

**STAFF REPORT
C45**

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PRC 4784.1

J. Holt

**TERMINATION AND ISSUANCE OF A GENERAL LEASE – RECREATIONAL AND
PROTECTIVE STRUCTURE USE**

APPLICANT:

Paul Scott and Andrea Scott

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Sacramento River, adjacent to 17368 Grand Island Road, near Walnut Grove, Sacramento County.

AUTHORIZED USE:

Use and maintenance of an existing fishing pier with wood enclosure, ramp, and bank protection previously authorized by the Commission, and an existing floating boat dock and gangway not previously authorized by the Commission.

LEASE TERM:

10 years, beginning December 3, 2018.

CONSIDERATION:

Fishing pier with wood enclosure, floating boat dock, ramp, and gangway: \$155 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.
- Lessee agrees and acknowledges hazards associated with sea-level rise may require additional maintenance or protection strategies regarding the improvements on the Lease Premises.
- Lessee agrees to obtain post-construction permits from all applicable regulatory agencies before December 2, 2023, for the

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existing floating boat dock and gangway not previously authorized by the Commission.

- Lessee agrees to submit a plan for structure removal and land restoration of the Lease Premises before March 2, 2024, if for any reason permits are not obtained before the permit acquisition deadline.
- Lessee agrees to apply for an amendment of lease for any and all future substantive changes to authorized improvements or land use, including removal of unauthorized facilities and restoration of the Lease Premises, if such events should occur during the proposed lease term.

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 June 21, 2013, the Commission authorized a 10-year General Lease – Recreational and Protective Structure Use to Paul Scott and Andrea Scott ([Item C12, June 21, 2013](#)). That lease will expire on May 10, 2022. In 2013, the Applicant made repairs and modifications to structures in the lease area without notifying staff. The modifications included the construction of a floating boat dock and gangway.

The Applicant is now applying for a termination of Lease No. PRC 4784.1 and issuance of a new General Lease – Recreational and Protective Structure Use, for the use and maintenance of a fishing pier with wood enclosure, ramp, and bank protection previously authorized by the Commission; and an existing floating boat dock and gangway not previously authorized by the Commission. The Applicant is applying for post-construction permits from all applicable regulatory agencies, for the existing floating boat dock and gangway.

Staff recommends termination of the existing lease, Lease No. PRC 4784.1, due to modifications of the lease facilities and expansion of the lease area, effective December 2, 2018. This expansion results in greater square footage of the facilities. Therefore, staff recommends issuance of a new General Lease – Recreational and Protective Structure Use. Staff also recommends that the Commission accept compensation for the unauthorized occupation of State land in the amount of \$269 for those improvements not previously authorized, from December 3, 2013 through

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December 2, 2018. Staff recommends that the Commission approve the new lease effective December 3, 2018.

The proposed lease area contains an existing fishing pier with wood enclosure, ramp, and bank protection previously authorized by the Commission and a floating boat dock and gangway not previously authorized by the Commission. These facilities are designed for recreational boating, fishing, 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 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 or failure to obtain all applicable regulatory permits for the existing floating boat dock and gangway, the lessee will be required to remove these 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. The bank protection will maintain and improve the integrity of the Sacramento River, which will help protect the Public Trust resources of the Sacramento River for recreational and navigational use by the public.

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 higher risk of flood exposure given future projection scenarios of sea-level rise. The lease premises consist of a floating boat dock, fishing pier with wood enclosure, ramp, adjustable gangway, and existing 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

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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 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 structures 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. Lowered water levels could also 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 or replacement to ensure continued function during and after storm seasons and to avoid dislodgement. The fixed features may need reinforcement and possibly replacement to withstand higher levels of flood exposure and more frequent storm events. For example, the pilings would be at a sufficient height to withstand projected changes in water levels, but additional fortification may be needed, especially if pilings anchor other lease facilities.

The bank protection provides stability and reduces the amount of erosion and scour pressure it may experience during future events, but 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.

