

**STAFF REPORT
C50**

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08/23/18
PRC 4607.1
G. Asimakopoulos

**GENERAL LEASE – RECREATIONAL
AND PROTECTIVE STRUCTURE USE**

APPLICANT:

Gerrit A. Dyke and Kristen M. Dyke, Trustees of the Gerrit A. Dyke and Kristen Marie Dyke Revocable Family Trust dated October 31, 2013

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Calaveras River, adjacent to 4137 Yacht Harbor Drive, near Stockton, San Joaquin County.

AUTHORIZED USE:

Continued use and maintenance of an existing single-berth floating boat dock and walkway previously authorized by the Commission and a boat lift, gangway, four pilings, electric and water utility outlets, and bulkhead protection not previously authorized by the Commission.

LEASE TERM:

10 years, beginning August 23, 2018.

CONSIDERATION:

Boat Dock and Appurtenant Facilities: \$183 per year, with an annual Consumer Price Index adjustment.

Bulkhead 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.

STAFF REPORT NO. **C50** (CONT'D)

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 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 February 5, 2001, the Commission authorized a 10-year Recreational Pier lease to Robert W. Hall and Irene C. Hall ([Item C09, February 5, 2001](#)). That lease expired on July 25, 2011. On November 7, 2013, ownership of the upland parcel was transferred to Gerrit A. Dyke and Kristen M. Dyke, Trustees of the Gerrit A. Dyke and Kristen Marie Dyke Revocable Family Trust dated October 31, 2013. While the existing gangway, four pilings, and bulkhead protection were not called out in the prior lease they all appear to have been in place prior to the Commission's prior authorization. However, the dock was expanded by 12 feet in length and two feet in width along with the addition of a boat lift and water utility outlets sometime before 2009.

The Applicant is now applying for a General Lease – Recreational and Protective Structure Use, for the continued use and maintenance of the existing boat dock, appurtenant facilities, and bulkhead protection. Staff recommends issuance of a new lease beginning August 23, 2018. Staff also recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$860 for the period beginning November 7, 2013, through August 22, 2018.

The subject dock and appurtenant facilities are for the docking and mooring of boats. These facilities are used for recreational boating. Recreational boating is water-dependent 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 bulkhead protection helps preserve the channel for navigational and recreational purposes. This protective measure is not inconsistent with the Public Trust Doctrine. The existing floating boat dock and appurtenant facilities have existed at this location for many years, and are located directly adjacent to the Applicant's upland property.

STAFF REPORT NO. C50 (CONT'D)

The proposed lease includes certain provisions protecting the public use of the proposed lease area, including a limited lease term of 10 years and a non-exclusive use provision. The facilities will 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. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved. The bulkhead protection will maintain and improve the integrity of the river channel, which will help protect the Public Trust resource of the river for recreational and navigational purposes by the public.

Climate Change Analysis:

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 subject facilities are located on the Calaveras River on the waterward side of the nearby levee,¹ 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 lease premises consist of an existing floating boat dock with lift, gangway, walkway, four pilings, electric and water utility outlets, and bulkhead protection in the Calaveras River. The risk of flood exposure for the lease premises is likely to increase with time. This region could see up to 1 foot of sea-level rise (from year 2000 levels) by 2030, 2 feet by 2050, and possibly more than 5 feet by 2100 (National Research Council 2012). Rising sea levels could lead to more frequent flood inundation in low lying areas and larger tidal events. 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). 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. Climate change and sea-level rise

¹ Climate Central Risk Zone Map, <https://ss2.climatecentral.org>, accessed 4/19/2018

STAFF REPORT NO. **C50** (CONT'D)

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 to structures within the lease premises during the term of the lease. The floating boat dock and gangway will be 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 they may require more frequent maintenance or replacement to ensure continued function during and after storm seasons or to avoid dislodgement. The fixed walkway, pilings, and bulkhead may need reinforcement and possibly replacement to withstand higher levels of flood exposure and more frequent storm events. In addition, the electric and water utility outlets and associated conduits could become a public safety hazard if dislodged or damaged from flooding or storm events. 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, 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; 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. 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)(2).

