

**STAFF REPORT  
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08/23/19

PRC 4777.1

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G. Asimakopoulos

**ACCEPTANCE OF A LEASE QUITCLAIM DEED AND ISSUANCE  
OF A GENERAL LEASE – RECREATIONAL  
AND PROTECTIVE STRUCTURE USE**

**LESSEE:**

Keith Hillen and Mary Hillen

**APPLICANT:**

Danette S. Smith and Michael D. Smith

**PROPOSED LEASE**

*AREA, LAND TYPE, AND LOCATION:*

Sovereign land located in the Sacramento River, adjacent to 5307 Garden Highway, near Sacramento, Sacramento County.

*AUTHORIZED USE:*

Continued use and maintenance of an existing boat dock, two personal watercraft floats, gangway, two pilings, 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 August 23, 2019.

*CONSIDERATION:*

**Boat Dock with Boat Lift, Two Personal Watercraft Floats, Gangway, and Two Pilings:** \$221 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.

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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.

**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 August 19, 2015, the Commission authorized a 10-year General Lease – Recreational and Protective Structure Use to Keith Hillen and Mary Hillen, for the use and maintenance of an existing boat dock, two jet-ski floats, gangway, and bank protection previously authorized by the Commission ([Item C52, August 19, 2015](#)). That lease will expire on August 18, 2025. On October 13, 2017, the upland parcel was deeded to the Applicant. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use, for the continued use and maintenance of the existing boat dock with boat lift, two personal watercraft floats, gangway, two pilings, and bank protection. The two pilings were not authorized in the previous lease but were depicted as a component of the lease premises on Exhibit B. In addition, sometime in 2018, the Applicant installed a boat lift, not previously authorized by the Commission.

The Lessee has executed a lease quitclaim deed releasing their interest in the lease to the State. Staff recommends acceptance of the lease quitclaim deed and issuance of a new lease to the Applicant, beginning August 23, 2019. Staff also recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$414 for the period beginning October 13, 2017, the day the upland parcel was deeded to the Applicant, through August 22, 2019, the day preceding issuance of the proposed new lease.

The existing 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 boat lift is relatively new but is within the footprint of the existing dock. The subject boat dock and appurtenant facilities are privately owned and maintained and are for the docking and mooring of boats. These facilities are used for recreational boating. Recreational boating is water-dependent and is generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private

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recreational boating facilities as an authorized use of Public Trust lands (Pub. Resources Code, § 6503.5). The bank protection will maintain and improve the integrity of the river channel, which will help preserve the Public Trust resources of the Sacramento River for recreational and navigational use by the public.

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 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.

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.

### **Climate Change Analysis:**

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 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.

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**Table 1. Projected Sea-Level Rise for San Francisco<sup>1</sup>**

<b>Year</b>	<b>Projection (feet)</b>
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: <sup>1</sup> 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 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, personal watercraft floats, and gangway 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

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and to avoid dislodgement of dock facilities. The pilings may need reinforcement and possibly replacement to withstand higher levels of flood exposure and more frequent storm events. The bank protection provides additional stability and should reduce the amount of erosion and scour pressure experienced by the bank during future events, but the bank remains at risk of accelerated deterioration from currents and floods. 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 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. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Applicant may be required to remove the existing boat dock with boat lift, two personal watercraft floats, gangway, two pilings, and bank protection and restore the premises to their original condition. Upon expiration or prior termination of the proposed lease, the Applicant also has no right to a new lease or to renewal of any previous lease.
2. 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.
3. The Lessee executed a lease quitclaim deed releasing Lessee's interest in the Lease to the State. Staff recommends acceptance of the lease quitclaim deed and issuance of a new lease to the Applicant.

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4. Acceptance of the lease quitclaim deed 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).

5. Staff recommends that the Commission find that the 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, 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 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 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 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 a lease quitclaim deed from the Lessee, effective August 22, 2019, of Lease No. PRC 4777.1, a General Lease – Recreational and Protective Structure Use, issued to Keith Hillen and Mary Hillen.

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2. Authorize acceptance of compensation from the Applicant in the amount of \$414 for the unauthorized occupation of State land for the period beginning October 13, 2017, through August 22, 2019.
3. Authorize issuance of Lease No. PRC 4777.1, a General Lease – Recreational and Protective Structure Use to the Applicant, beginning August 23, 2019, for a term of 10 years, for the continued use and maintenance of an existing boat dock, two personal watercraft floats, gangway, two pilings, and bank protection previously authorized by the Commission; and the use and maintenance of an existing boat lift 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 boat dock with boat lift, personal watercraft floats, gangway and pilings: \$221 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 4777.1**

**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 404 Sutter County patented January 6, 1869, County of Sacramento, State of California, more particularly described as follows:

All those lands underlying an existing gangway, single-berth floating boat dock, boat lift, and two (2) personal watercraft floats, lying adjacent to that parcel described in Grant Deed recorded October 13, 2017 as Document Number 201710131270 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.

