

Staff Report 27

LESSEE:

William H. Kearns, Jr., Trustee of the William H. Kearns, Jr. Separate Property Trust
Dated July 27, 1999

APPLICANT:

Richard T Messersmith and Karol A Messersmith, Trustees of the Richard T
Messersmith and Karol A Messersmith Family Revocable Trust est 9/11/03

PROPOSED ACTION:

Termination and Issuance of a General Lease – Recreational and Protective
Structure Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Georgiana Slough, adjacent to 17075 Terminous Road, near
Isleton, Sacramento County.

AUTHORIZED USE:

Use and maintenance of an existing covered boat dock with slip and boat lift,
dock finger, personal watercraft float, gangway, four pilings, and bank protection.

TERM:

10 years, beginning June 29, 2021.

CONSIDERATION:

**Covered boat dock with slip and boat lift, dock finger, personal watercraft float,
gangway, and four pilings:** \$357 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 that the 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, 6501.1, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On August 17, 2017, the Commission authorized a General Lease - Recreational and Protective Structure Use to William H. Kearns, Jr., Trustee of the William H. Kearns, Jr. Separate Property Trust Dated July 27, 1999, for an existing covered boat dock with slip and boat lift, dock finger, personal watercraft float, gangway, four pilings, and bank protection ([Item C44, August 17, 2017](#)). That lease will expire on September 12, 2027. On December 17, 2020, the upland property and lease improvements were deeded to the Applicant. The Applicant is applying for a General Lease – Recreational and Protective Structure Use for the use and maintenance of an existing covered boat dock with slip and boat lift, dock finger, personal watercraft float, gangway, four pilings, and bank protection in Georgiana Slough.

Staff recommends termination of the existing lease because the Lessee abandoned the lease premises, sold the upland property without executing a lease quitclaim deed or application for assignment. The effective date of the proposed new lease will align with the authorization date. Accounting records show the annual rent is paid current. There will be no gap in payment for the use of State land in Georgiana Slough. The proposed lease will require the Applicant to indemnify the State for the entire period of occupation, ensuring the State is protected.

The subject improvements are privately owned and maintained facilitates that align with recreational boating activities. Recreational boating is a water-

dependent use that 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 land (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 for recreational and navigational use by the public.

The facilities have existed at this location for many years. The facilities are located adjacent to the upland property and occupy a relatively small area of the slough. 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 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.

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 Georgiana 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.

Table 1. Projected Sea-Level Rise for San Francisco

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: Projections are with respect to a 1991 to 2009 baseline.

This effect could increase Georgiana Slough'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 dock and stabilizer poles. 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 float, dock finger, boat lift, 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, such as the four pilings and bank protection may need reinforcement to withstand higher levels of flood exposure and more frequent storm 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 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 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. An applicant has no right to a new lease or to renewal of any previous lease. Denial of the application may result in a determination that the proposed activity on or use of state land is unauthorized and may result in legal action.
2. This action is consistent with the "Meeting Evolving Public Trust Needs" and the "Leading Climate Activism" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
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 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).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the termination of the lease and issuance of 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 Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Terminate, effective June 28, 2021, Lease ~~58008760~~, a General Lease – Recreational and Protective Structure Use, issued to William H. Kearns, Jr., Trustee of the William H. Kearns, Jr. Separate Property Trust Dated July 27, 1999.
2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning June 29, 2021, for a term of 10 years, for the use and maintenance of an existing covered boat dock with slip and boat lift, dock finger, personal watercraft float, gangway, four pilings, 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; annual rent in the amount of \$357, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 8760

LAND DESCRIPTION

A parcel of tide and submerged land situated in the bed of the Georgiana Slough lying adjacent to Swamp and Overflow Survey 849 patented April 2, 1873 Sacramento County, State of California, more particularly described as follows:

All those lands underlying an existing covered boat dock with a slip and boat lift, dock finger, personal water craft float, gangway and four pilings lying adjacent to that parcel described in Grant Deed, recorded December 17, 2020 in Document Number 202012171311 in Official Records of said County.

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

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

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared February 5, 2021 by the California State Lands Commission Boundary Unit.



