

**STAFF REPORT
C40**

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06/21/18
PRC 8779.1
J. Holt

GENERAL LEASE – RECREATIONAL AND PROTECTIVE STRUCTURE USE

APPLICANT:

W. Wayne Herman, Trustee of the 1991 W. Wayne Herman Trust

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Sacramento River, adjacent to 2295 Garden Highway, near Sacramento, Sacramento County.

AUTHORIZED USE:

Continued use and maintenance of an existing floating boat dock with slip, four pilings, gangway, and bank protection.

LEASE TERM:

10 years, beginning May 5, 2018.

CONSIDERATION:

Floating boat dock with slip, four pilings, and gangway: \$218 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 May 5, 2008, the Commission authorized a General Lease – Recreational and Protective Structure Use to W. Wayne Herman ([Item C17, May 5, 2008](#)). That lease expired on May 4, 2018. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use, for the continued use and maintenance of an existing floating boat dock with slip, four pilings, gangway, and bank protection in the Sacramento River.

The floating boat dock and appurtenant facilities have existed at this location for many years. The lease facilities are designed for recreational boating and shoreline protection. 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 bank protection will maintain and improve the integrity of the river channel, which will help protect the Public Trust resources of the Sacramento River for recreational and navigational use public by the public.

The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 10-year term, 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 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, increased wave activity, storm events, and flooding are not limited to the open coast. The existing structures within the lease area are located along the Sacramento River

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within a tidally-influenced region. The subject facilities are vulnerable to flooding at current sea levels and at a higher risk of flood exposure given future projected scenarios of sea-level rise. The facilities associated with this lease area include a floating boat dock with slip, four pilings, a gangway, and bank protection.

By 2030, California's coast could see up to 1 foot of sea-level rise (from year 2000 levels), 2 feet by 2050, and possibly more than 5 feet by 2100 (National Research Council 2012). This effect could increase the Sacramento River's inundation levels within the lease area. In addition, as stated in *Safeguarding California* (California Natural Resources Agency 2014), 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).

Climate change could have a number of impacts for this region. The amount and timing of snowmelt runoff will likely change such that runoff pulses are earlier in the season and stronger precipitation events will occur over a shorter period of time. This outcome is because warming temperatures will result in more water falling as rain rather than snow, earlier spring snowmelt, and less snowpack overall. In rivers and tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris. In addition, there will be greater amounts of runoff because less water will be trapped at higher altitudes in snowpack. 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 coastal and riverine areas by changing erosion and sedimentation rates. In rivers and tidally influenced waterways, flooding and storm flow will likely increase scour, decreasing bank stability and structure.

The combination of these projected conditions could increase the likelihood of damage 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 potentially leading to increased wear and tear on the pilings and dock, reduce navigability of the channel, thereby increasing hazards, and impacting the function and utility of the lease area structures.

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The floating boat dock 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 to ensure continued functionality, during and after storm seasons and to avoid dislodgement of dock facilities. The fixed features may need reinforcement to withstand higher levels of flood exposure.

The bank is somewhat vegetated, which provides additional stability and reduces 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 as exposed portions of the protective structure could be vulnerable to future events. 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 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.

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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:

Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning May 5, 2018, for a term of 10 years, for the continued use and maintenance of an existing floating boat dock with slip, four pilings, gangway, 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; consideration for the floating boat dock with slip, four pilings, and gangway: \$218 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 8779.1

LAND DESCRIPTION

One 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:

All those lands underlying an existing floating boat dock with slip, four pilings and gangway lying adjacent to that parcel as described in Exhibit "A" of that Grant Deed recorded August 16, 2012, in Book 20120816 Page 359 in Official Records of said County.

TOGETHER WITH any land lying immediately beneath any bank protection structure adjacent to said parcel.

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

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared April 30, 2018 by the California State Lands Commission Boundary Unit.



