

**CALENDAR ITEM  
C16**

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S 3

02/09/16  
PRC 7473.9  
G. Asimakopoulos

**AMENDMENT OF LEASE**

**LESSEE:**

Philicia G. Lund and Mary K. Lund

**EXISTING LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

Sovereign land located in the Sacramento River, adjacent to 17781 Grand Island Road, near Walnut Grove, Sacramento County.

*AUTHORIZED USE:*

Continued use and maintenance of 15 existing pilings, and construction, use, and maintenance of a covered floating boat shed, an uncovered floating boat dock, gangway, and debris diverter.

*LEASE TERM:*

10 years, beginning May 24, 2012.

*CONSIDERATION:*

No monetary consideration pursuant to Public Resources Code section 6503.5.

**PROPOSED AMENDMENT:**

Amend the lease to remove specific construction dates related to when construction shall be completed. All other terms and conditions of the lease shall remain in effect without amendment.

**STAFF ANALYSIS AND RECOMMENDATION:**

**Statutory Authority:**

Public Resources Code sections 6005, 6216, 6301, and 6503.5; California Code of Regulations, Title 2, section 2000, subdivision (b).

**Public Trust and State's Best Interests Analysis:**

The subject lease amendment will give the Lessee additional time to construct a boat shed, dock and appurtenant facilities for the docking and mooring of boats. Recreational boating is a water-dependent activity and

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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 authorized improvements are and will be privately owned and maintained. The adjacent upland parcel is privately owned and developed with a residence.

The existing 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 proposed dock and appurtenant facilities will not significantly alter the land; the lease, as amended, 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 all improvements and restore the lease premises to their original condition. Based on the foregoing, Commission staff believes that the dock facilities will not substantially interfere with public trust needs, at this location, and at this time and for the foreseeable term remaining on the lease.

The existing 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. For all the reasons above, Commission staff believes the amendment of this lease is consistent with the common law public trust doctrine and in the best interests of the State.

**OTHER PERTINENT INFORMATION:**

1. Applicant owns the upland adjoining the lease premises.
2. On May 24, 2012, the Commission authorized a General Lease – Recreational Use for the construction of a dock, boat shed, and gangway to Philicia G. and Mary K. Lund. That lease will expire on May 23, 2022. The Lessee is now applying for an amendment to the existing General Lease – Recreational Use, to allow for additional time to construct the proposed boat shed and docking facilities.
3. The Lessee obtained all necessary permits in 1990 to construct the facility; however, only the pilings were installed and all permits and authorizations need to be reinstated for the installation of the remaining facilities.
4. The existing lease requires the Lessee to construct all facilities by December 31, 2015, and if the proposed facilities are not completed and

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in use by said date, the lease will terminate and the existing improvements shall be removed and the lease premises restored to the condition prior to installation of the improvements.

5. The Lessee has been in regular contact with Commission staff about the progress of their permitting activities. The reason for the delay in permitting and construction is due to a disagreement the Lessee has with one of the permitting agencies, the U.S. Fish and Wildlife Service, regarding the required mitigation fees. The Lessee requested reconsideration with that agency, which was granted, resulting in no change to the terms. Currently, the Lessee is following the administrative appeal process and the timing of the outcome is unknown. Approval of this amendment should allow more than sufficient time for the Lessee to resolve that situation.
6. Staff recommends the Commission authorize a lease amendment to remove the construction deadlines set forth in the lease. This amendment would give the Lessee until the end of the term of the lease, May 23, 2022, to permit and construct the proposed facilities.
7. Staff recommends that the amendment of this lease as it promotes 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.
8. The 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 3, New Construction of Small Structures, California Code of Regulations, Title 2, section 2905, subdivision (c)(1).

Authority: Public Resources Code section 21084 and California Code of Regulations, Title 14, section 15300 and California Code of Regulations, Title 2, section 2905.

9. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

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**APPROVALS OBTAINED:**

California Department of Fish and Wildlife

**FURTHER APPROVALS REQUIRED:**

U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, National Oceanic and Atmospheric Administration, Central Valley Regional Water Quality Control Board; Central Valley Flood Protection Board.

