

# Staff Report 09

## **APPLICANT:**

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Roy W. Keller and Nicole A. Keller, Trustees, the Keller Family Trust Dated December 3, 2007

## **PROPOSED ACTION:**

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Issuance of a General Lease – Recreational Use

## **AREA, LAND TYPE, AND LOCATION:**

Sovereign land in the Sacramento River, adjacent to 10545 Highway 160, near Hood, Sacramento County.

## **AUTHORIZED USE:**

Removal of an existing boat dock and walkway and use and maintenance of one piling and one three-piling dolphin.

## **TERM:**

5 years, beginning October 21, 2021.

## **CONSIDERATION:**

\$140 per year, with an annual Consumer Price Index adjustment; and compensation for the unauthorized occupation of State land in the amount of \$1,224 for the period beginning August 1, 2013 through October 20, 2021.

## **SPECIFIC LEASE PROVISIONS:**

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- If the existing boat dock and walkway are not removed by December 31, 2021, the Lease consideration will change to \$244, with an annual Consumer Price Index adjustment, retroactive to October 21, 2022.
- Lessee agrees to indemnify the Lessor for any liabilities arising from the period of unauthorized occupation of the State lands (prior to the issuance of the lease)

- Lessee agrees and acknowledges hazards associated with climate change, including sea-level rise, may require additional maintenance or protection strategies regarding the improvements on the Lease Premises.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **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 October 20, 2003, the Commission authorized a Recreational Pier Lease to Roy Keller ([Item 10, October 20, 2003](#)). The lease expired on July 31, 2013. The Applicant is now applying for a General Lease – Recreational Use, for the removal of an existing boat dock and walkway and the use and maintenance of one piling and one three-piling dolphin.

The subject dock and appurtenant facilities are privately owned and maintained and are for the docking and mooring of recreational boats. The existing floating boat dock and walkway are in poor condition, and the Applicant has contracted a marine construction company to remove them. The annual rent would be for one remaining piling and one three-piling dolphin. The Lessee is aware that an amendment to the lease would be required prior to any proposed dock reconstruction in the future.

Recreational boating is water-dependent and 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 existing boat dock and appurtenant facilities have existed at this location for many years and are located directly adjacent to the Applicant's upland property.

The proposed lease includes certain provisions protecting the public use of the proposed lease area, including a limited lease term of 5 years and a non-exclusive use provision. The facilities do not significantly alter the land, and the lease does not alienate the State's fee simple interest or permanently impair public rights. Upon termination of the lease, the lessee may be required to remove any improvements 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.

Furthermore, the lessee agrees to indemnify the Commission for any liabilities arising from the period of unauthorized occupation of the State lands (prior to the issuance of the lease). 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 lease area is located on the Sacramento River at a tidally influenced site vulnerable to flooding at current sea levels.

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**

<b>Year</b>	<b>Projection (feet)</b>
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. Lowered water levels could also reduce navigability of the channel, thereby increasing hazards and impacting the function and utility of the lease area structures.

Regular maintenance, as referenced in the lease, may 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; and is in the best interests of the State.

**OTHER PERTINENT INFORMATION:**

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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. 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" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
3. **Existing Piling and One Three-piling Dolphin:** 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)(1).

4. **Removal of an Existing Boat Dock and Walkway:** Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 4, Minor Alteration to Land; California Code of Regulations, title 2, section 2905, subdivision (d)(3).

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:**

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- A. Land Description
- B. Site and Location Map

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

### **CEQA FINDINGS:**

**Existing Piling and One Three-piling Dolphin:** 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)(1).

**Removal of an Existing Boat Dock and Walkway:** 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 4, Minor Alteration to Land; California Code of Regulations, title 2, section 2905, subdivision (d)(3).

### **PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that the proposed lease will not 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 compensation from the Applicant in the amount of \$1,224 for unauthorized occupation of State land for the period beginning August 1, 2013 through October 20, 2021.

