

**STAFF REPORT
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08/23/19
PRC 9183.1
A2167
V. Caldwell

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AMENDMENT OF LEASE

LESSEE:

Robert E. Sutherland and Betty J. Sutherland

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Steamboat Slough, adjacent to 3404 Snug Harbor Drive, on Ryer Island, near Walnut Grove, Solano County.

AUTHORIZED USE:

Use and maintenance of existing fill, covered deck with balustrade, double-berth dock with two boat lifts, two wood pilings, ramp, jet-ski platform, and bank protection.

LEASE TERM:

10 years, beginning February 20, 2015.

CONSIDERATION:

Fill, Covered Deck with Balustrade, Double-Berth Dock with Two Boat Lifts, Two Wood Pilings, Ramp, and Jet Ski Platform: \$596 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.

PROPOSED AMENDMENT:

Amend the lease to:

- Authorize deletion of fill, a portion of the covered deck with balustrade, boat lift, and jet-ski platform from the authorized improvements
- Authorize a personal watercraft lift to be added to the authorized improvements

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- To reduce the lease area to those lands waterward of the protective structure (concrete bulkhead);
- Replace the existing Exhibit A, Land Description, and Exhibit B, Site and Location Map, with the attached Exhibit A, Land Description, and Exhibit B, Site and Location Map (for reference purposes only)
- Revise rent from \$596 per year to \$206 per year with an annual Consumer Price Index adjustment, effective February 20, 2020

All other terms and conditions of the lease shall remain in effect without amendment

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 February 20, 2015, the Commission authorized Lease No. PRC 9183.1, a General Lease – Recreational and Protective Structure Use for existing fill, covered deck with balustrade, double-berth dock with two boat lifts, two wood pilings, ramp, jet-ski platform, and bank protection to Robert E. Sutherland and Betty J. Sutherland ([Item C48, February 20, 2015](#)). The lease will expire on February 19, 2025.

The Lessee has questioned the inclusion of the fill and full residential deck in the lease and the payment of rent for these improvements, and has requested a lease amendment to authorize the deletion of the fill, a portion of the covered deck with balustrade, one of the two boat lifts, and the jet-ski platform from the authorized improvements and to authorize the addition of a personal watercraft lift to the authorized improvements.

The existing boat dock and ramp are privately owned and maintained and located on Steamboat Slough. The subject improvements facilitate recreational boating. 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).

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Staff has investigated whether the existing fill is indeed artificial fill or a part of the old riverbank. Based on a review of the information available, staff has determined that the concrete bulkhead is the best line to use for leasing purposes only. Consequently, staff is recommending that the fill and the deck and balustrade that are connected to the upland residence on the fill be deleted from the lease premises to the extent they are landward of the protective structure (concrete bulkhead). A portion of the covered deck with balustrade that is waterward of the protective structure will remain under lease. One of the two boat lifts and the jet-ski platform have been removed by the lessees and a personal watercraft lift has been installed. Staff recommends adding the personal watercraft lift as an authorized improvement.

The proposed amendment does not alienate the State's fee simple interest or permanently impair public rights. The lease is nonprejudicial to boundary or title claims of either party. The lease and the proposed lease amendment do not set or fix the State's boundaries, nor do they limit the State's sovereign ownership interest claims. The lease is limited to a 10-year term and does not grant the lessee exclusive rights to the lease premises, and reserves an easement to the public for Public Trust-consistent uses. Upon termination of the lease, the Lessee may be required to remove all improvements from State land. The 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 use of public land.

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 Steamboat Slough 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 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.

Rising sea levels can lead to more frequent flood inundation in low lying areas and larger tidal events, and could increase the Steamboat Slough's inundation levels within the lease area over the term of the lease. 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 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 double-berth 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 to ensure continued functionality during and after

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storm seasons and to avoid dislodgement. The fixed pilings, bulkhead, and bank protection may need reinforcement to withstand higher levels of flood exposure.

Further climate change impact analyses on the lease area will be assessed at the time the lease expires in 2025 if an application is submitted for a new lease, and would be based on projected sea-level rise scenarios at that time.