The bank is also 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. 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, 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 accept compensation for the unauthorized occupation of State land in the amount of \$269 for the period

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of December 3, 2013 through December 2, 2018, when consideration was not remitted for the use of State land.

3. Termination of the lease 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).

4. Staff recommends that the Commission find that 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 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 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 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 termination of Lease No. PRC 4784.1, a General Lease – Recreational and Protective Structure Use, issued to Paul Scott and Andrea Scott, effective December 2, 2018.

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2. Authorize acceptance of compensation in the amount of \$269 for the unauthorized occupation of State land from December 3, 2013 through December 2, 2018.
3. Authorize issuance of a General Lease – Recreational and Protective Structure Use to Applicant; beginning December 3, 2018, for a term of 10 years, for the use and maintenance of a fishing pier with wood enclosure, ramp, and bank protection previously authorized by the Commission and an existing floating boat dock and gangway not previously authorized by the Commission; 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 fishing pier with wood enclosure, ramp, floating boat dock, and gangway: \$155 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 4784.1

LAND DESCRIPTION

Two parcels of tide and submerged land situate in the bed of the Sacramento River, lying adjacent to Swamp and Overflowed Land Survey 957, patented October 4, 1871, County of Sacramento, State of California and more particularly described as follows:

PARCEL 1 – Dock

All those lands underlying an existing dock and gangway lying adjacent to Parcel One described in Exhibit A of that Grant Deed, recorded May 11, 2012 in Book 20120511 at Page 0196 in Official Records of said County.

TOGETHER WITH any applicable Impact Area(s).

PARCEL 2 – Fishing Pier

All those lands underlying an existing fishing pier with wood enclosure and ramp lying adjacent to Parcel One described in Exhibit A of that Grant Deed, recorded May 11, 2012 in Book 20120511 at Page 0196 in Official Records of said County.

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 MHTL of the right bank of said river as per Sacramento Superior Court Case No. 78345 and shown on "Record of Survey of Compromise Title Settlement Agreement, Boundary Line Agreement No. 241 at Long Island, Vicinity of Isleton in Projected Section 27, T4N, R3E, MDM" and filed in Book 38 of Surveys at page 40 Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 02/01/17 by the California
State Lands Commission Boundary Unit



