

**STAFF REPORT
C52**

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02/04/19
PRC 6883.1
G. Asimakopoulos

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

APPLICANT:

Stanley J. Stewart And Pamela O. Stewart, as Trustees of The Stewart 2006 Living Trust Dated April 10, 2006

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Sacramento River, adjacent to 3077 Garden Highway, near Sacramento, Sacramento County.

AUTHORIZED USE:

Continued use and maintenance of an existing single-berth floating boat dock, steel ramp, one piling, a two-pile dolphin and bank protection previously authorized by the Commission, and existing electric and water utility outlets not previously authorized by the Commission.

LEASE TERM:

10 years, beginning February 4, 2019.

CONSIDERATION:

Single-Berth Floating Boat Dock, Steel Ramp, One Piling, Two-Pile Dolphin, and Electric and Water Utility Outlets: \$166 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:

1. Liability insurance in an amount no less than \$1,000,000 per occurrence.
2. Lessee agrees and acknowledges hazards associated with sea-level rise may require additional maintenance or protection strategies regarding the improvements on the Lease Premises

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STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 6501.1, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

Public Trust and State's Best Interests Analysis:

On November 21, 2006, the Commission authorized a 10-year General Lease – Recreational and Protective Structure Use to Stanley J. Stewart and Pamela O. Stewart, as Trustees of The Stewart 2006 Living Trust Dated April 10, 2006, for the continued use and maintenance of an existing uncovered floating boat dock, ramp, and bank protection ([Item C28, November 21, 2006](#)). That lease expired on April 30, 2017. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use. The piling and two-pile dolphin were not authorized in the previous lease but were depicted as a component of the lease premises on Exhibit A. Similarly, the electric and water utility outlets were not authorized in the previous lease but appear to have been in place since before 2007. Staff recommends issuance of a new lease beginning February 4, 2019. Staff also recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$293 for the period beginning May 1, 2017, the day after the prior lease expired, through February 3, 2019, the day preceding issuance of the proposed new lease.

The subject dock and appurtenant facilities are privately owned and maintained and are for the docking and mooring of recreational 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 (Pub. Resources Code, § 6503.5). The existing floating boat dock and appurtenant facilities have existed at this location for many years, and are located directly adjacent to the Applicant's upland property.

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. The facilities will not significantly alter the land, the lease does not alienate the State's fee simple interest, and does 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.

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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 subject 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 lease premises consist of a single-berth floating boat dock, steel ramp, one piling, a two-pile dolphin, electric and water utility outlets, and bank protection.

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 Francisco¹

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: ¹ Projections are with respect to a 1991 to 2009 baseline.

This effect could increase the Sacramento River's inundation levels within the lease area. In addition, as stated in *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

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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 pilings and dock. 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 ramp are adaptable to variable water levels, allowing them to rise and fall with storms and droughts and increasing their resiliency to some climate change impacts, but may require more frequent maintenance or replacement to ensure continued function during and after storm seasons and to avoid dislodgement. The fixed pilings, riprap protection, and other structures driven into the riverbed may need reinforcement and possibly replacement to withstand higher levels of flood exposure and more frequent storm events. Although the pilings appear to be at a sufficient height to withstand projected changes in water levels, additional fortification may be needed to secure the electric utility outlets, as damage to these pilings could lead to a public safety hazard. The bank is vegetated, which provides additional stability and will reduce the amount of erosion and scour pressure experienced during future events because of the vegetation's underground root system; but remains at risk of accelerated deterioration from currents and floods. Exposed portions of the protective structure could be vulnerable to future events, and an alternative bank protection strategy, such as bank restoration, may be required to reduce flood impacts to the upland parcel. Regular maintenance, as required by the terms of the lease, will reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland (not within the lease area) are

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located in an area that may be subject to effects of climate change, including sea-level rise.

Conclusion:

For all the reasons above, staff believes the issuance of this lease will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. 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.
2. 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.

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).

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, and for the foreseeable

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term of the lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of compensation from the Applicant in the amount of \$293 for unauthorized occupation of State land for the period beginning May 1, 2017, through February 3, 2019.

2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to Stanley J. Stewart And Pamela O. Stewart, as Trustees of The Stewart 2006 Living Trust Dated April 10, 2006; beginning February 4, 2019, for a term of 10 years, for the continued use and maintenance of an existing single-berth floating boat dock, steel ramp, one piling, two-pile dolphin, and bank protection previously authorized by the Commission, and existing electric and water utility outlets not previously authorized by the Commission; as described in Exhibit A, Land Description, and as shown on Exhibit B, Site and Location Map (for reference purposes only), attached and by this reference made a part hereof; consideration for the single-berth floating boat dock, steel ramp, one piling, a two-pile dolphin, and electric and water utility outlets: \$166 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

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LAND DESCRIPTION

Two parcels of tide and submerged land situated in the bed of the Sacramento River, lying adjacent to Swamp and Overflow Lands survey 284, patented August 24, 1869, County of Sacramento, State of California, more particularly described as follows:

PARCEL 1 - DOCK

All those lands underlying an existing single-berth floating boat dock, steel ramp, piling, existing two-pile dolphin, and electric and water utility outlets lying adjacent to that parcel described in Grant Deed recorded April 13, 2006 as Document Number 20060413 at Page 918 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.