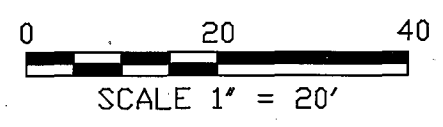
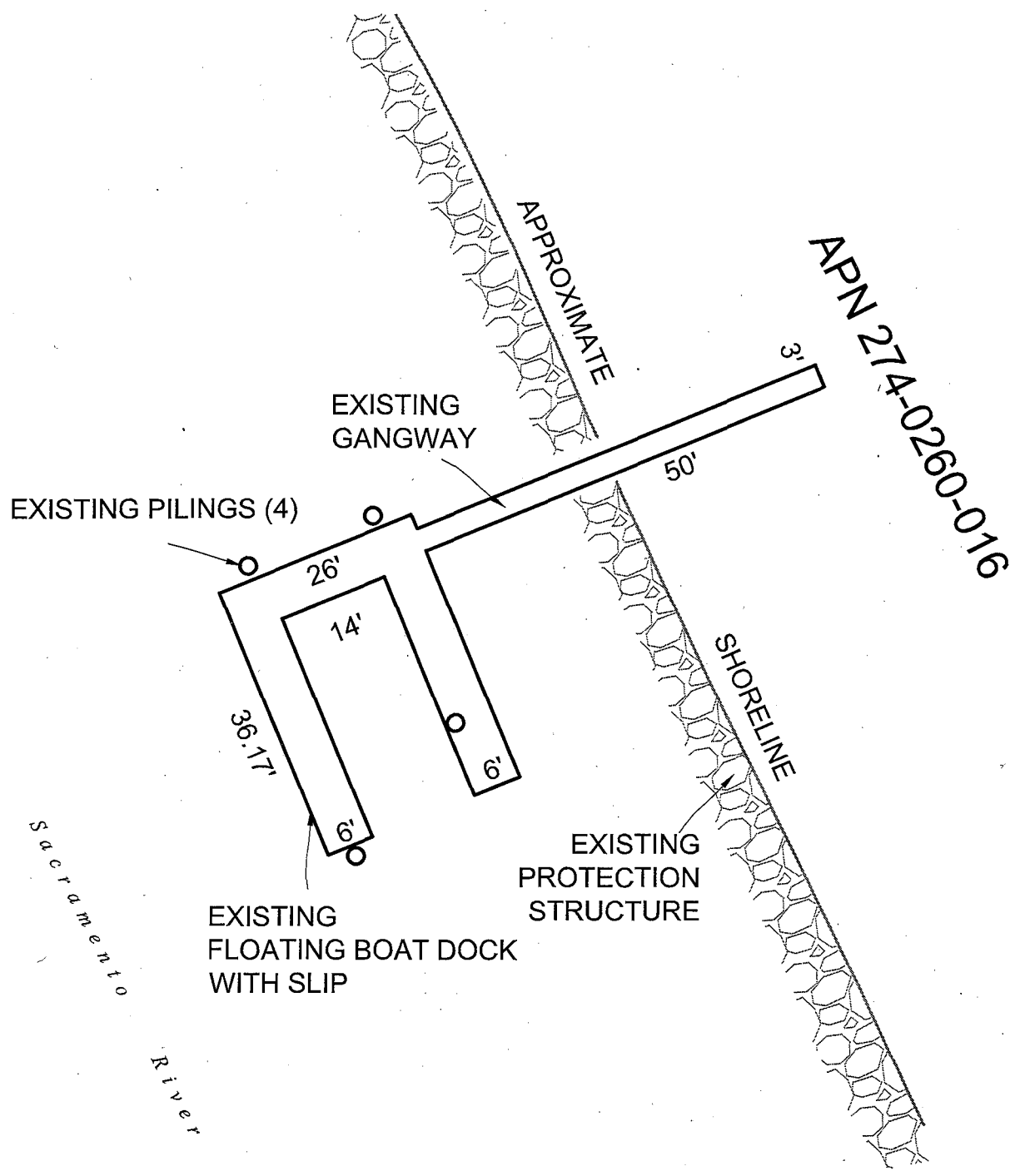


