

# Staff Report 12

## **LESSEE:**

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Ashly Black

## **APPLICANT:**

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Melinda M. Scott

## **PROPOSED ACTION:**

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Consider Waiver of Penalty and Interest; Void Invoice Number 51362; Termination and Issuance of a General Lease – Recreational Use

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

Sovereign land in the Sacramento River, adjacent to 13810 State Highway 160, near Walnut Grove, Sacramento County.

## **AUTHORIZED USE:**

Use and maintenance of an existing boat dock, float, gangway, and two pilings.

## **TERM:**

10 years, beginning August 23, 2022.

## **CONSIDERATION:**

\$140 per year, with an annual Consumer Price Index adjustment, and \$235 to compensate for the unauthorized occupation of State sovereign land for the period through August 22, 2022.

## **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:**

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### **AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, 6503.5, and 6505.5; California Code of Regulations, title 2, sections 2000 and 2003.

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

On June 28, 2016, the Commission authorized a 10-year General Lease – Recreational Use to Ashly Black, for use and maintenance of an existing boat dock, float, gangway, and two pilings ([Item C20, June 28, 2016](#)). That lease will expire on December 11, 2024. On June 21, 2019, the upland was deeded to Melinda M. Scott. The Applicant is applying for a General Lease – Recreational Use for use and maintenance of an existing boat dock, float, gangway, and two pilings in the Sacramento River. Based on the information provided with the application and Commission records, the subject facilities have existed at this location for many years, as shown on prior lease exhibits.

The Commission's accounting records show that the annual rent is paid through December 11, 2020. Therefore, staff is requesting compensation from the Applicant for the period of unpaid rent which is noted as December 12, 2020, through August 22, 2022, the day preceding issuance of the new lease. This measure will ensure that rent is remitted for use of State land and mitigate any gaps in payment. Staff recommends voiding Invoice #51362, dated October 13, 2020, in the amount of \$138.97, issued to Ashly Black (Lessee) for the period of December 12, 2020, through December 11, 2021, since Ms. Black was not the upland owner during this time period. Further, staff requests waiving any penalty and interest associated with this invoice based on the transfer of ownership and the cost of collection measures. Staff recommends termination of Lease No. PRC 5348, because the upland was sold without a lease quitclaim deed and application for assignment. The proposed termination date is June 21, 2019, the day of the transfer of the upland property.

Staff recommends issuance of a new lease to the Applicant, effective August 23, 2022, the day of proposed authorization. The new lease will require the Applicant to indemnify the State for the entire period of occupation noted as June 21, 2019, to August 22, 2022, ensuring the State is protected. Further, staff recommends seeking

compensation from the Applicant in the amount of \$235, for the period of unauthorized occupation when rent was not remitted for use of State land.

The subject improvements are privately owned and maintained 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 facilities are located directly adjacent to the upland property and occupy a relatively small area of the river. 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 proposed 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 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**

<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.

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 floating dock, float, and gangway are adaptable to higher 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 the facilities. However, the pilings and bank protection (under PRC 7203.9) are fixed and therefore more vulnerable to sea level rise and more frequent flood events. These structures may need additional fortification or repair and maintenance to ensure they do not become dislodged or degraded, as they could pose risks to public safety and navigation.

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 the 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:**

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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 lands as authorized by law. If the Commission denies the application, the Applicant may be required to remove the boat dock, float, gangway, and two pilings and restore the premises to their original condition. Upon expiration or prior termination of a lease, the lessee also has no right to a new lease or to renewal of any previous lease.
2. The existing bank protection adjacent to the upland property is under lease PRC 7203 between the Commission and the Central Valley Flood Protection Board.
3. This action is consistent with the "Leading Climate Activism" and "Meeting Evolving Public Trust Needs" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
4. 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).

5. Staff recommends that the Commission find 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:**

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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 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 waiver of penalty and interest, and termination and issuance of 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. Waive penalty and interest due for the period of December 12, 2020 through August 22, 2022, and void Invoice Number 51362 issued to Ashly Black.
2. Terminate, effective June 21, 2019, Lease Number PRC 5348, a General Lease – Recreational Use, issued to Ashly Black.
3. Accept compensation from the Applicant in the amount of \$235, for the unauthorized occupation of state sovereign land for the period through August 22, 2022.
4. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning August 23, 2022, for a term of 10 years, for the use and maintenance of an existing boat dock, float, gangway, and two pilings, 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, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**LEASE 5348**

**LAND DESCRIPTION**

A parcel of tide and submerged land situated in the bed of the Sacramento River, lying adjacent to Swamp and Overflowed Land Survey 305, patented November 24, 1871, County of Sacramento, State of California, described as follows:

All those lands underlying an existing boat dock, float, gangway, and two pilings lying adjacent to that parcel described in Grant Deed recorded June 21, 2019 as Document Number 201906210992 in Official Records of said County.

TOGETHER WITH any applicable Impact Area(s).