2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning October 21, 2021, for a term of 5 years, for the removal of an existing boat dock and walkway, and the use and maintenance of one piling and one three-piling dolphin, 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 \$140 per year, with an annual Consumer Price Index adjustment; liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**LEASE 6610**

**LAND DESCRIPTION**

Two parcels of submerged land situate in the bed of the Sacramento River, lying adjacent to Swamp and Overflowed Land Survey 429 patented November 1, 1869, County of Sacramento, State of California and more particularly described as follows:

**PARCEL 1 – Unattached Piling**

All those lands underlying an existing piling lying adjacent to that parcel described in Grant Deed, recorded December 20, 2007 in Book 20071220 at Page 0496 in Official Records of said County.

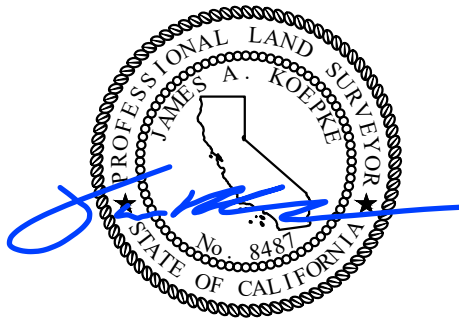
**PARCEL 2 – Dolphin**

All those lands underlying an existing 3-pile dolphin lying adjacent to that parcel described in Grant Deed, recorded December 20, 2007 in Book 20071220 at Page 0496 in Official Records of said County.

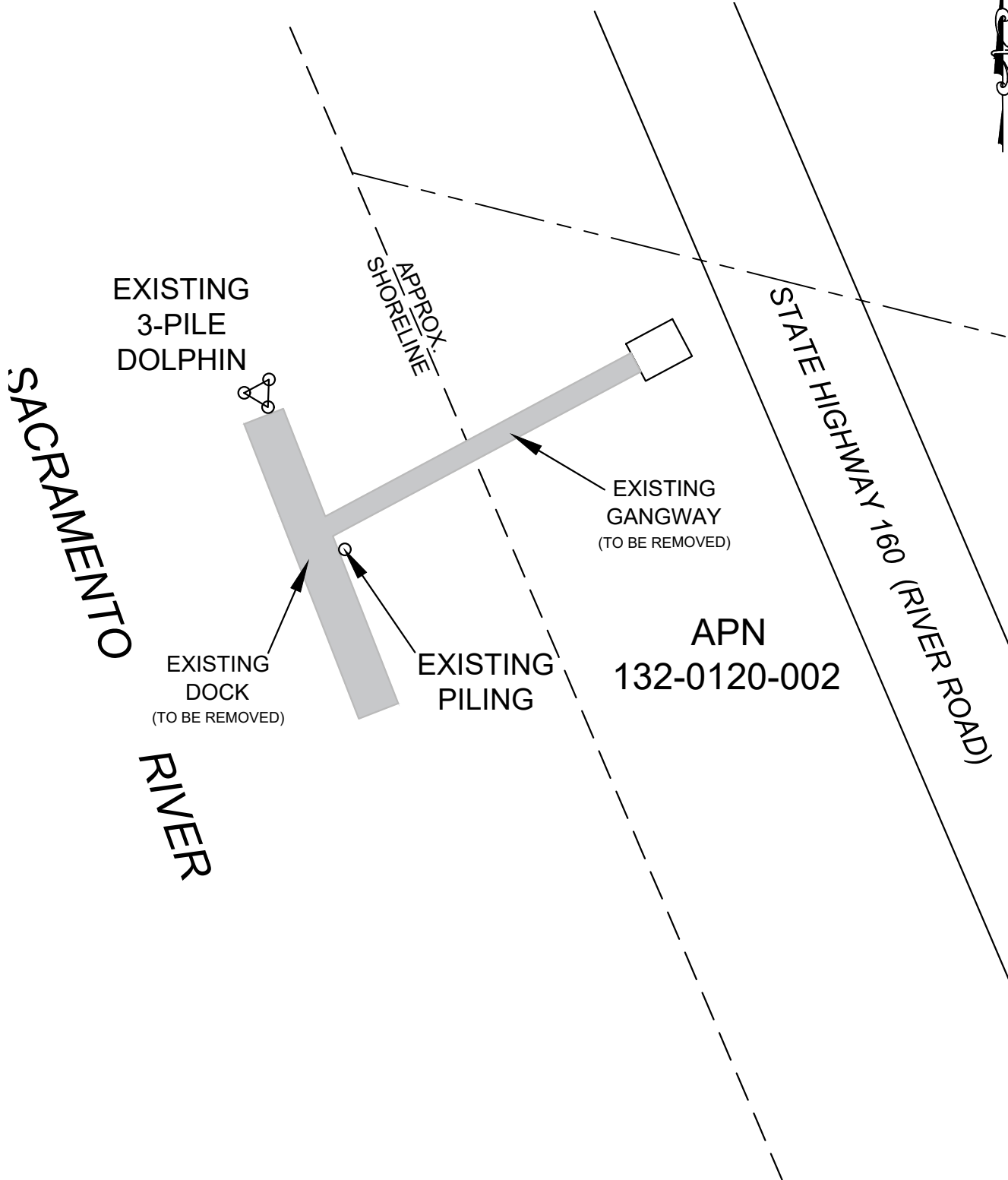
Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