EXHIBIT A

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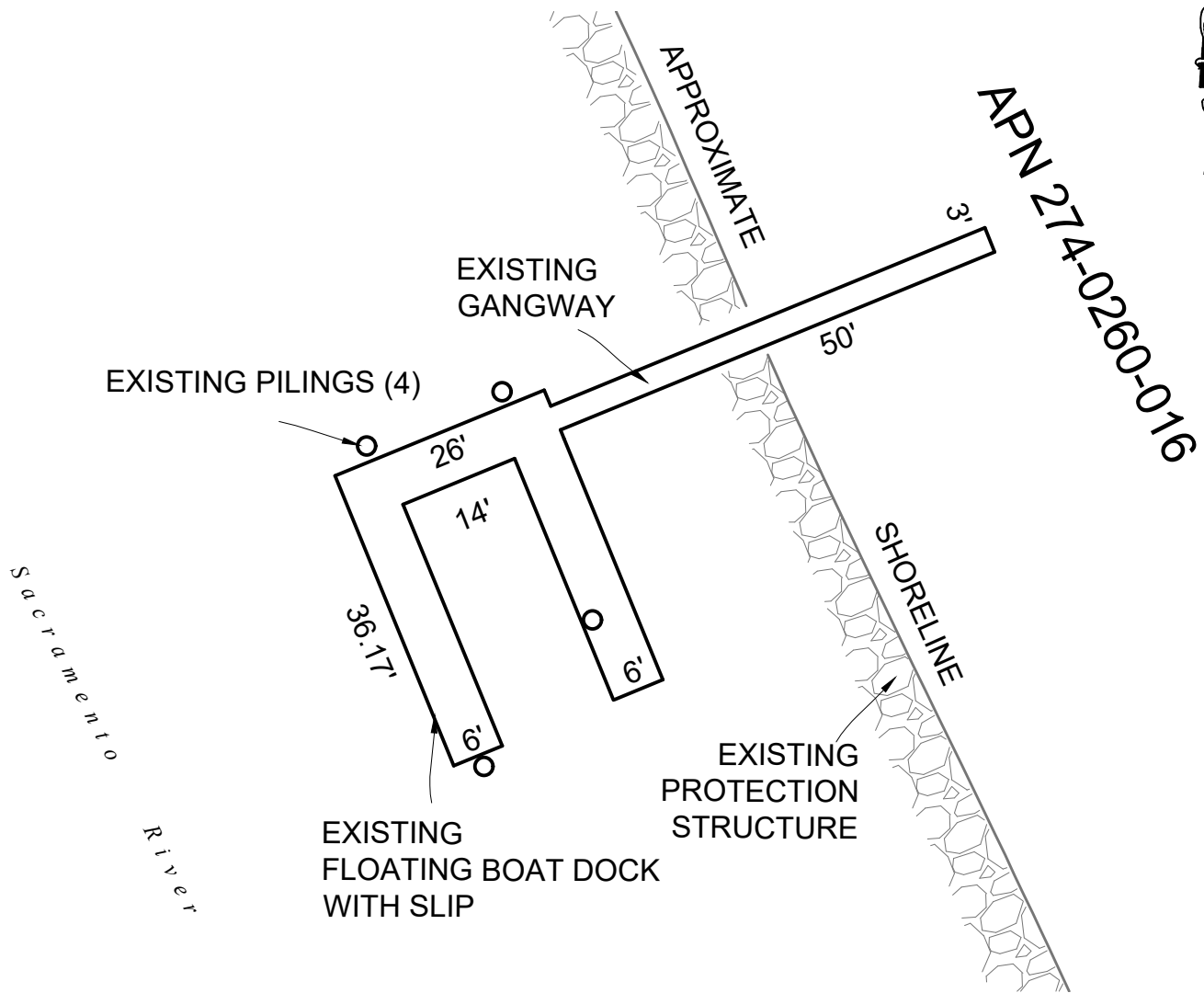
LAND DESCRIPTION PLAT
 PRC 8779.1, HERMAN TRUST
 SACRAMENTO COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

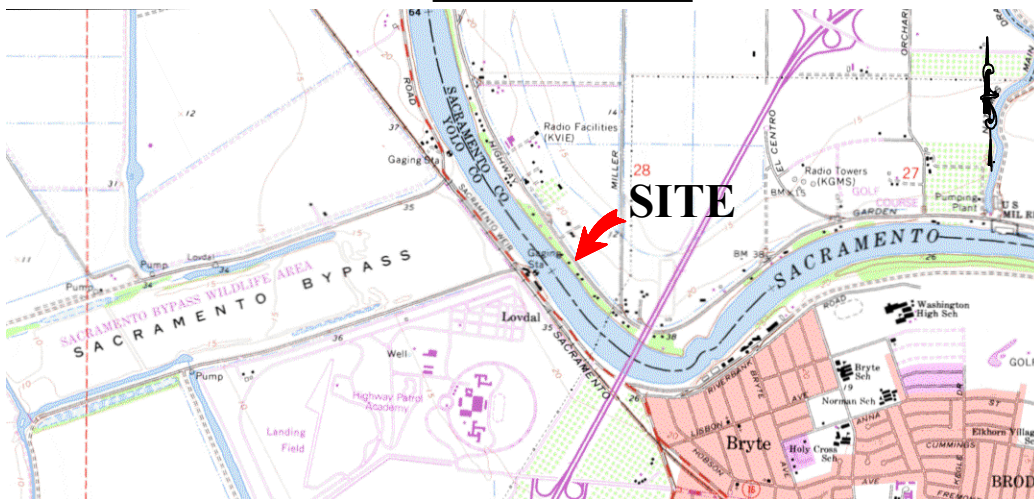
SITE



2295 GARDEN HIGHWAY, SACRAMENTO

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 8779.1
 HERMAN TRUST
 APN 274-0260-016
 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.

MIJ 4/30/18