

Staff Report 48

LESSEE:

Chris R. Johnson and Heidi Lynn Kellis-Johnson

APPLICANT:

Bruce N. Goldsmith, Trustee of the Bruce N. Goldsmith Revocable Living Trust dated March 7, 2016

PROPOSED ACTION:

Acceptance of a Lease Quitclaim Deed and Issuance of a General Lease –
Recreational and Protective Structure Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Sacramento River, adjacent to 6601 Garden Highway, near Sacramento, Sacramento County.

AUTHORIZED USE:

Continued use and maintenance of an existing boat dock, gangway, galvanized cables, and bank protection.

TERM:

10 years, beginning December 8, 2021.

CONSIDERATION:

Boat dock, gangway, and galvanized cables: \$140 per year, with an annual Consumer Price Index adjustment; and \$97 to compensate for the unauthorized occupation of state sovereign land for the period beginning March 29, 2021 through December 7, 2021.

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 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 March 29, 2012, the Commission authorized a General Lease - Recreational and Protective Structure Use for an existing boat dock with fish cleaning sink, gangway, galvanized cables, and bank protection to Chris R. Johnson and Heidi Lynn Kellis-Johnson ([Item C19, March 29, 2012](#)). On February 27, 2018, the Commission authorized a continuation of rent at \$147 per year ([Executive Officer's Report, February 27, 2018](#)). On February 9, 2021, upland ownership and the facilities were transferred to Bruce N. Goldsmith, Trustee of the Bruce N. Goldsmith Revocable Living Trust dated March 7, 2016. The upland owners exercised dominion and control over the uplands and the associated infrastructure.

The Applicant owns the upland parcel adjoining the lease premises and is now applying for a General Lease – Recreational and Protective Structure Use for the continued use and maintenance of the existing facilities that they privately own and maintain.

Staff recommends acceptance of a lease quitclaim deed from the current Lessee, who paid rent through March 28, 2021, and issuance of a new lease to the Applicant beginning December 8, 2021. Staff further recommends the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$97 for the period beginning March 29, 2021 (the day after the current Lessee paid rent) through December 7, 2021 (the day before the proposed lease begins).

The subject facilities are used for the docking and mooring of boats and facilitate recreational boating. 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 has existed at this location for several years. The bank protection will maintain and improve the integrity of the river channel, which helps protect the Public Trust resources for public recreation and navigation.

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 State for the occupation of the public land involved, except for the bank protection, which provides a public benefit.

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 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

Year	Projection (feet)
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 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 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. 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 existing 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 of dock facilities. The existing galvanized cables and bank protection may need reinforcement and possibly replacement to withstand higher levels of flood exposure and more frequent storm events.

The vegetated bank provides additional stability and reduces 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 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 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 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 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 an 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. If the Commission denies the application, the Applicant, as the owner of the improvements on state land, may be required to remove the docking facilities and bank protection and restore the premises to their original condition. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Leading Climate Activism" and "Meeting Evolving Public Trust Needs" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. Acceptance of a 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 the acceptance of a lease quitclaim deed and issuance of 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; are consistent with the common law Public Trust Doctrine; and are in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of a lease quitclaim deed, effective February 8, 2021, of Lease Number PRC 7916, a General Lease – Recreational and Protective Structure Use, issued to Chris R. Johnson and Heidi Lynn Kellis-Johnson.
2. Authorize acceptance of compensation from the Applicant in the amount of \$97 for the unauthorized occupation of State land for the period beginning March 29, 2021 through December 7, 2021.

3. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning December 8, 2021, for a term of 10 years, for the use and maintenance of an existing boat dock, gangway, galvanized cables, 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; consideration for the boat dock, gangway, and galvanized cables: \$140 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 interest; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 7916

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 922 patented July 16, 1898, County of Sacramento, State of California and more particularly described as follows:

All those lands underlying an existing boat dock and gangway lying adjacent to that parcel described in Grant Deed, recorded February 9, 2021 in Document Number 202102092280 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 09/15/2021 by the California State Lands Commission Boundary Unit.