Conclusion:

For all the reasons above, staff believes the authorization of this amendment does not interfere with the common law Public Trust Doctrine at this location, at this time, and for the foreseeable term of the lease; 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. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.
2. This proposed action is consistent with the Commission's 2016-2020 Strategic Plan Strategy 1.1 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. Addition of Personal Watercraft Lift
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.

4. The remaining amendment of lease is not a project as defined by CEQA because it is an administrative action that will not result in direct or indirect physical changes in the environment.

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

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 amendment will not substantially interfere with the public's right to navigation and fishing or with the Public Trust needs and values, at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

CEQA FINDING:

Addition of Personal Watercraft Lift

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).

AUTHORIZATION:

Authorize the amendment of Lease No. PRC 9183.1, a General Lease – Recreational and Protective Structure Use, effective August 23, 2019, to modify the authorized lease improvements to delete the existing fill, a portion of the covered deck and balustrade landward of the protective structure (concrete bulkhead), boat lift, and jet-ski platform; to add the personal watercraft lift; to reduce the lease area to those lands waterward of the protective structure (concrete bulkhead); to revise rent from \$596 to \$206 per year, with an annual Consumer Price Index adjustment, effective February 20, 2020; and to replace the existing Exhibit A, Land Description, and Exhibit B, Site and Location Map, with the attached Exhibit A, Land Description, and Exhibit B, Site and Location Map (for reference purposes only); all other terms and conditions of the lease will remain in effect without amendment.

EXHIBIT A

PRC 9183.1

LAND DESCRIPTION

A parcel of tide and submerged land situate in the bed of the Steamboat Slough, lying adjacent to Swamp and Overflowed Land Survey 544 patented October 17, 1878, County of Solano, State of California and more particularly described as follows:

All those lands underlying an existing double-berth floating boat dock with a boat lift and jet-ski lift, ramp, two wood pilings, electric and water utility outlets, and deck with railing lying adjacent to that parcel described in Short Form Deed of Trust and Assignment of Rent, recorded August 29, 1986 in Book 1986 at page 97512 in Official Records of said County.

TOGETHER WITH any applicable Impact Area(s).

ALSO TOGETHER WITH all those lands lying immediately beneath any existing bank protection structure adjacent to said parcel.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the right bank of said Steamboat Slough.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 06/17/19 by the California State Lands Commission Boundary Unit