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

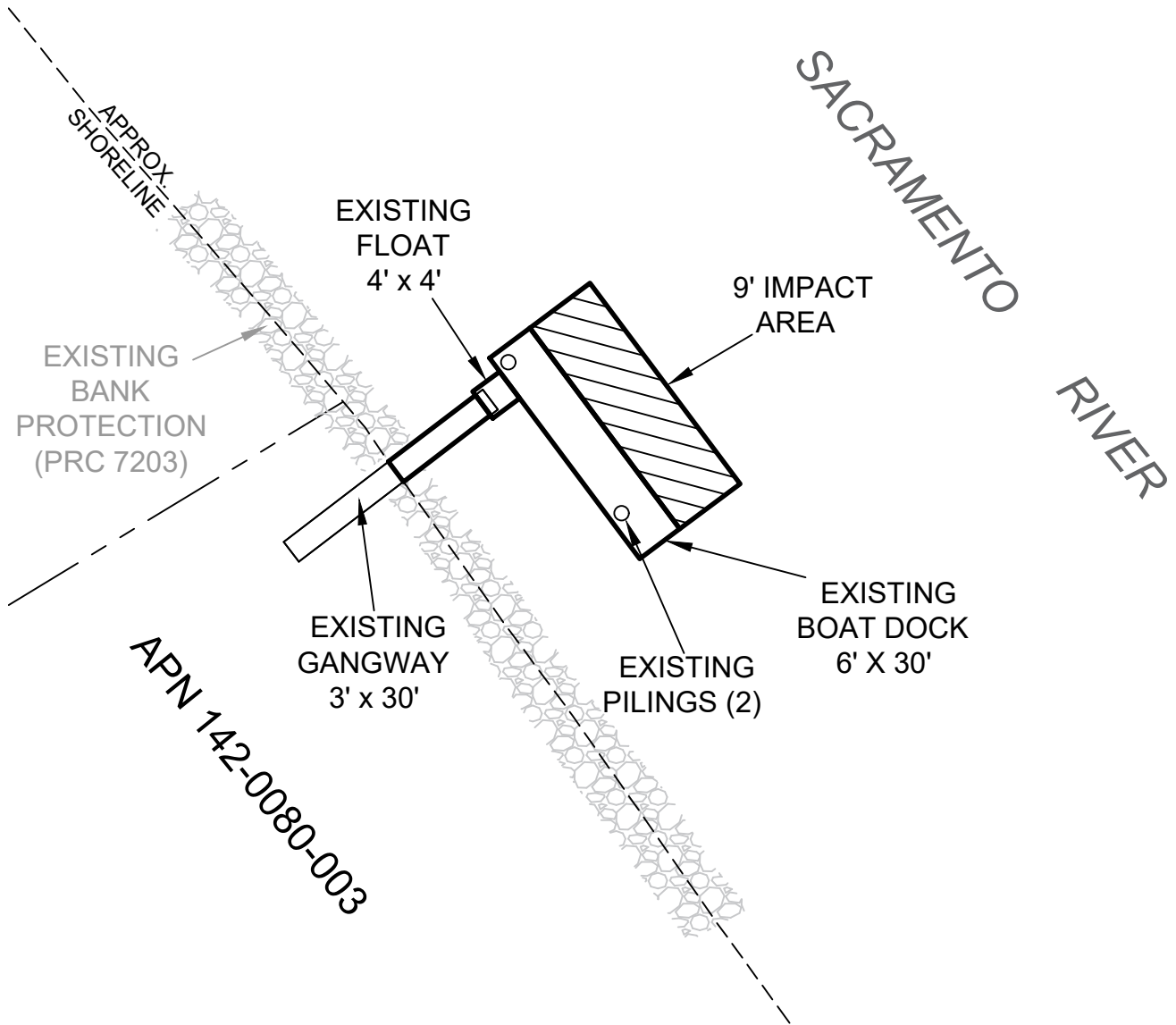
Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

Prepared 03/03/2022 by the California State Lands Commission Boundary Unit.



