

Staff Report 22

LESSEE:

Jonathan D. Smith and Milissa Smith

APPLICANT:

Kevin M. Sullivan and Christine E. Sullivan, Trustees of The Sullivan Family Trust Dated May 31, 1991

PROPOSED ACTION:

Acceptance of a Lease Quitclaim Deed for a General Lease – Recreational and Protective Structure Use; and issuance of a General Lease – Recreational and Protective Structure Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Sacramento River, adjacent to 4237 Garden Highway, near Sacramento, Sacramento County.

AUTHORIZED USE:

Use and maintenance of an existing covered single-berth boat dock with two boat lifts, gangway, three pilings, electric and water utility conduits, and bank protection.

TERM:

10 years, beginning August 25, 2021

CONSIDERATION:

Covered single-berth boat dock with two boat lifts, gangway, three pilings, and electric and water utility conduits: \$374 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, 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:

On December 17, 2014, the Commission authorized a 10-year General Lease – Recreational and Protective Structure Use to Jonathan D. Smith and Milissa Smith ([Item C21, December 17, 2014](#)). That lease will expire on October 3, 2024.

On March 18, 2021, ownership of the upland parcel and lease improvements was deeded to the Applicant, Kevin M. Sullivan and Christine E. Sullivan, Trustees of The Sullivan Family Trust Dated May 31, 1991. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use, for the use and maintenance of an existing covered single-berth boat dock with two boat lifts, gangway, three pilings, electric and water utility conduits, and bank protection.

Staff recommends acceptance of a lease quitclaim deed from the current Lessee and issuance of a new lease to the Applicant beginning August 25, 2021. Because the Applicant took ownership of the upland on March 18, 2021, the lease provisions regarding indemnity extend to the period of the Applicant's unauthorized occupation of state-owned lands, from March 18, 2021, through August 24, 2021, the day before the beginning date of the proposed lease. The Commission's accounting records show the annual rent was paid through October 2, 2021.

The dock and appurtenant facilities are used for the docking and mooring of boats and facilitate recreational boating. Recreational boating is a water-dependent use that is general 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 for recreational and navigational use 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 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 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 the Sacramento River 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.

Rising sea levels can lead to more frequent flood inundation in low lying areas and larger tidal events and could increase the Sacramento River'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, dock, gangway, boat lifts, electric and water utility conduits, and bank protection. 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 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. The fixed pilings may need reinforcement to withstand higher levels of flood exposure.

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 common law Public Trust Doctrine; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application for a new lease 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 a renewal of any previous lease. Denial of the application may result in a determination that the proposed activity on or use of state lands 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. Additional content
3. Acceptance of the lease quitclaim deed 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 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 common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of a lease quitclaim deed, effective August 24, 2021, for Lease Number PRC 9168, a General Lease – Recreational and Protective Structure Use, issued to Jonathan D. Smith and Milissa Smith.
2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant, beginning August 25, 2021, for a term of 10 years, for the use and maintenance of an existing covered single-berth boat dock with two boat lifts, gangway, three pilings, electric and water utility conduits, and bank protection, as described in Exhibit A, Land Description, and as shown on Exhibit B, Site and Location Map (for reference purposes only), attached and by this reference made a part hereof; consideration for the existing covered single-berth boat dock with two boat lifts, gangway, three pilings, and electric and water utility conduits: \$374 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, as specified in the lease, if the Commission finds such action to be in the States best interests; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 9168

LAND DESCRIPTION

A parcel of tide and submerged land situate in the bed of the Sacramento River, lying adjacent to Swamp and Overflowed Land Survey 193 patented July 11, 1865, County of Sacramento, State of California and more particularly described as follows:

All those lands underlying an existing single-berth covered floating boat dock with two boat lifts, gangway, three pilings and utility outlet lying adjacent to that parcel described in Grant Deed, recorded March 18, 2021 in Document Number 202103181249 in Official Records of said County.

TOGETHER WITH any applicable Impact Area(s).

ALSO 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 left bank of said River.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 06/25/2021 by the California State Lands Commission Boundary Unit



