

**STAFF REPORT
C34**

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08/23/18
W 27158
J. Holt

GENERAL LEASE – RECREATIONAL AND PROTECTIVE STRUCTURE USE

APPLICANT:

David M. Anders and Mark A. Zampella

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Sacramento River, adjacent to 4455 Garden Highway, near Sacramento, Sacramento County.

AUTHORIZED USE:

Construction, use, and maintenance of a floating boat dock, gangway, gangway float, and three pilings; and use and maintenance of existing bank protection.

LEASE TERM:

10 years, beginning August 23, 2018

CONSIDERATION:

Floating boat dock, gangway, gangway float, and three pilings: \$185 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:

1. Liability insurance in an amount no less than \$1,000,000 per occurrence.
2. Lessee agrees and acknowledges hazards associated with sea-level rise may require additional maintenance or protection strategies regarding the improvements on the lease premises.

STAFF REPORT NO. **C34** (CONT'D)

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 Analysis:

On December 15, 2017, an application was submitted for a General Lease – Recreational and Protective Structure Use, for the construction, use and maintenance of a floating boat dock, gangway, gangway float, and three pilings in the Sacramento River. Bank protection already exists at this location but has not been previously authorized by the Commission.

The proposed facilities are designed for recreational boating purposes. Recreational boating is a water-dependent activity and 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 lands (Pub. Resources Code, § 6503.5). The existing bank protection will maintain and improve the integrity of the river channel, which will help protect the Public Trust resources of the Sacramento River for recreational and navigational use by the public at no cost to the public.

The proposed facilities will not significantly alter the land or alienate the State's fee simple interest. It will not permanently impair public rights or restrict access. 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.

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. Because the final placement of the facilities may be different based on conditions at the time of installation, staff recommends that the Commission delegate to the Executive Officer or her designee the authority to amend the proposed lease and exhibits, if necessary, to accurately reflect the final location and configuration of improvements.

STAFF REPORT NO. C34 (CONT'D)

Climate Change:

Climate change impacts including sea-level rise, increased wave activity, storm events, and flooding are not limited to the open coast. The lease area is located along the Sacramento River within a tidally-influenced region vulnerable to flooding at current sea levels. In the foreseeable future, this area will be at a higher risk of flood exposure given future projected scenarios of sea-level rise. The proposed lease area will include a floating boat dock, adjustable gangway, gangway float, three pilings, and bank protection.

By 2030, this region could see up to 1 foot of sea-level rise (from year 2000 levels), 2 feet by 2050, and possibly more than 5 feet by 2100 (National Research Council 2012). This effect could increase the Sacramento River's inundation levels within the lease area. In addition, as stated in *Safeguarding California* (California Natural Resources Agency 2014), 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).

Climate change could have a number of impacts for this region. The amount and timing of snowmelt runoff will likely change such that runoff pulses are earlier in the season and stronger precipitation events will occur over a shorter period of time. This outcome is caused by warming temperatures, resulting in more water falling as rain, rather than snow, earlier spring snowmelt, and less snowpack overall. In rivers and tidally-influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris. In addition, there will be greater amounts of runoff because less water will be trapped at higher altitudes in snowpack. 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 coastal and riverine areas by changing erosion and sedimentation rates. In rivers and tidally influenced waterways, flooding and storm flow will likely increase scour, decreasing bank stability and structure.

The combination of these projected conditions could increase the likelihood of damage 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

STAFF REPORT NO. C34 (CONT'D)

potentially leading to increased wear-and-tear on the pilings and 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 proposed floating boat dock, adjustable gangway, and gangway float 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 of dock facilities. The fixed structures, such as the proposed pilings and existing bank protection, may need reinforcement to withstand higher levels of flood exposure.

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 required by the terms of the lease, will 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.

Conclusion:

For all the reasons above, staff believes the issuance of this lease is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
2. **Construction of Floating Boat Dock, Gangway, Gangway Float, and Three Pilings:** 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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1).

STAFF REPORT NO. **C34** (CONT'D)

3. **Existing Bank Protection:** Staff recommends that the Commission find that this activity is exempt from the requirements of the 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.