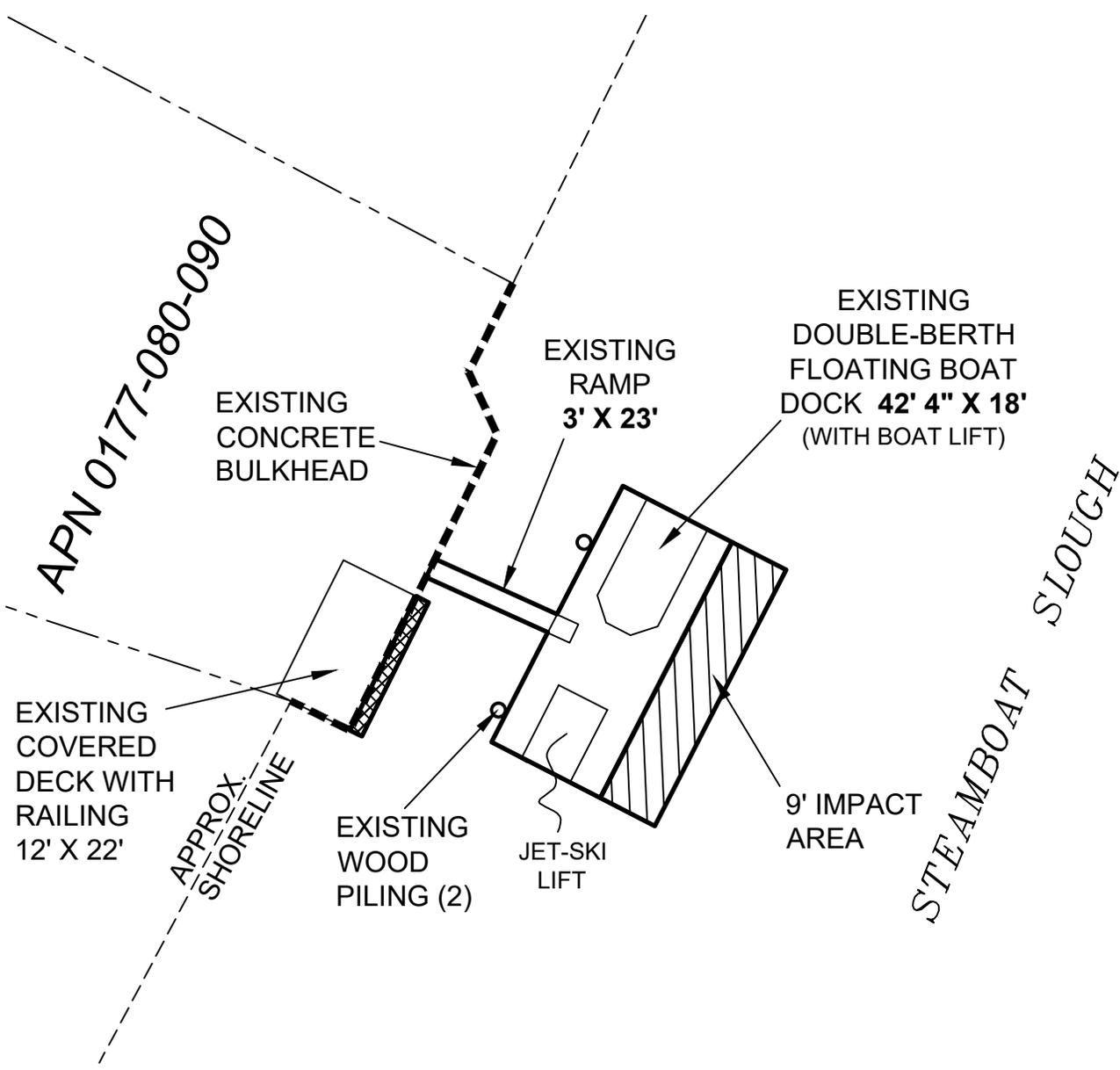
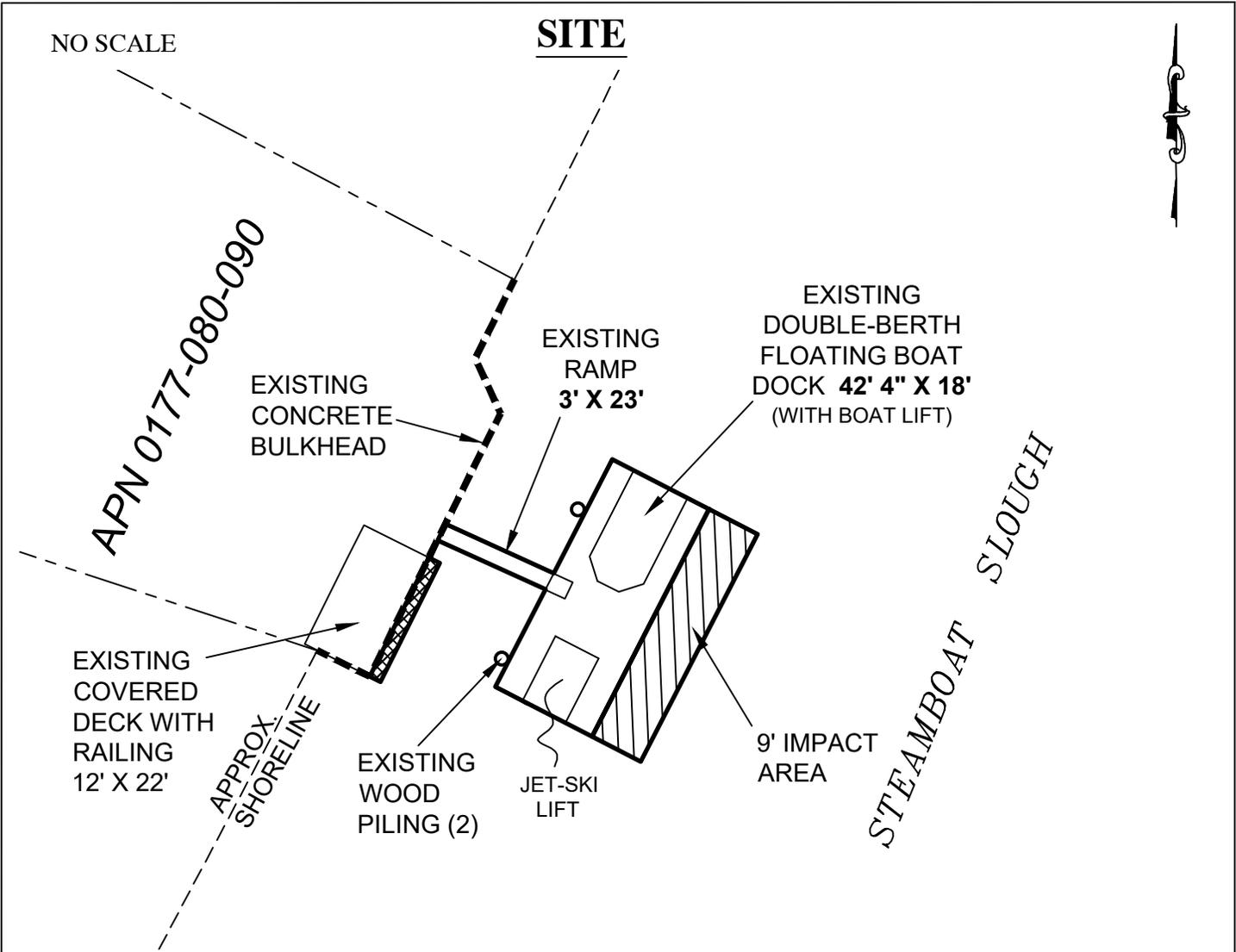