**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 public trust needs and values at this location, is consistent with the common law public trust doctrine, and is in the best interests of the State.

**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 3, New Construction of Small Structures; California Code of Regulations, Title 2, section 2905, subdivision (c)(1).

**SIGNIFICANT LANDS INVENTORY FINDING:**

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

**AUTHORIZATION:**

Authorize the amendment of Lease No. PRC 7473.9, a General Lease – Recreational Use, effective December 31, 2015, to remove the construction 'completed by' date in Section 1 and Section 2, paragraph 6, requiring construction to be complete by December 31, 2015; all other terms and conditions of the lease will remain in effect without amendment.

**EXHIBIT A**

**PRC 7473.9**

**LAND DESCRIPTION**

Two parcels of tide and submerged land situate in the Sacramento River, lying adjacent to Swamp and Overflow Survey No. 551 and 512, patented November 23, 1874, County of Sacramento, State of California, and more particularly described as follows

**PARCEL 1 – DOCK**

All those lands underlying a proposed floating boat dock, boat shed, gangway and landing lying adjacent to Parcel 1 as described in Exhibit “A” of that Grant Deed recorded August 15, 2003 in Book 20030815 at Page 0255 in Official Records of said County.

TOGETHER WITH a use area.

**PARCEL 2 – DEBRIS DIVERTER**

All those lands underlying a proposed debris diverter lying adjacent to said Parcel.

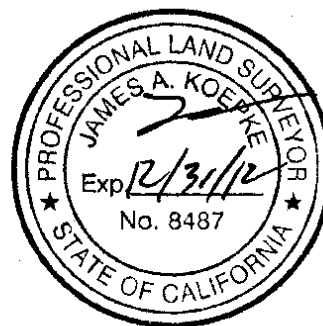
EXCEPTING THEREFROM any portion lying landward of the Ordinary High Water Mark of the right bank of the Sacramento River.

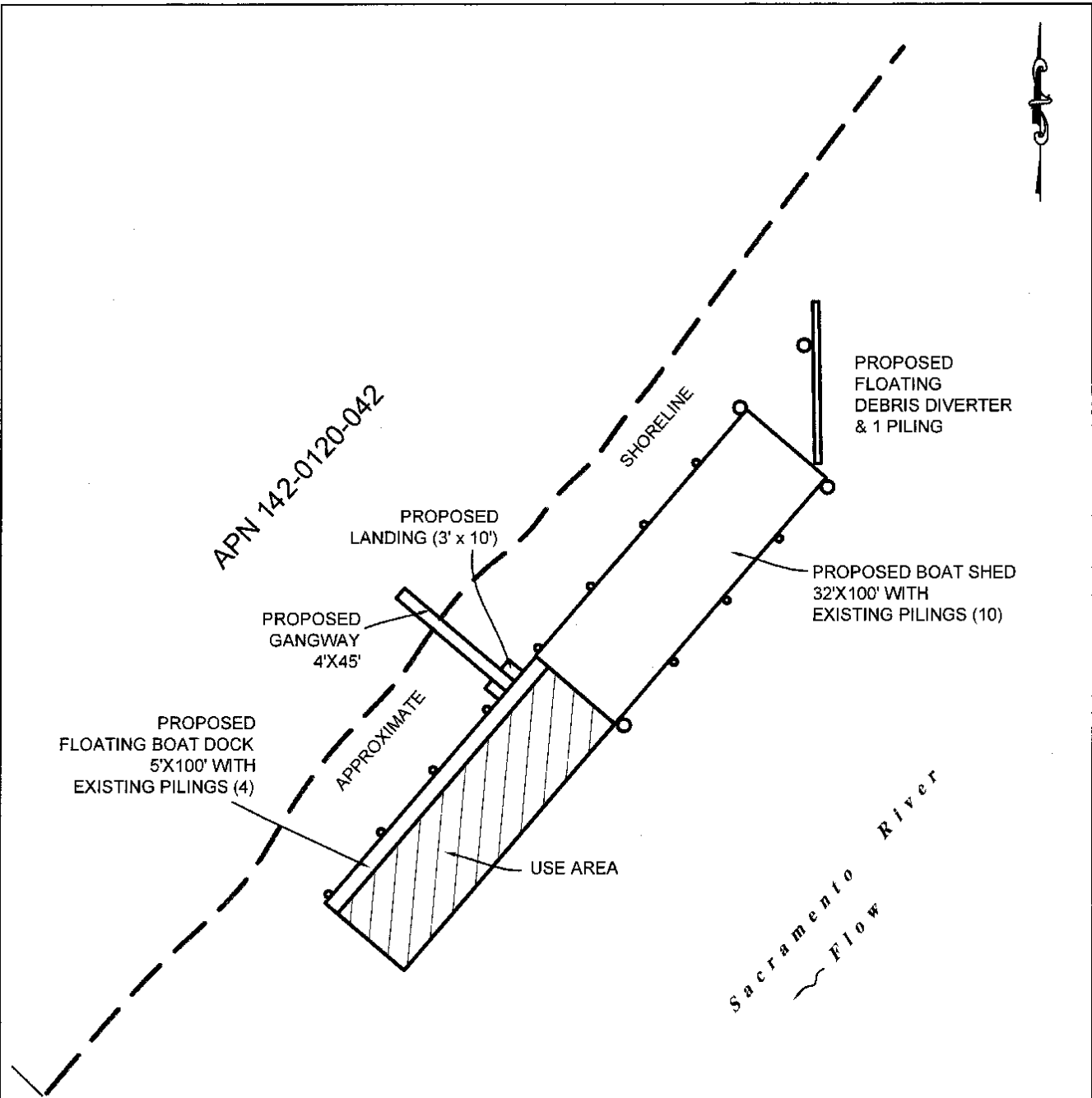
Accompanying plat is hereby made part of this description.