Prepared 04/29/2021 by the California State Lands Commission Boundary Unit



NO SCALE



# EXHIBIT A

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TS 04/29/2021

LAND DESCRIPTION PLAT  
 LEASE 6610, KELLER FAMILY TRUST  
 SACRAMENTO COUNTY

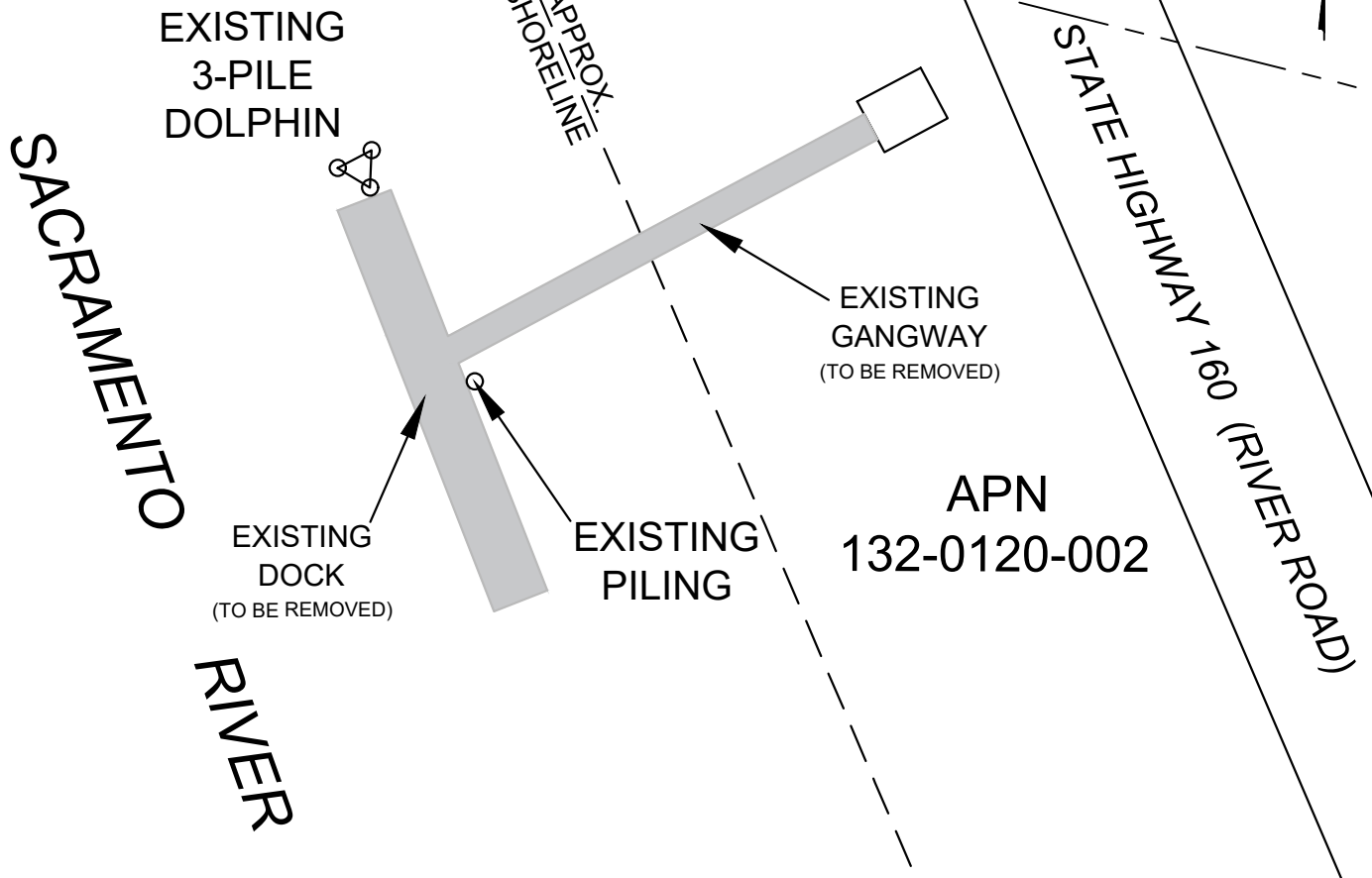
CALIFORNIA STATE  
