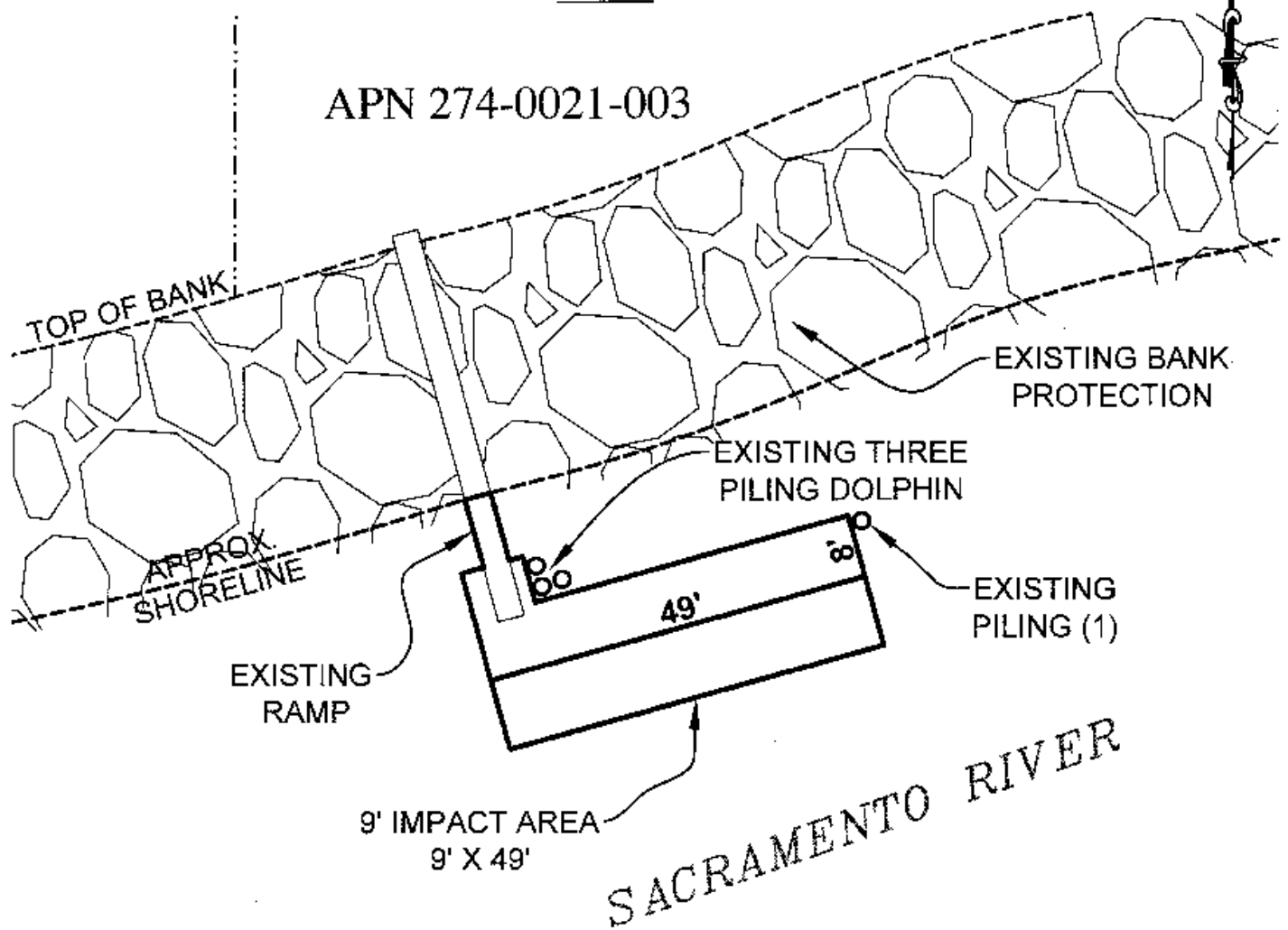
CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

SITE

APN 274-0021-003



1841 GARDEN HIGHWAY, SACRAMENTO

NO SCALE

LOCATION



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.

Exhibit B

PRC 5612.1
 MARKSTEIN TRUST
 APN 274-0021-003
 GENERAL LEASE -
 RECREATIONAL & PROTECTIVE
 STRUCTURE USE
 SACRAMENTO COUNTY



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