This description is based on Applicant provided design plans found in the Application for Lease of State Lands for a proposed pier, together with any and all appurtenances pertaining thereto, to be built at a later date within the Lease time frame. This description is to be updated once final as-built plans are submitted.

**END OF DESCRIPTION**

Prepared April 5, 2012 by the California State Lands Commission Boundary Unit.





**EXHIBIT A**

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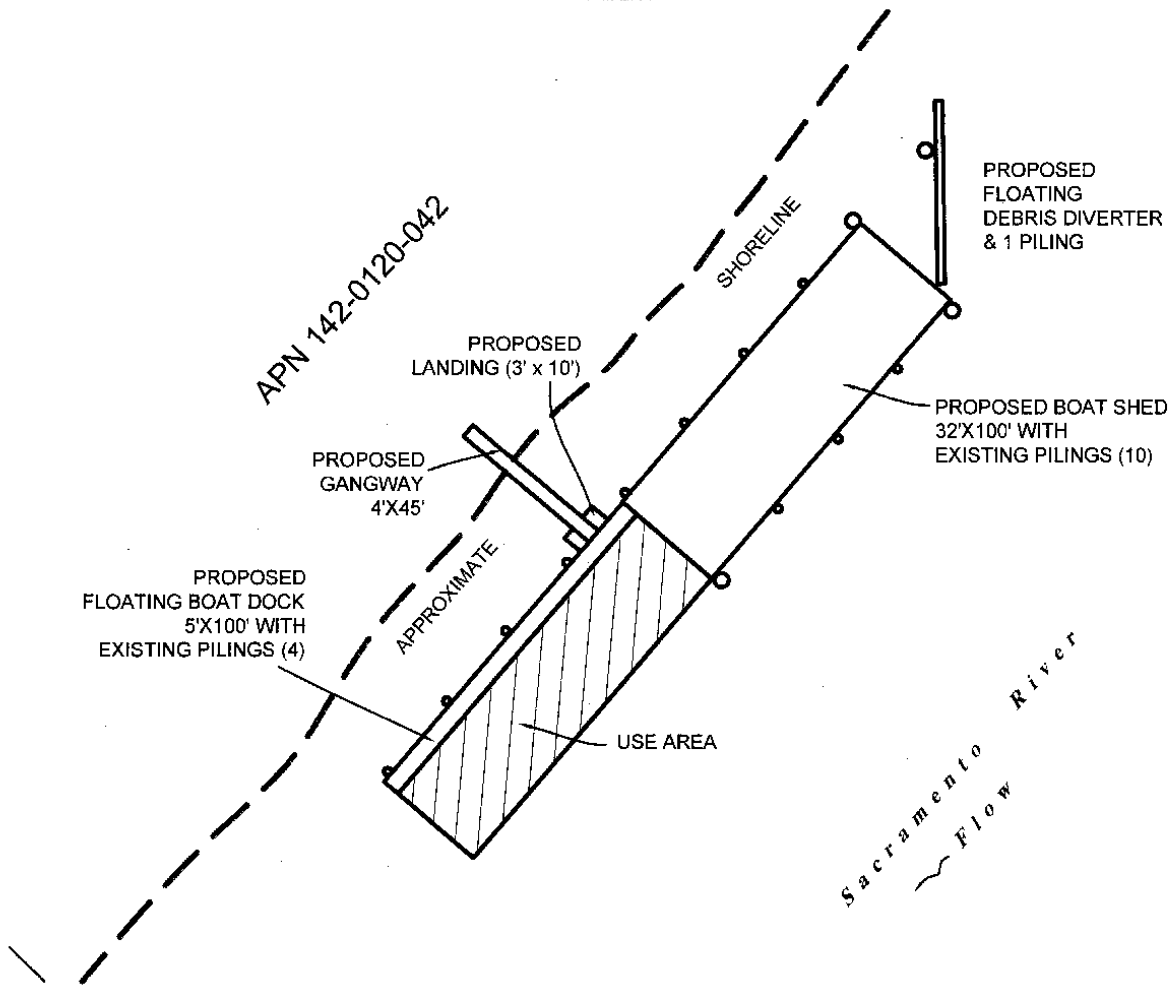
LAND DESCRIPTION PLAT  
 PRC 7473.9, LUND  
 SACRAMENTO COUNTY

CALIFORNIA STATE  
 LANDS COMMISSION



NO SCALE

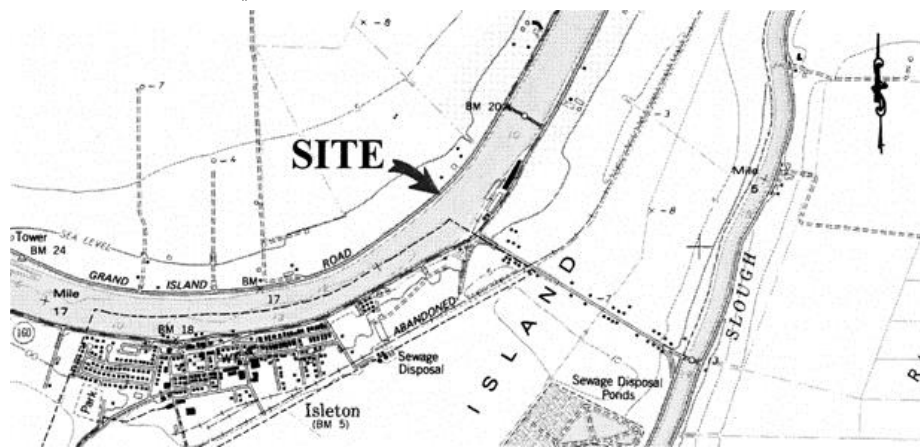
### SITE



17781 GRAND ISLAND RD., WALNUT GROVE

NO SCALE

### LOCATION



MAP SOURCE: USGS QUAD

### **Exhibit B**

PRC 7473.9  
 LUND  
 APN 142-0120-042  
 GENERAL LEASE -  
 RECREATIONAL 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.

MJJ 04/12/12