NO SCALE



APN 225-0090-053

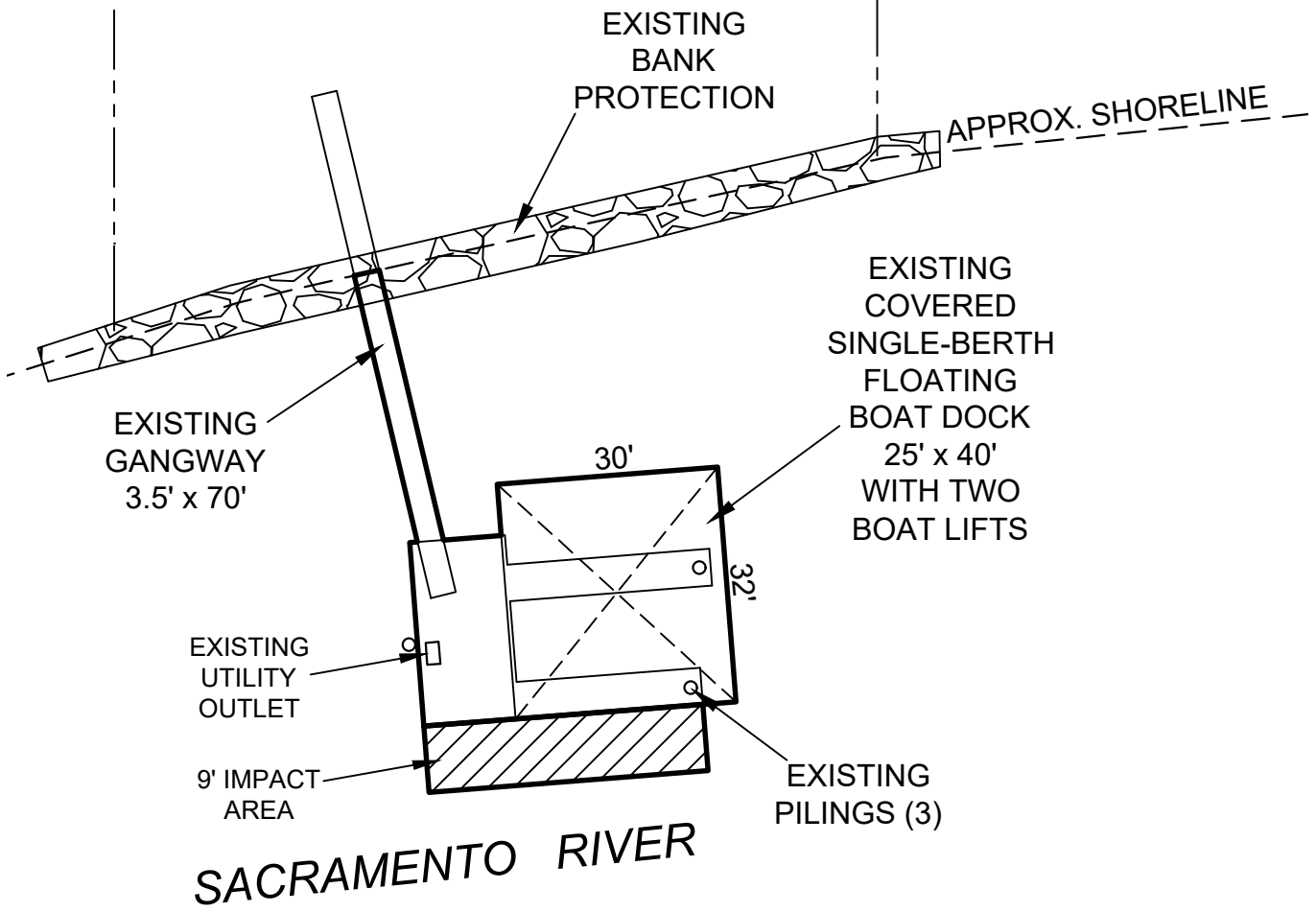


EXHIBIT A

LAND DESCRIPTION PLAT
 LEASE 9168, SULLIVAN FAMILY TRUST
 SACRAMENTO COUNTY

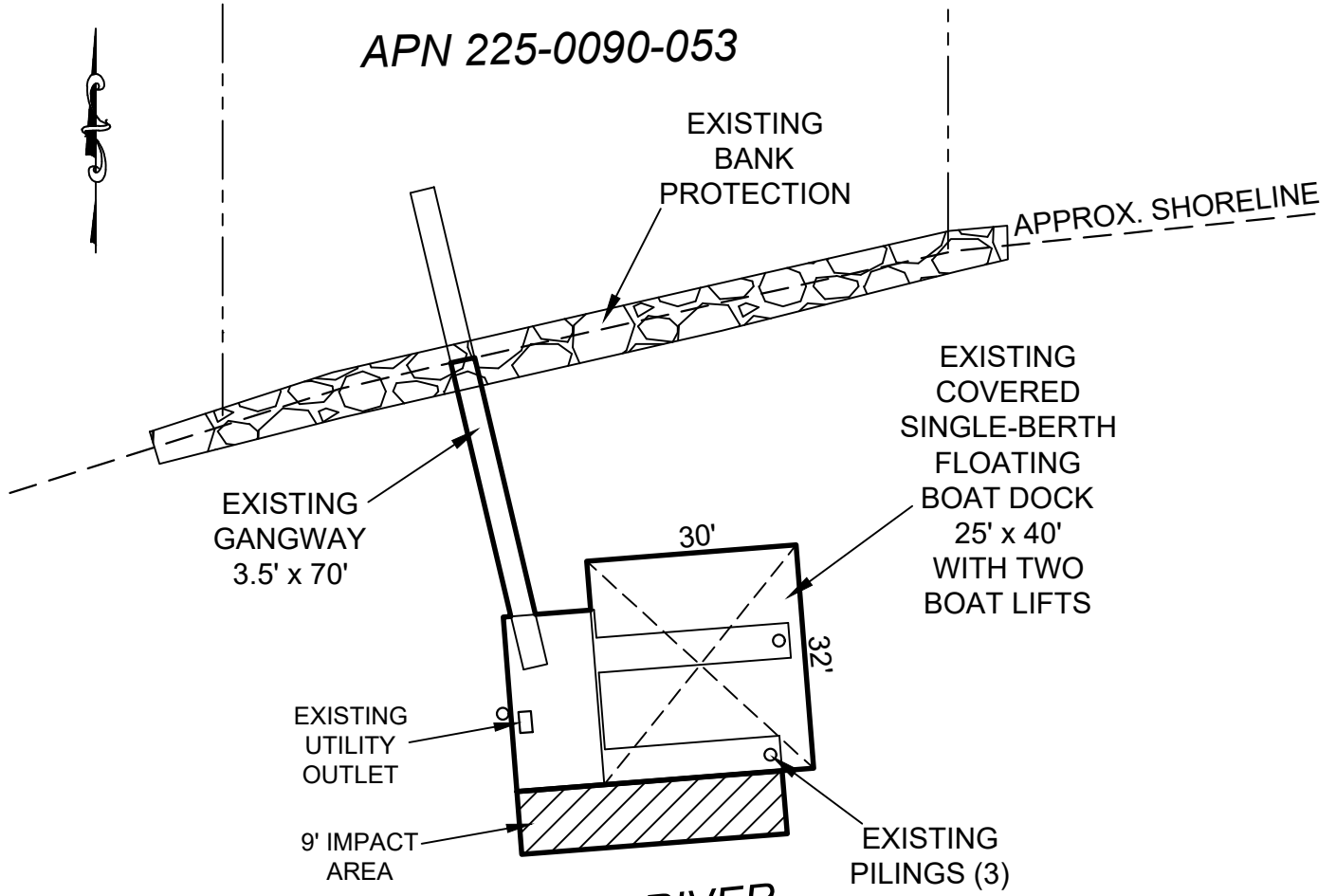
CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

SITE

APN 225-0090-053

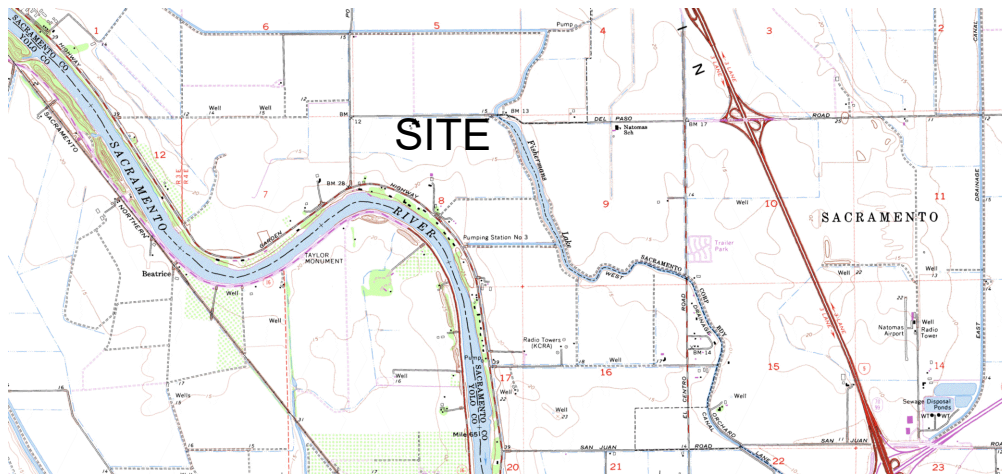


SACRAMENTO RIVER

4237 GARDEN HIGHWAY, SACRAMENTO

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

LEASE 9168
 SULLIVAN FAMILY TRUST
 APN 225-0090-053
 GENERAL LEASE-
 RECREATIONAL & PROTECTIVE
 STRUCTURE USE
 SACRAMENTO COUNTY



TS 06/25/2021

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.