STAFF REPORT NO. **C50** (CONT'D)

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 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:

Find that 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 acceptance of compensation from the Applicant in the amount of \$860 for the unauthorized occupation of State land for the period beginning November 7, 2013, through August 22, 2018.
2. 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 continued use and maintenance of an existing single-berth floating boat dock and walkway previously authorized by the Commission and a boat lift, gangway, four pilings, electric and water utility outlets, and bulkhead protection not previously authorized by the Commission, as described in Exhibit A, Land Description, and as shown on Exhibit B, Site and Location Map (for reference purposes only), attached and by this reference made a part hereof; consideration for the existing single-berth floating boat dock with boat lift, gangway, four pilings, electric and water utility outlets, and walkway: \$183 per year, with an annual Consumer Price Index adjustment; consideration for the bulkhead protection: the public

STAFF REPORT NO. **C50** (CONT'D)

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.

EXHIBIT A

PRC 4607.1

LAND DESCRIPTION

A parcel of tide and submerged land situate in the bed of the Calaveras River, lying adjacent to Swamp and Overflowed Land Survey 1299 patented March 10, 1873, County of San Joaquin, State of California and more particularly described as follows:

All those lands underlying an existing single-berth floating boat dock, boat lift, gangway, four pilings, electrical and water utility outlets, walkway, and bulkhead lying adjacent to that parcel described in Grant Deed recorded November 7, 2013 as Document Number 2013-139773 in Official Records of said County 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 left bank of said river.

Accompanying plat is hereby made part of this description.