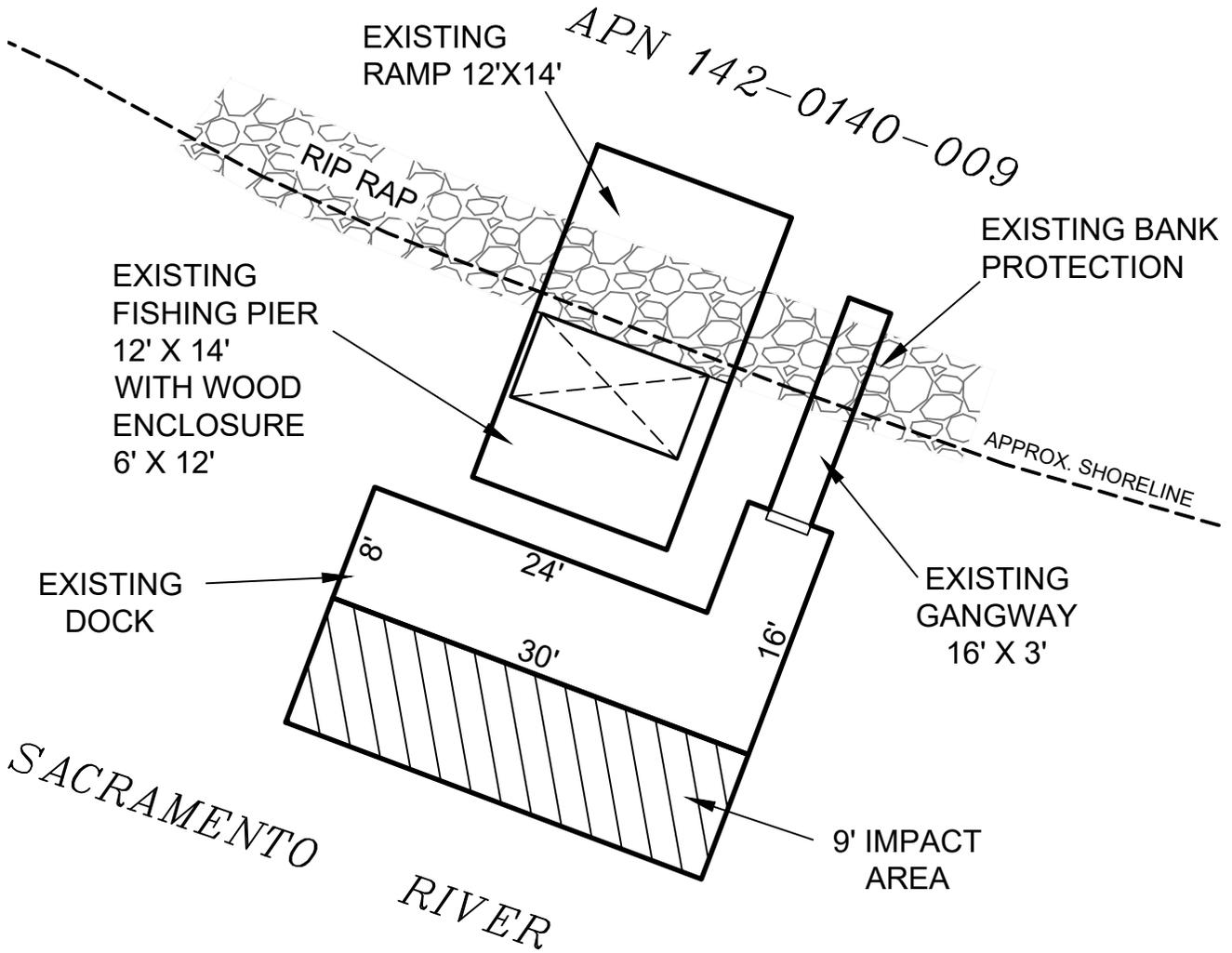
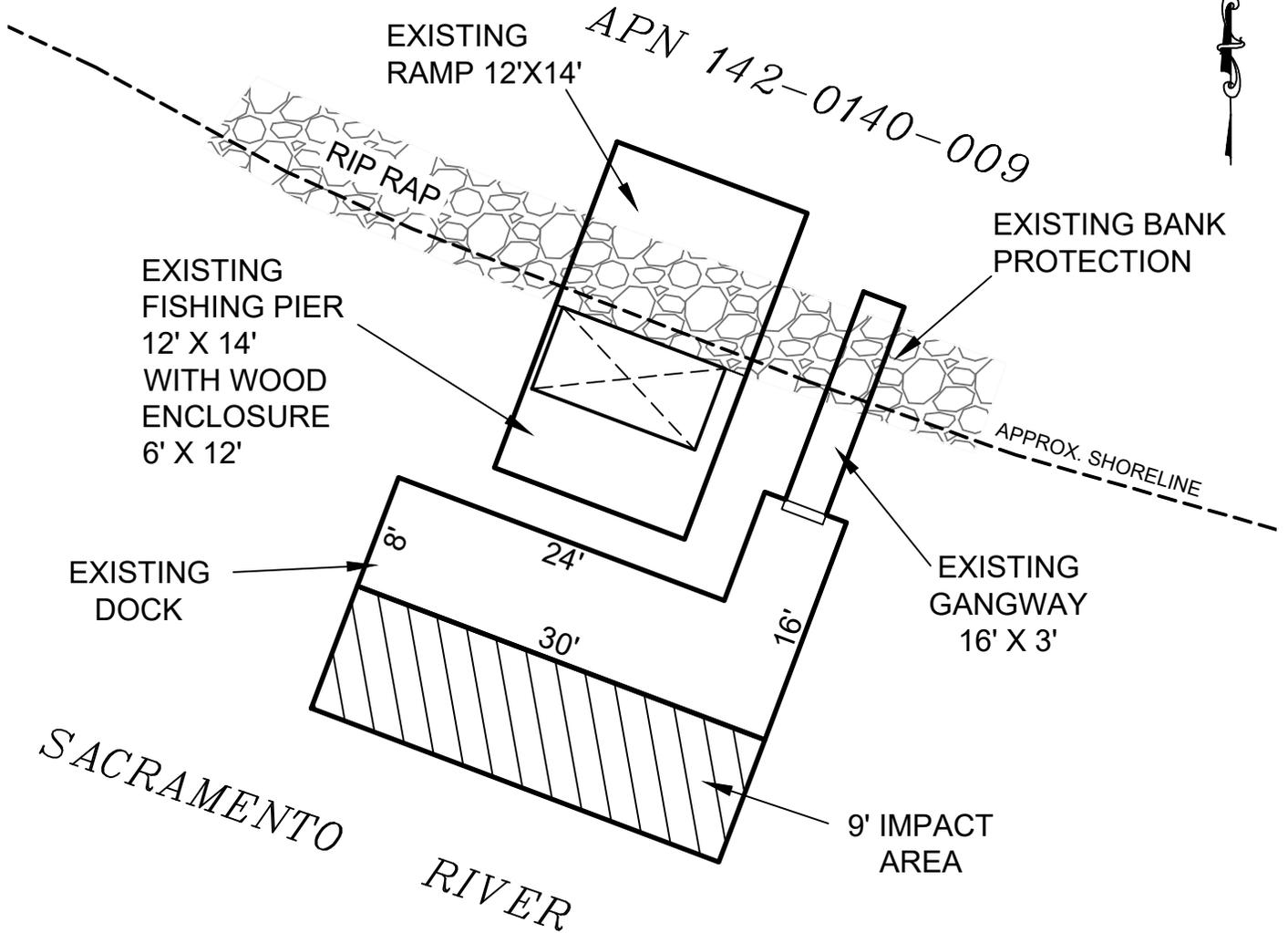


