

Staff Report 39

APPLICANT:

Joshua Weiss Harmatz and Leslie Harmatz, Co-Trustees of the Harmatz Family Trust dated December 8, 2009

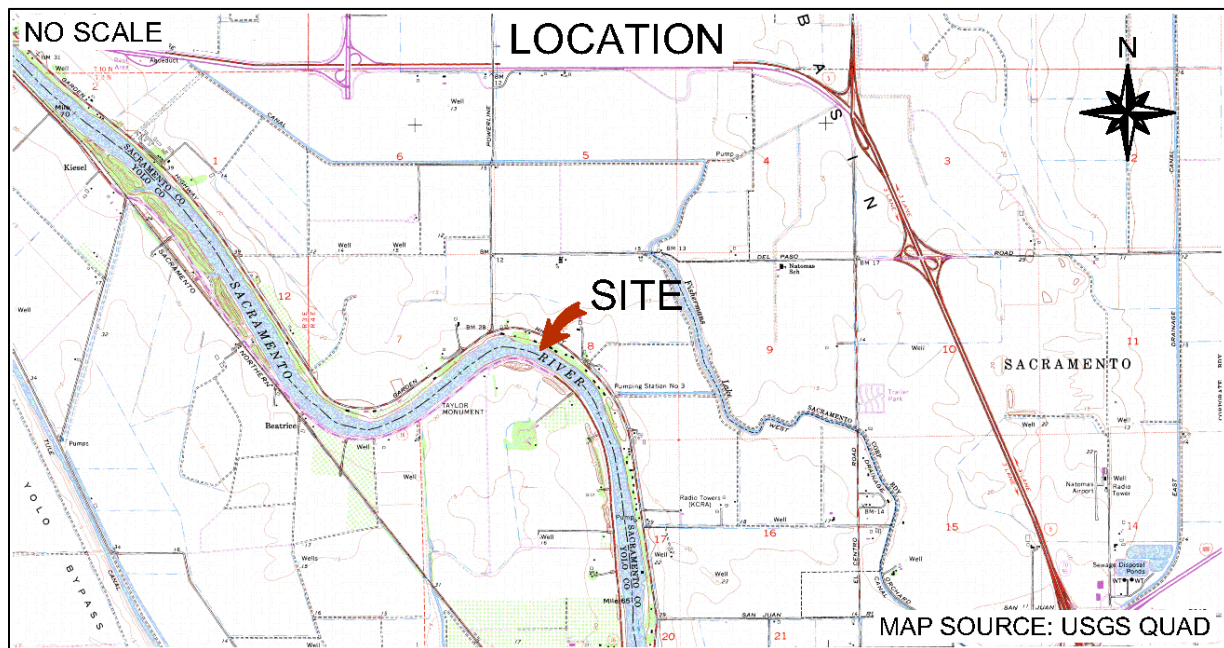
PROPOSED ACTION:

Issuance of a General Lease – Recreational and Protective Structure Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Sacramento River, adjacent to 4171 Garden Highway, near Sacramento, Sacramento County (as shown in Figure 1).