EXHIBIT A





3404 SNUG HARBOR DRIVE, WALNUT GROVE

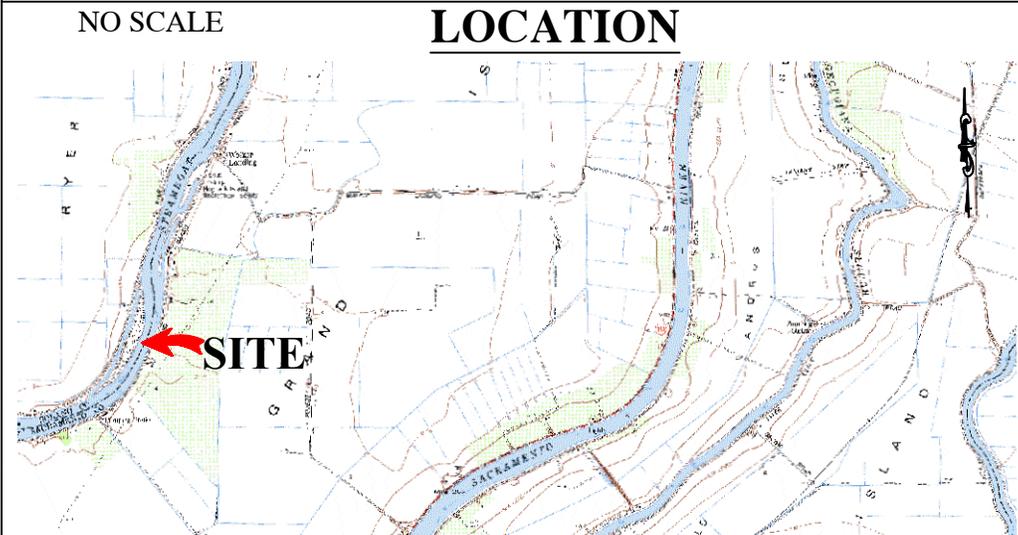


Exhibit B

PRC 9183.1
 SUTHERLAND
 APN 0177-080-090
 GENERAL LEASE -
 RECREATIONAL AND
 PROTECTIVE STRUCTURE USE
 SOLANO 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.