NO SCALE



## EXHIBIT A

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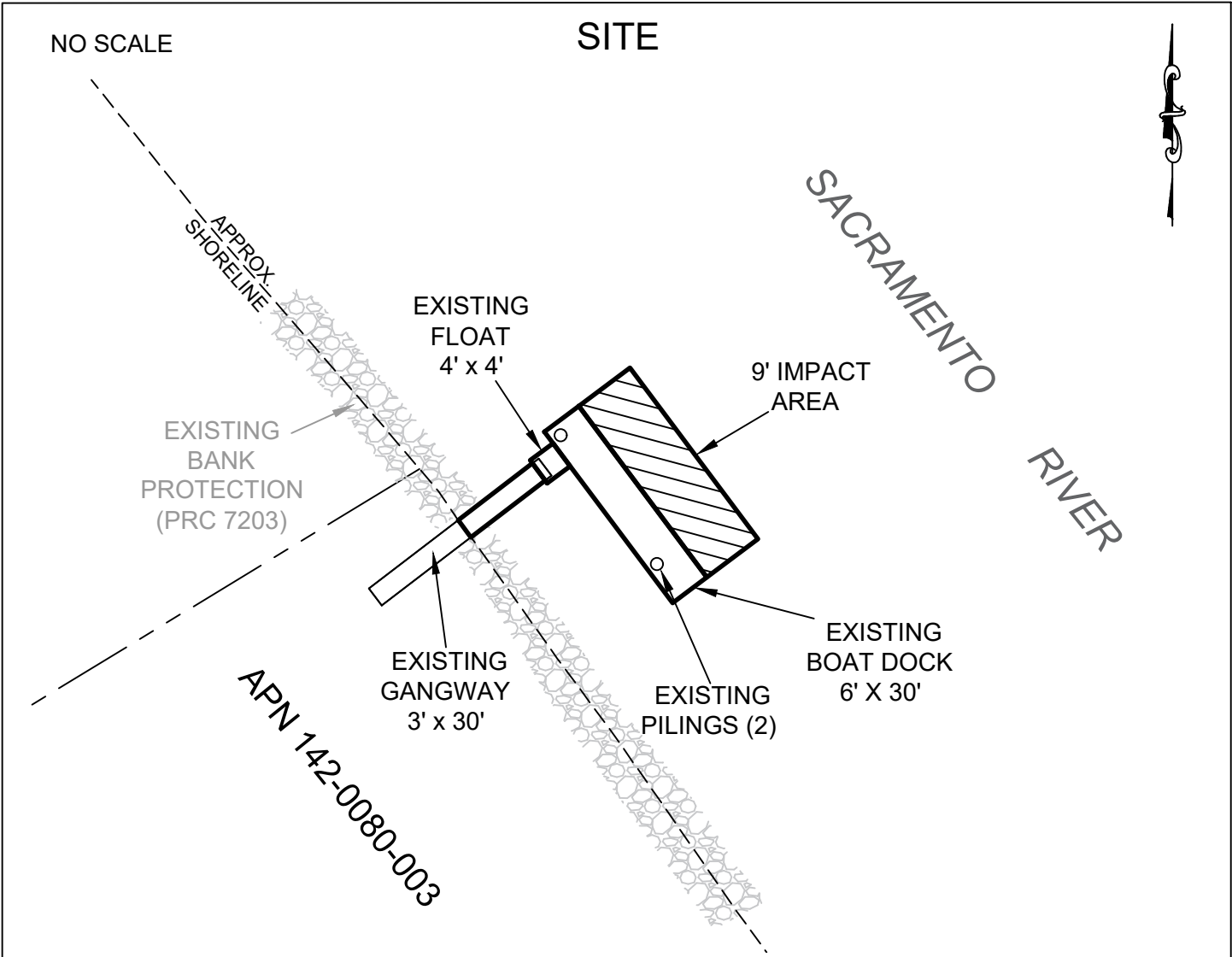
DT 03/03/2022

LAND DESCRIPTION PLAT  
LEASE 5348, SCOTT  
SACRAMENTO COUNTY

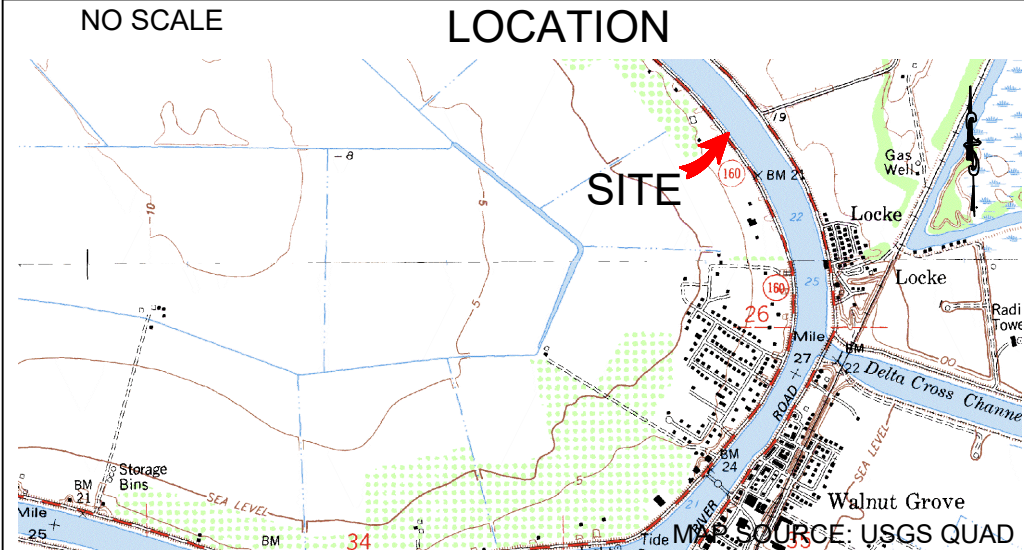
CALIFORNIA STATE  
LANDS COMMISSION







13810 STATE HIGHWAY 160, NEAR WALNUT GROVE



**EXHIBIT B**

LEASE 5348  
SCOTT  
APN 142-0080-003  
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.