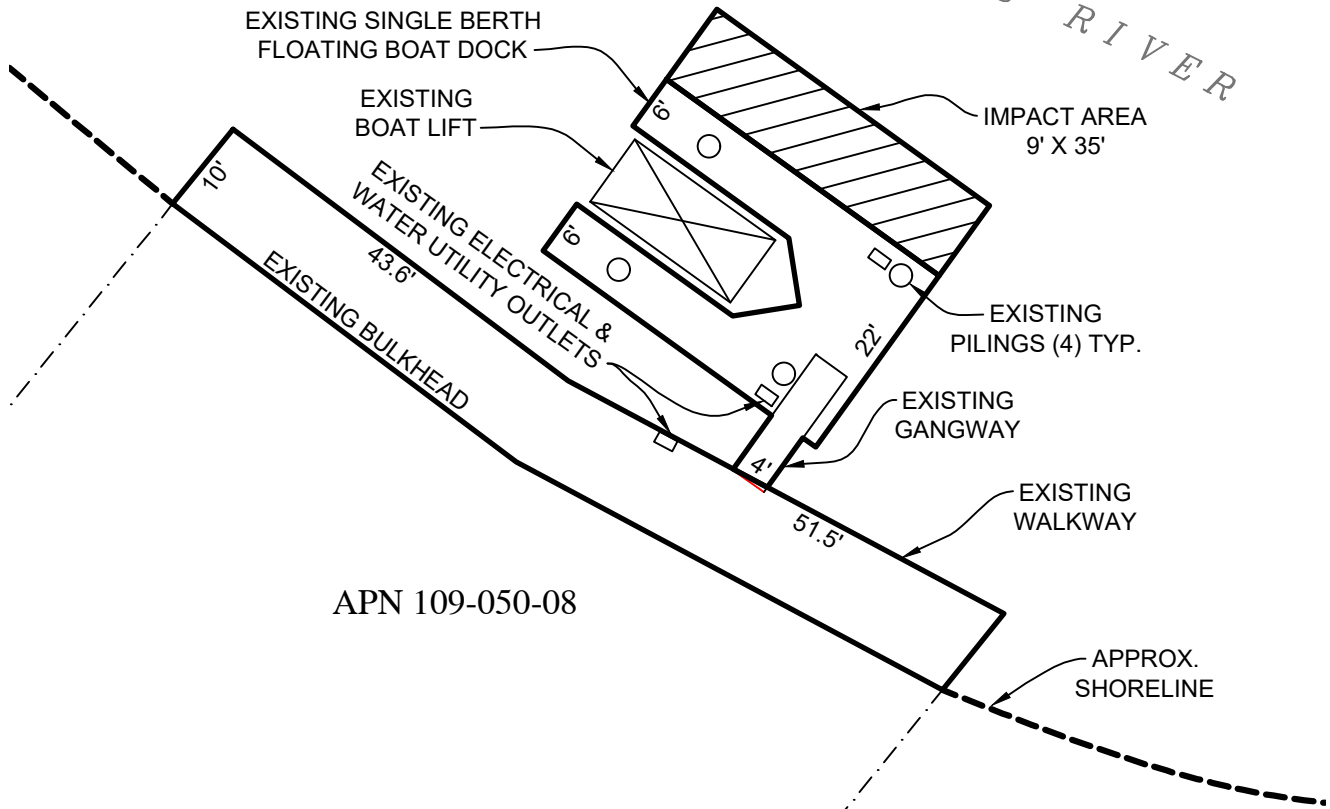
END OF DESCRIPTION

Prepared 6/27/2018 by the California State Lands Commission Boundary Unit





CALAVERAS RIVER



APN 109-050-08

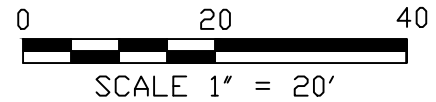


EXHIBIT A

Page 2 of 2

RGB 6/27/18

LAND DESCRIPTION PLAT
 PRC 4607.1, DYKE REVOCABLE TR.
 SAN JOAQUIN COUNTY

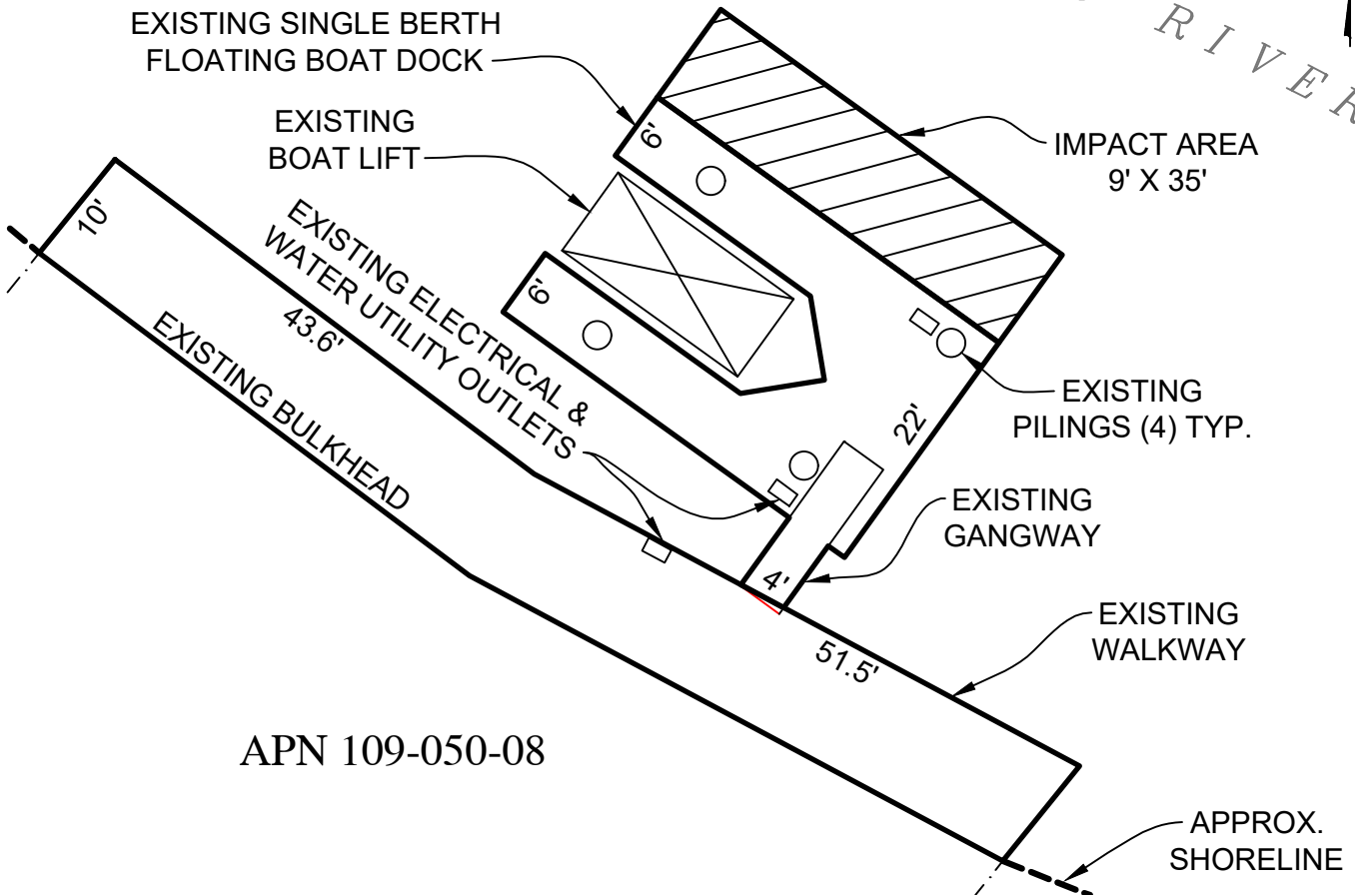
CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