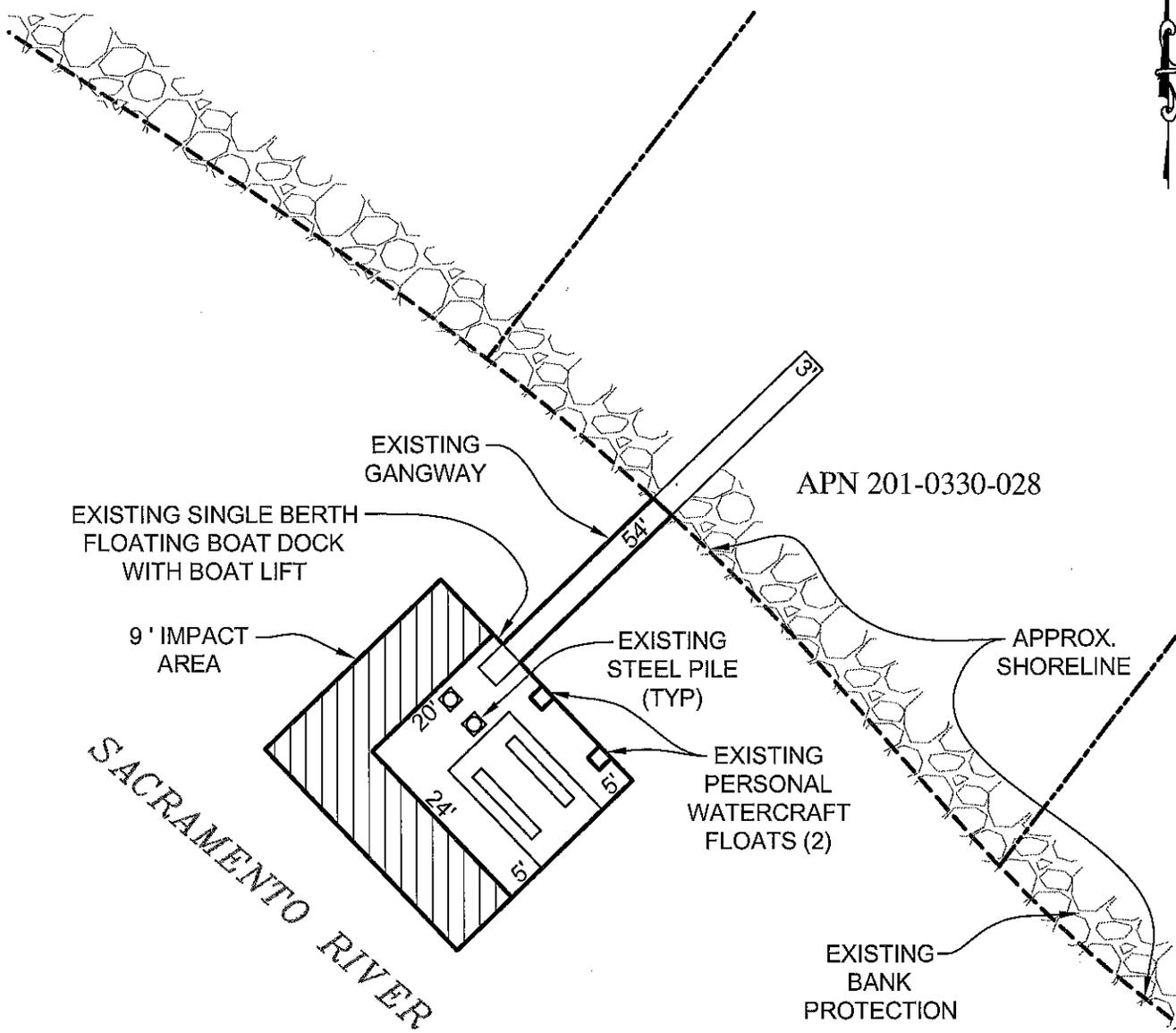
EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the left bank of the Sacramento River.

Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

Prepared 07/16/2019 by the California State Lands Commission Boundary Unit.