Figure 1. Location

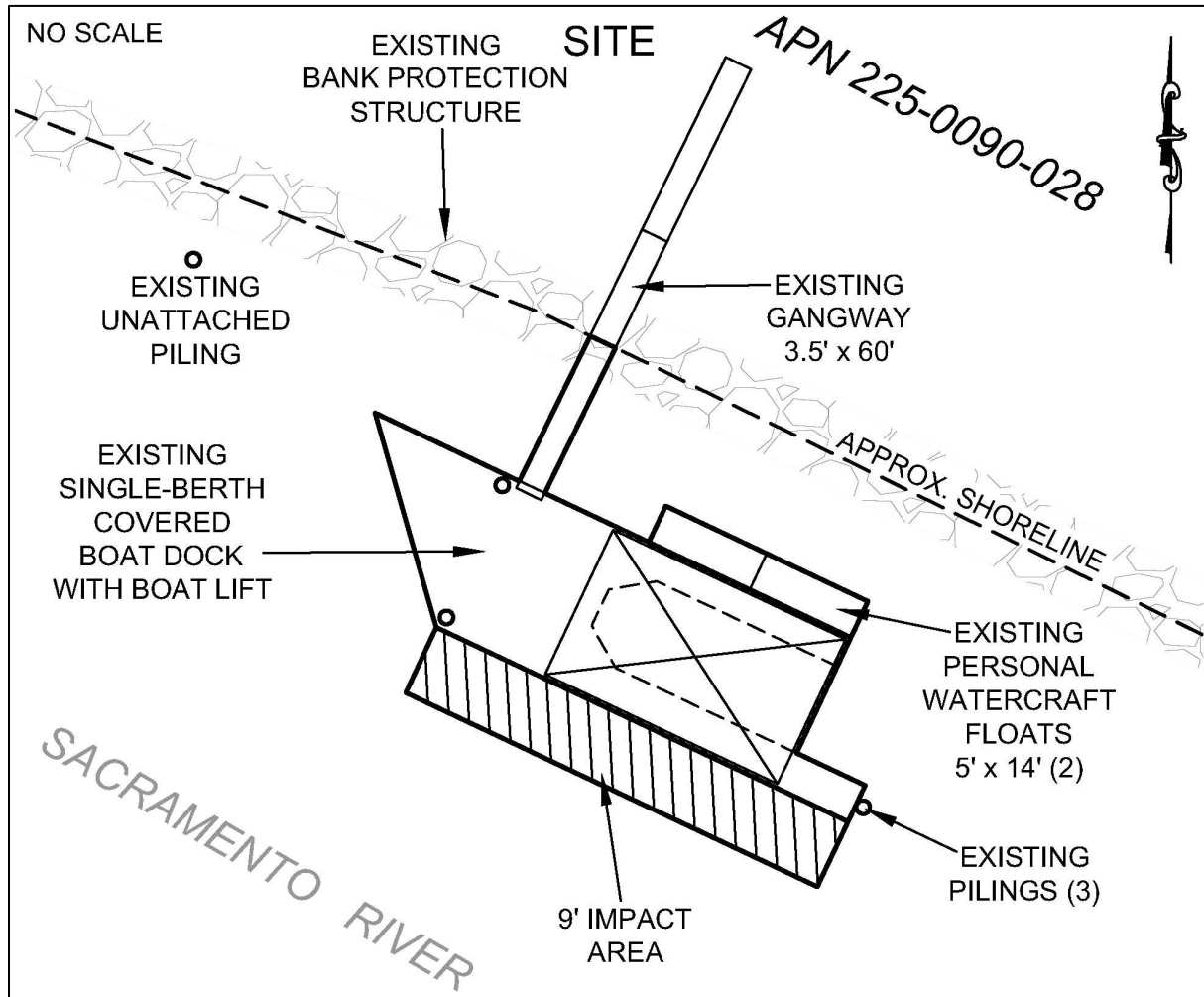


AUTHORIZED USE:

Use and maintenance of an existing covered boat dock with boat lift and three steel pilings, gangway, one unattached steel piling, and bank protection previously

authorized by the Commission; and two existing personal watercraft floats not previously authorized by the Commission (as shown in Figure 2).

Figure 2. Site Map



NOTE: This depiction of the lease premises is based on unverified information provided by the applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

TERM:

10 years, beginning December 5, 2022.

CONSIDERATION:

\$700 per year, with an annual Consumer Price Index adjustment, and \$146 to compensate for the unauthorized occupation of state sovereign land for the period prior to December 5, 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.
- Lessee agrees to submit an application to the Commission for removal of the unattached steel piling or for reuse of the piling, within two years of Lease execution date.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 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 December 5, 2012, the Commission authorized issuance of a 10-year General Lease – Recreational and Protective Structure Use to Joshua Weiss Harmatz and Leslie Harmatz, Co-Trustees of the Harmatz Family Trust dated December 8, 2009, for the use and maintenance of an existing uncovered single-berth floating boat dock, four steel pilings, gangway, and bank protection previously authorized by the Commission, and the use and maintenance of an existing boat lift not previously authorized by the Commission, located in the Sacramento River, adjacent to 4171 Garden Highway, near Sacramento, Sacramento County ([Item 09, December 5, 2012](#)). On October 19, 2017, the staff conducted a review of the rent as called for in the lease. Subsequently, the rent was continued at \$290 per year ([Executive Officer's Report, October 19, 2017](#)). The lease expired on December 4, 2022.

The Applicant reported that the uncovered boat dock was severely damaged in 2016 and subsequently rebuilt in approximately the same footprint as the prior dock. A cover for shade and two personal watercraft floats were added to the dock and secured in the same location, but the Commission was not notified.

The Applicant is applying for a new General Lease – Recreational and Protective Structure Use, for the use and maintenance of the covered boat dock with boat lift and three steel pilings, gangway, one unattached steel piling, and bank protection previously authorized by the Commission, and for use and maintenance of two existing personal watercraft floats not previously authorized by the Commission. The proposed lease is recommended to start December 5, 2022, which is the end date of the prior lease term.

The proposed lease requires the Applicant to pay \$146 in compensation for the unauthorized occupation of State land by the two personal watercraft floats for the period prior to December 5, 2022. The lease provisions regarding indemnity include the period of the Applicant's unauthorized occupation of State-owned lands by the two personal watercraft floats prior to December 5, 2022. The existing unattached steel piling will be left in place. The lease requires the submittal of an application for the reuse or removal of the unattached steel piling within two years of execution of the lease.

The existing covered boat dock with boat lift and three steel pilings, gangway, one unattached steel piling, and two personal watercraft floats 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 bank protection will protect the upland property and maintain and improve the integrity of the Sacramento River, which will help protect the Public Trust resources for recreational and navigational use by the public. 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 lease area is in the Sacramento River, which at this location is a tidally influenced site vulnerable to flooding at current sea levels; therefore, this area would be at a higher risk of flood exposure given future projection 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.

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.

Sea level rise could increase the Sacramento River's inundation levels within the lease area. In addition, as stated in the [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 existing covered boat dock with boat lift, gangway, and two personal watercraft floats 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 combination of these projected conditions could also increase the likelihood of damage and affect the fixed piles within the lease premises during the term of the lease, which may need reinforcement and possibly replacement to withstand higher levels of flood exposure and more frequent storm events.

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 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; 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 as authorized by law. If the Commission denies the application, the Applicant may be required to remove covered boat dock with boat lift and three steel pilings, gangway, unattached steel piling, and two personal watercraft floats, and restore the premises to their original condition. The lessee 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. Staff recommends that the Commission find that the 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)(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.

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:

1. Find that the existing and continuing use and maintenance of the covered boat dock with boat lift and three steel pilings, and gangway will not substantially impair the public rights to navigation, fishing, and commerce; 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
2. Find that the existing and continuing use and maintenance of the unattached steel piling and bank protection are not generally consistent with the Public Trust Doctrine, but the current use does not substantially interfere with the trust; and
3. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of compensation from the Applicant in the amount of \$146 for the unauthorized occupation of state sovereign land by the two personal watercraft floats for the period prior to December 5, 2022.
2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning December 5, 2022, for a term of 10 years, for the use and maintenance of an existing covered boat dock with boat lift and three steel pilings, gangway, one unattached steel piling, and bank protection previously authorized by the Commission; and two existing personal watercraft floats not previously authorized by the Commission; annual rent in the amount of \$700, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.