PARCEL 2 - DOLPHIN

All those lands underlying an existing dolphin, lying adjacent to that parcel described in Grant Deed recorded April 13, 2006 as Document Number 20060413 at Page 918 in Official Records of Sacramento County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 8/31/2018 by the California State
Lands Commission Boundary Unit.



SACRAMENTO RIVER

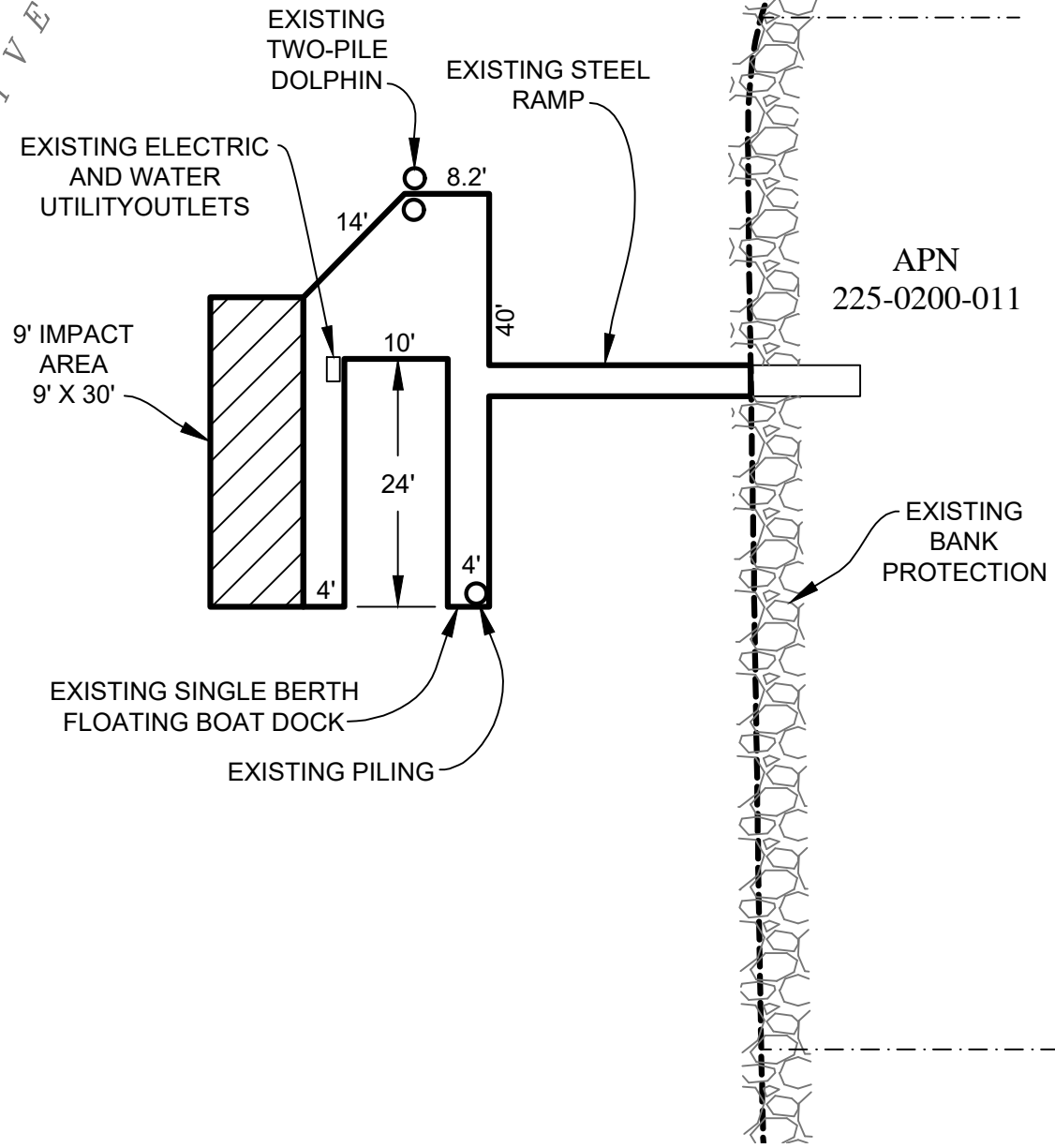


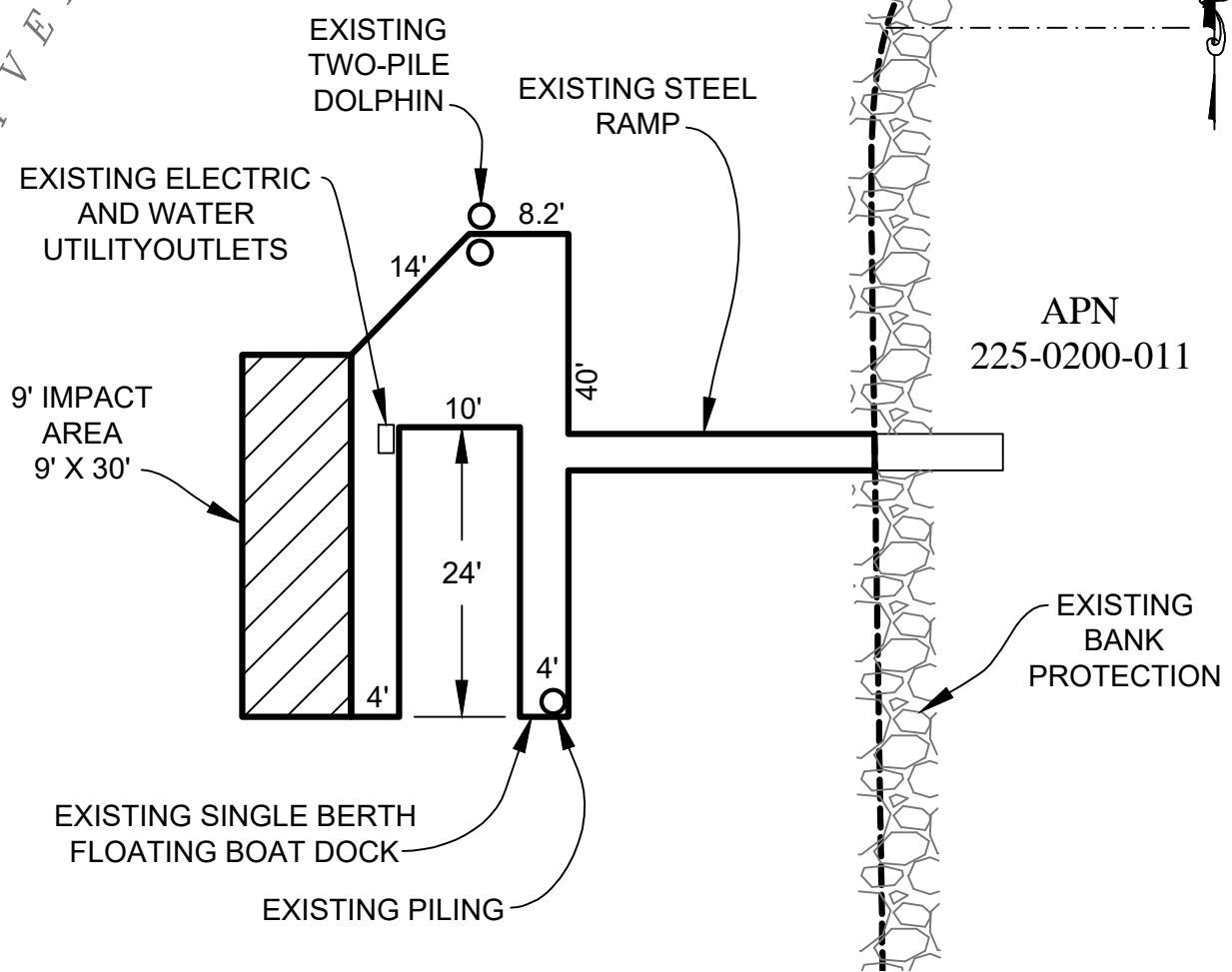
EXHIBIT A



NO SCALE

SITE

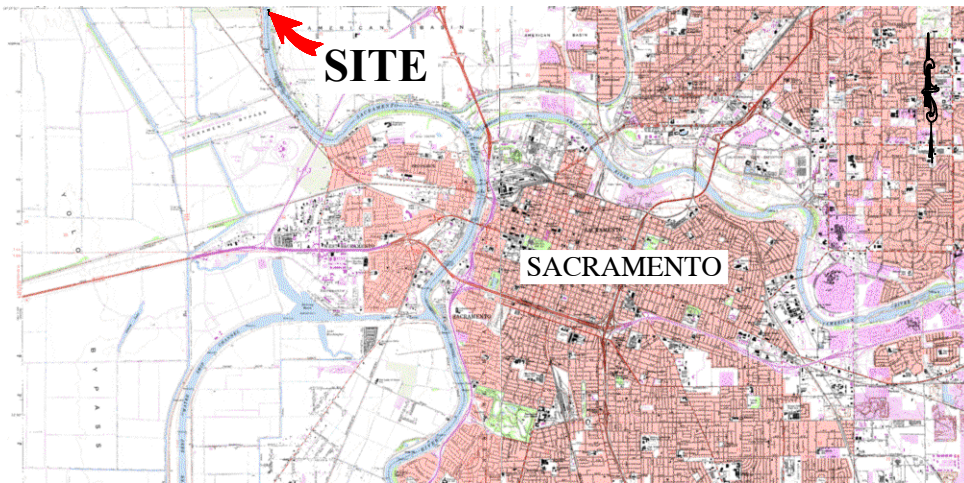
SACRAMENTO RIVER



3077 GARDEN HIGHWAY, SACRAMENTO, CA

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 6883.1
 STEWART TRUST
 APN 225-0200-011
 GENERAL LEASE -
 RECREATION &
 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.