**EXHIBIT A**

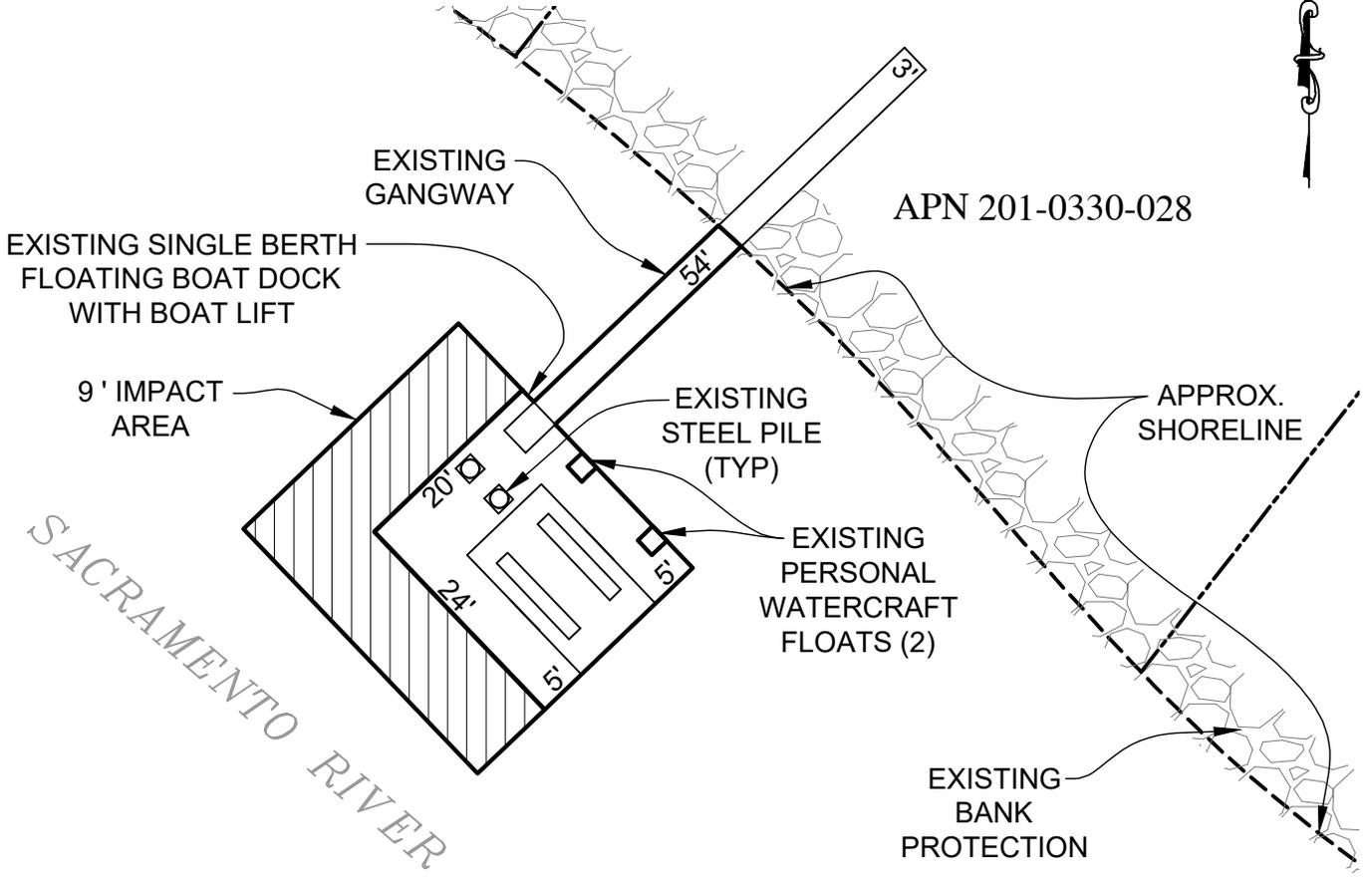
LAND DESCRIPTION PLAT  
 PRC 4777.1, SMITH  
 SACRAMENTO COUNTY

CALIFORNIA STATE  
 LANDS COMMISSION



NO SCALE

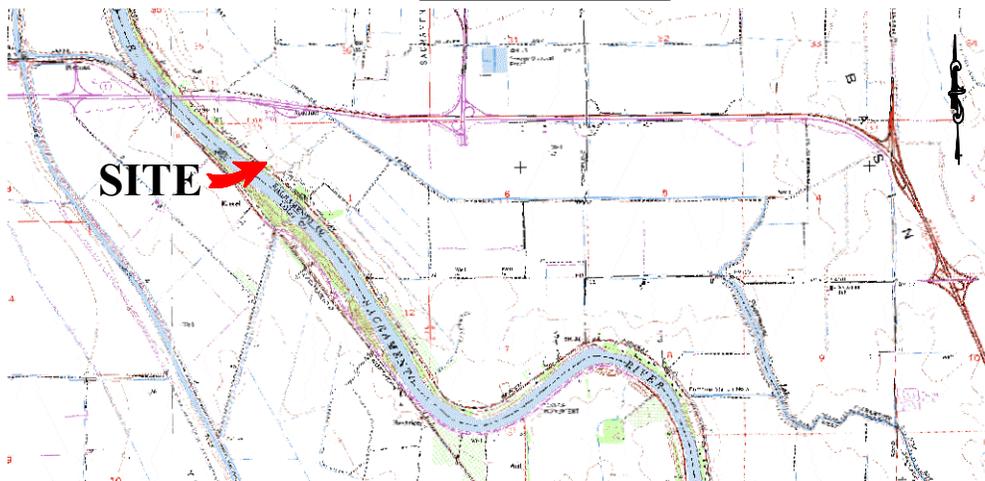
### SITE



5307 GARDEN HWY, NORTH OF SACRAMENTO

NO SCALE

### LOCATION



MAP SOURCE: USGS QUAD

### Exhibit B

PRC 4777.1  
 SMITH  
 APN 201-0330-028  
 GENERAL LEASE -  
 RECREATIONAL &  
 PROTECTIVE STRUCTURE USE  
 SACRAMENTO COUNTY



RGB 07/16/19

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.