 LANDS COMMISSION





NO SCALE

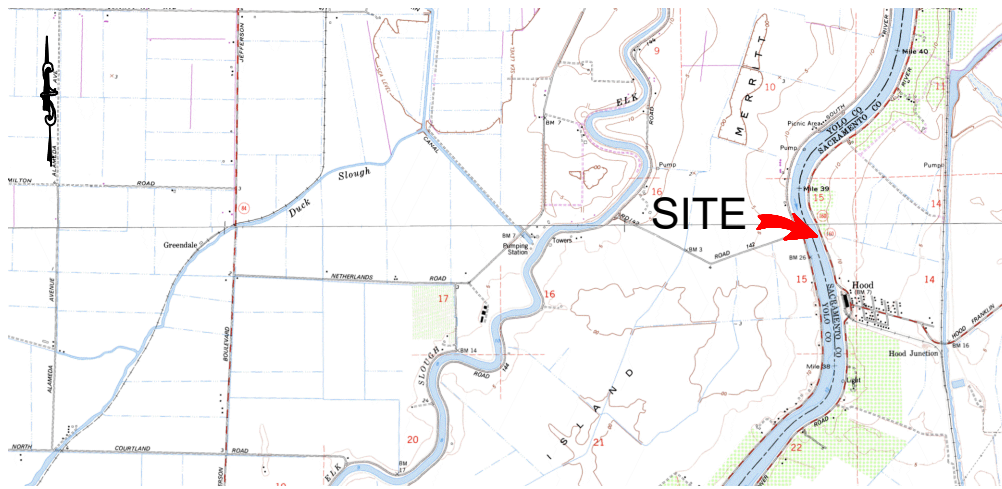
# SITE



10545 STATE HIGHWAY 160, NEAR HOOD

NO SCALE

# LOCATION



MAP SOURCE: USGS QUAD

**Exhibit B**  
 LEASE 6610  
 KELLER FAMILY TRUST  
 APN 132-0120-002  
 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.