EXHIBIT A



NO SCALE

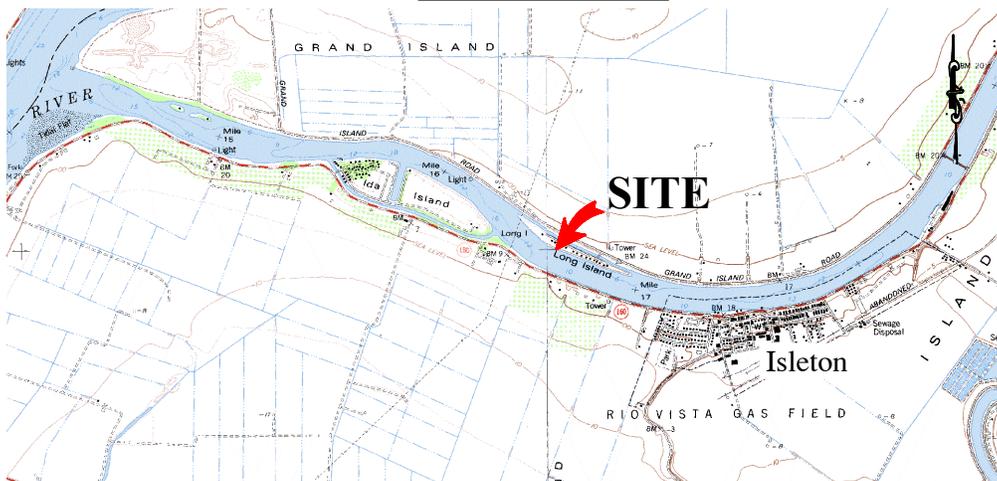
SITE



17368 GRAND ISLAND ROAD, NEAR WALNUT GROVE

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 4784.1

SCOTT

APN 142-0140-009

GENERAL LEASE -

RECREATIONAL AND

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.