NO SCALE



SACRAMENTO RIVER

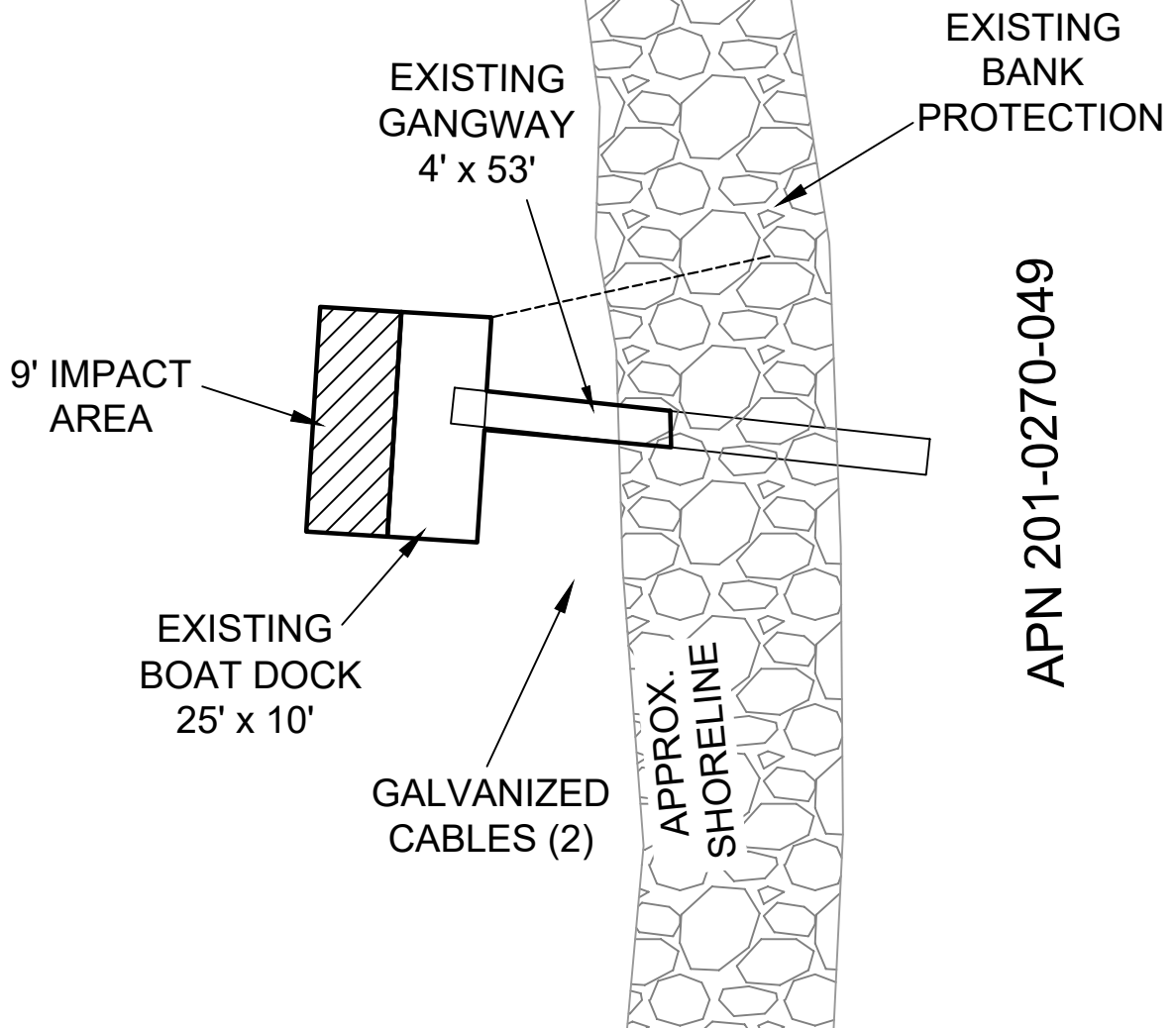


EXHIBIT A

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LAND DESCRIPTION PLAT
LEASE 7916, GOLDSMITH TRUST
SACRAMENTO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE



SACRAMENTO RIVER

9' IMPACT
AREA

EXISTING
BOAT DOCK
25' x 10'

EXISTING
GANGWAY
4' x 53'

GALVANIZED
CABLES (2)

APPROX.
SHORELINE

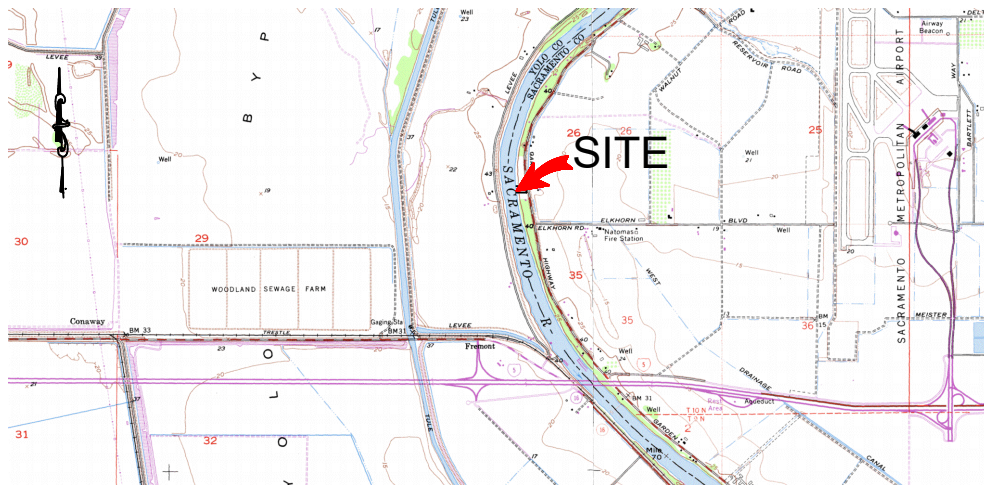
EXISTING
BANK
PROTECTION

APN 201-0270-049

6601 GARDEN HIGHWAY, SACRAMENTO

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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.

Exhibit B

LEASE 7916
GOLDSMITH TRUST
APN 201-0270-049
GENERAL LEASE-
RECREATIONAL &
PROTECTIVE STRUCTURE USE
SACRAMENTO COUNTY



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