SITE

CALAVERAS RIVER

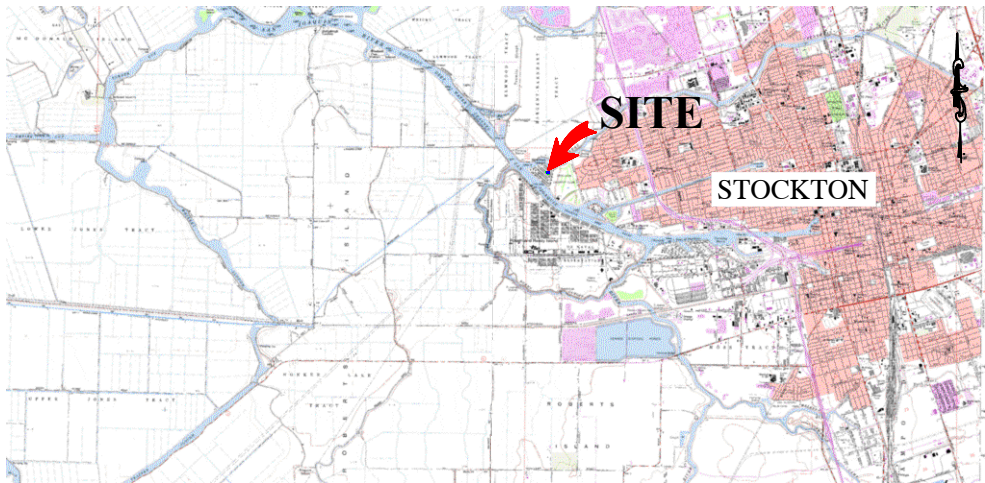


APN 109-050-08

4137 YACHT HARBOR DRIVE, NEAR STOCKTON

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

PRC 4607.1
 DYKE REVOCABLE TRUST
 APN 109-050-08
 GENERAL LEASE -
 RECREATIONAL & PRO-
 TECTIVE STRUCTURE USE
 SAN JOAQUIN COUNTY



RGB 6/27/18