NO SCALE

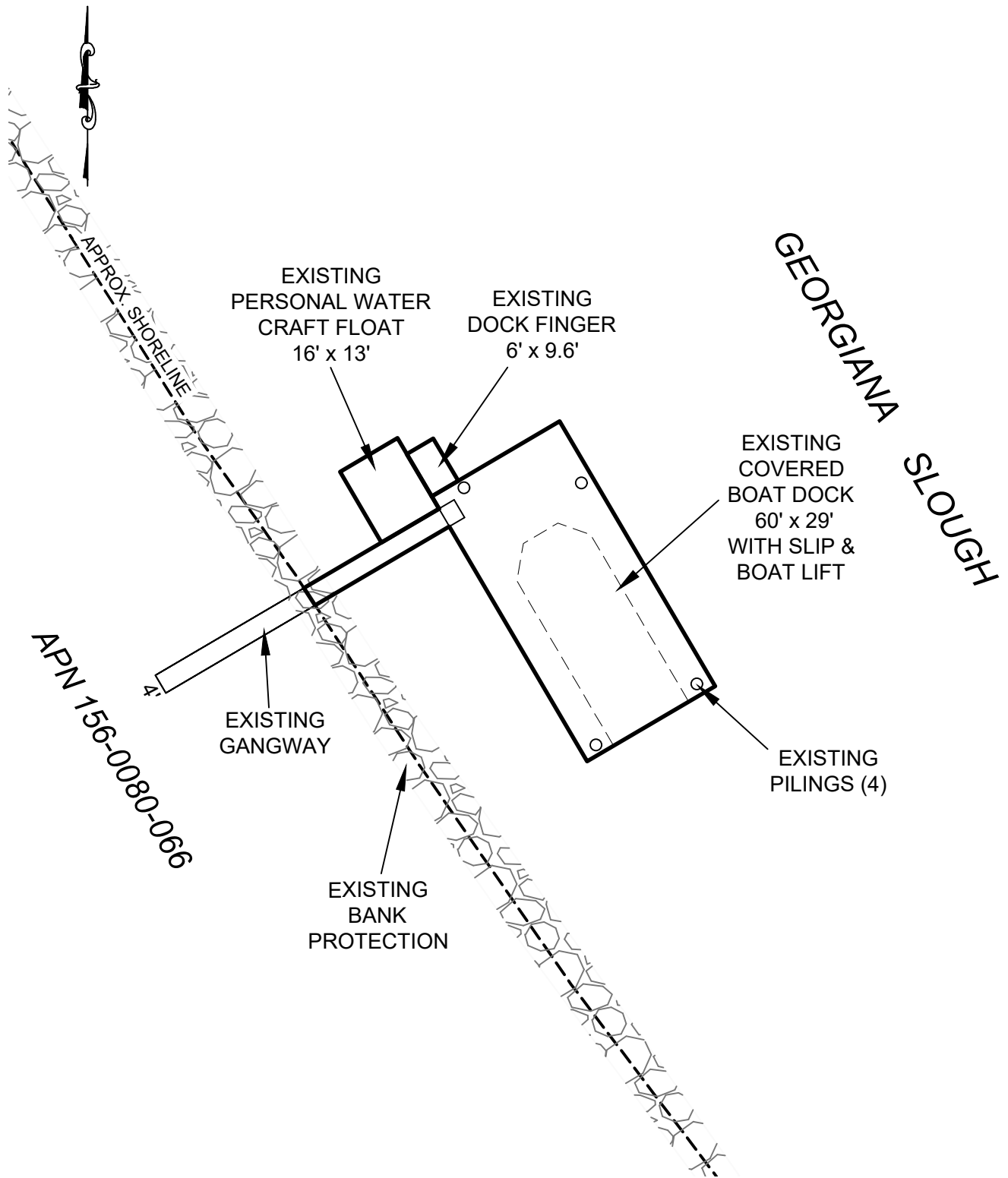


EXHIBIT A

Page 2 of 2

TS 02/05/2021

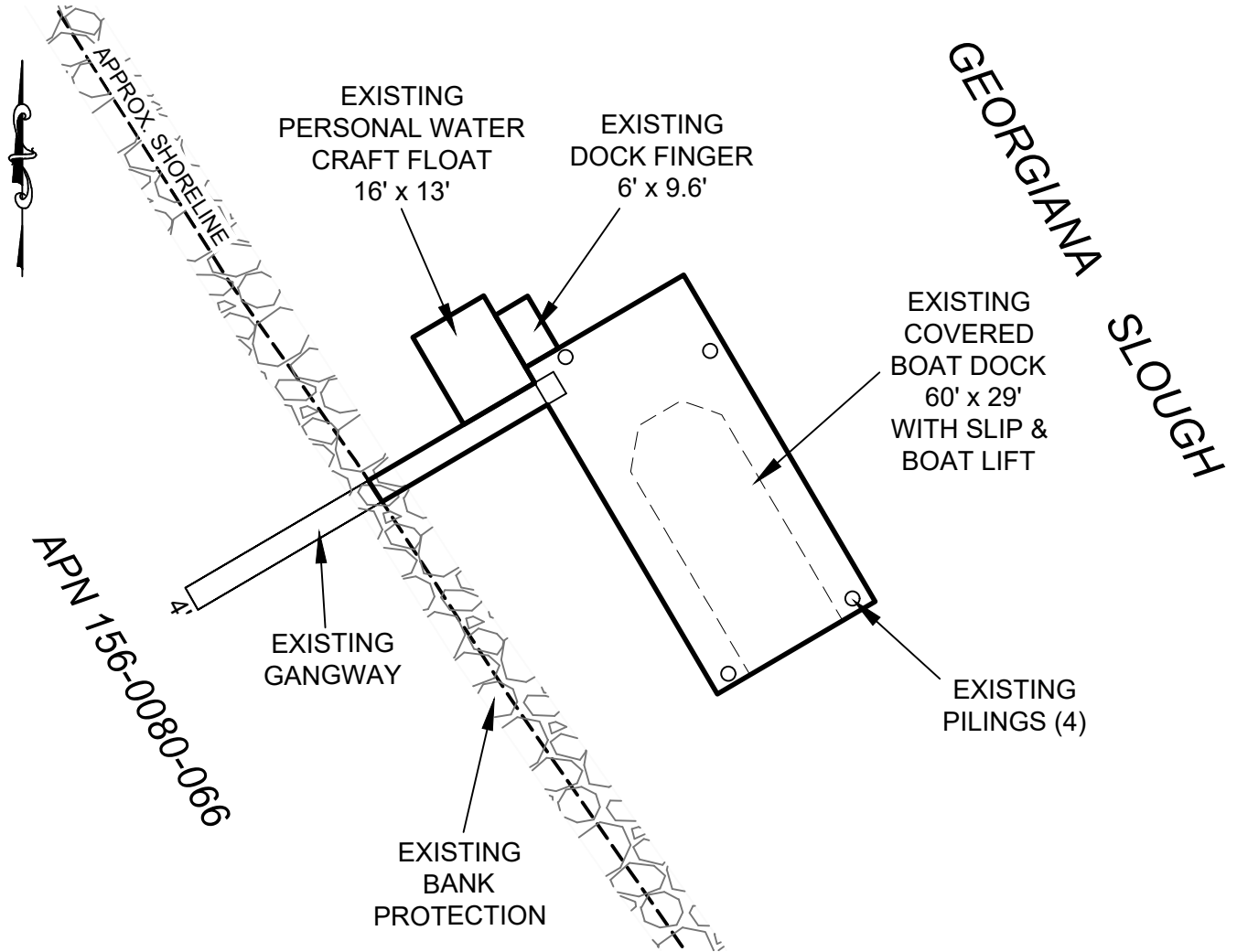
LAND DESCRIPTION PLAT
LEASE 8760, MESSERSMITH FAMILY
REVOCABLE TRUST
SACRAMENTO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

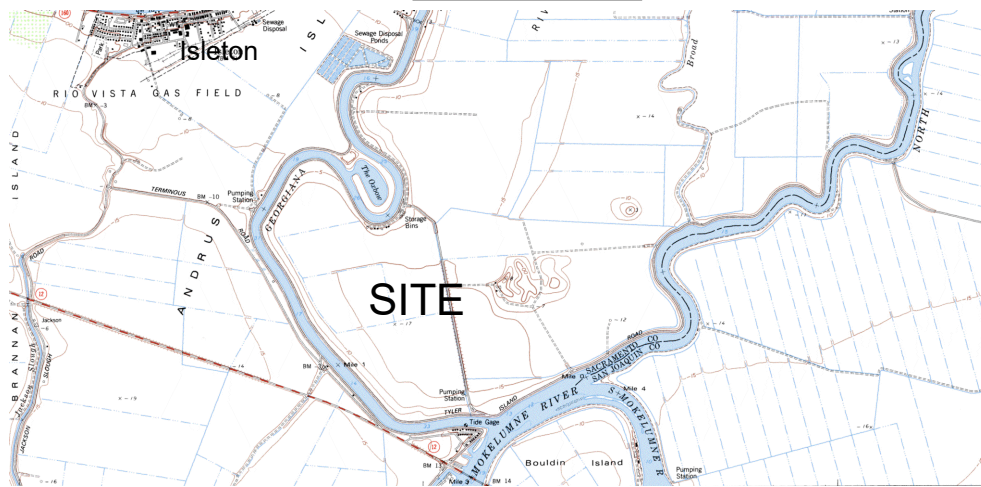
SITE



17075 TERMINOUS RD., NEAR ISLETON

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B
 LEASE 8760
 MESSERSMITH FAMILY
 REVOCABLE TRUST
 APN 156-0080-066
 GENERAL LEASE -
 RECREATIONAL & PROTECTIVE
 STRUCTURE USE
 SACRAMENTO COUNTY



TS 02/05/2021

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.