APPROVALS OBTAINED:

California Department of Fish and Wildlife
Reclamation District 1000

FURTHER APPROVALS REQUIRED:

United States Army Corps of Engineers
Central Valley Flood Protection Board

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Construction of Floating Boat Dock, Gangway, Gangway Float, and Three Pilings: 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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1).

Existing Bank Protection: 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).

STAFF REPORT NO. **C34** (CONT'D)

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 issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning August 23, 2018, for a term of 10 years, for the construction, use, and maintenance of a floating boat dock, gangway, gangway float, and three pilings; and the use and maintenance of existing 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 floating boat dock, gangway, gangway float, and three pilings: \$185 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 interests; and liability insurance in an amount no less than \$1,000,000 per occurrence.

2. Delegate to the Executive Officer or her designee the authority to amend the lease and exhibits, if necessary, to accurately reflect the authorized facilities final location.

EXHIBIT A

W 27158

LAND DESCRIPTION

One parcel of tide and submerged land situate in the bed of the Sacramento River, lying adjacent to Swamp and Overflow Survey 415 patented July 11, 1865, Sacramento County, State of California, more particularly described as follows:

All those lands underlying a proposed floating boat dock, gangway, gangway float and three pilings lying adjacent to that parcel as described in that Grant Deed recorded August 2, 2010, in Book 20100802 Page 1078 in Official Records of said County.

TOGETHER WITH any land lying immediately beneath any bank protection structure adjacent to said parcel.

EXCEPTING THEREFROM any portion(s) lying landward of the Ordinary High Water Mark of the Sacramento River.

Accompanying plat is hereby made part of this description.

This description is based on Applicant provided design plans for a proposed dock, together with any and all appurtenances pertaining thereto, to be built at a later date within the Lease time frame. This description is to be updated once final as-built plans are submitted.

END OF DESCRIPTION

Prepared July 9, 2018 by the California State Lands Commission Boundary Unit.



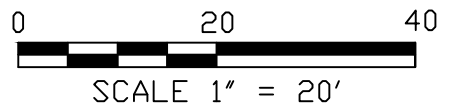
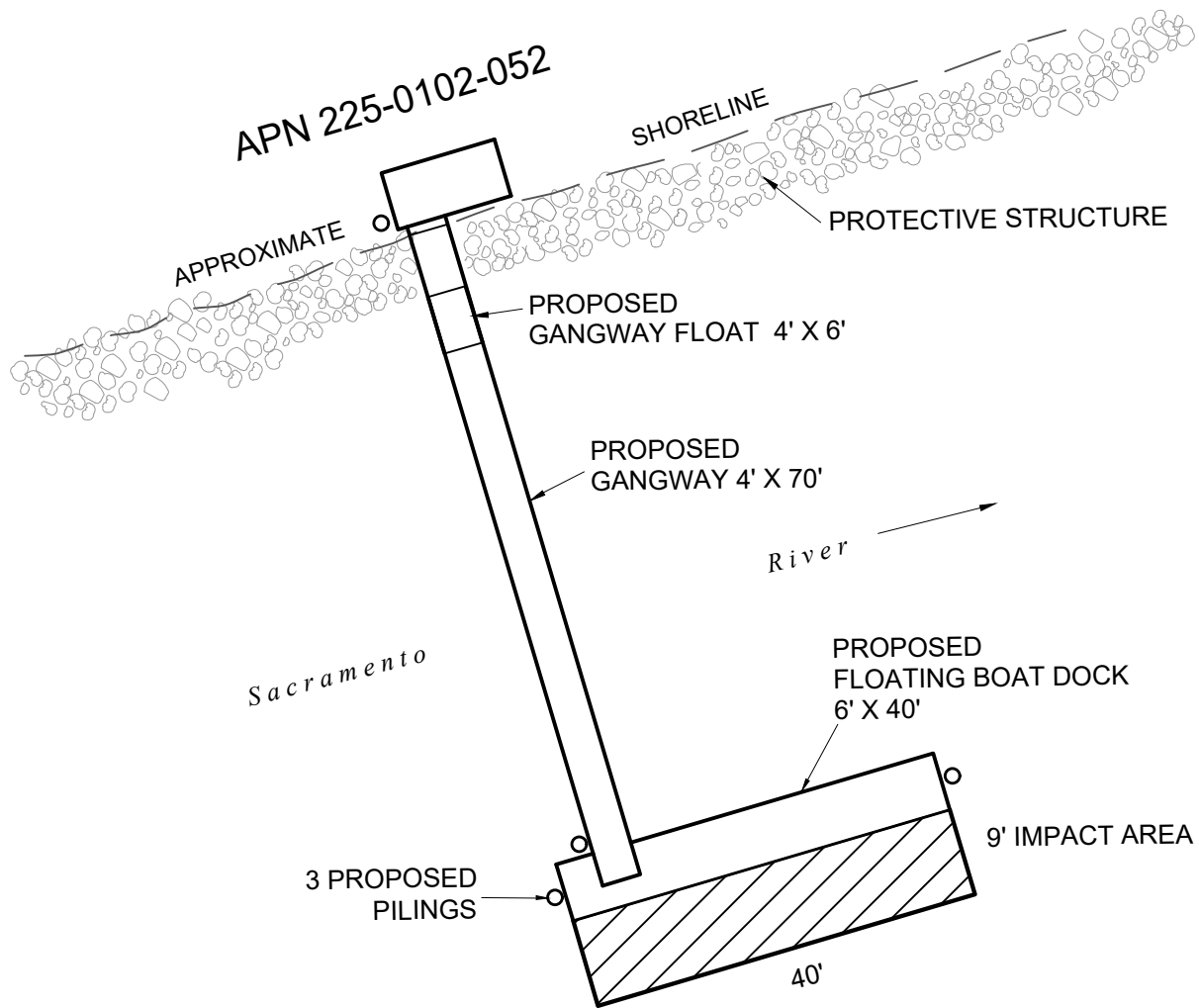


EXHIBIT A

Page 2 of 2

MJJ 7/06/18

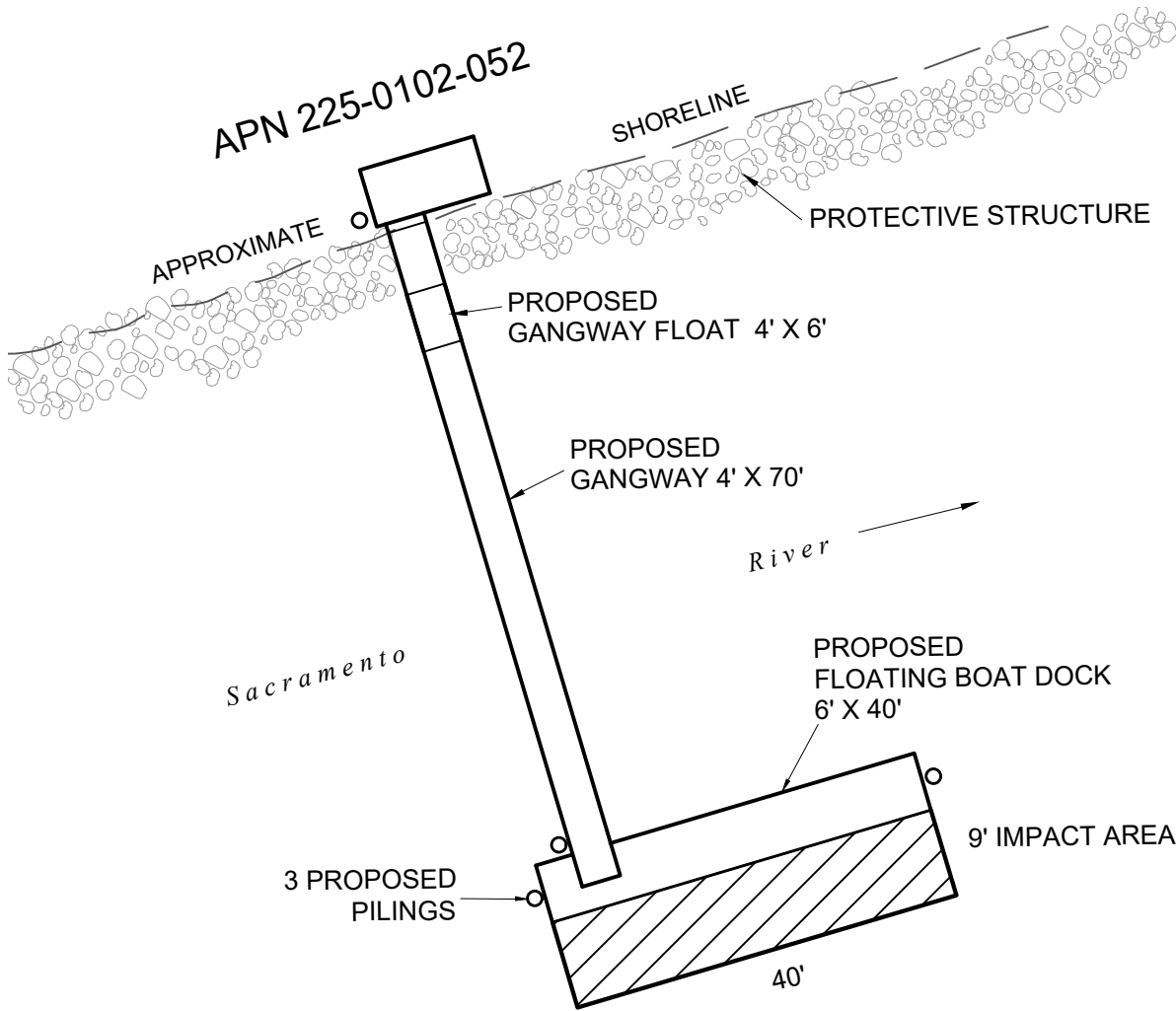
LAND DESCRIPTION PLAT
W 27158, ANDERS & ZAMPELLA
SACRAMENTO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

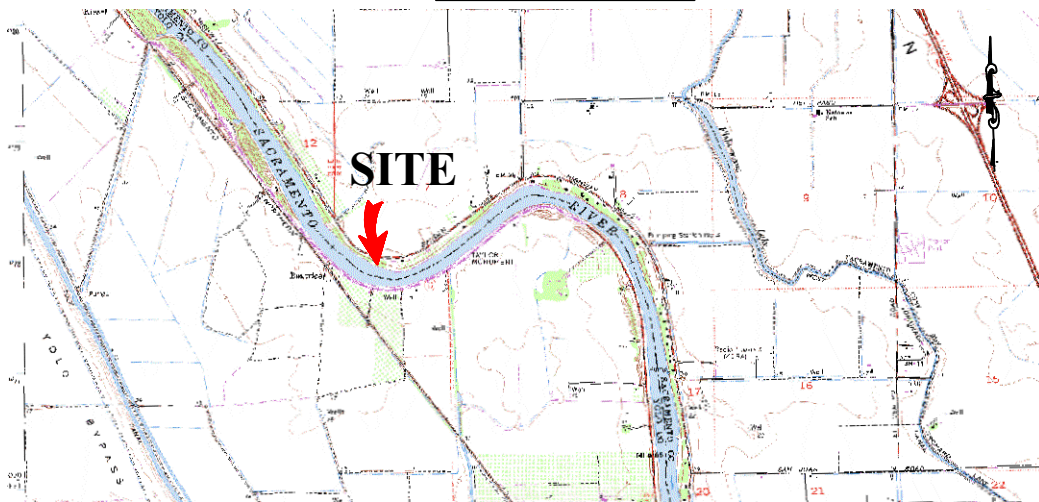
SITE



4455 GARDEN HIGHWAY, SACRAMENTO

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

W 27158
 ANDERS & ZAMPELLA
 APN 225-0102-052
 GENERAL LEASE -
 RECREATIONAL &
 PROTECTIVE STRUCTURE 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.

MJJ 7/06/18