

**STAFF REPORT
C32**

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08/17/17
PRC 9044.1
G. Asimakopoulos

ASSIGNMENT OF LEASE

LESSEE/ASSIGNOR:

Demetrius Barmettler and Paula Barmettler

APPLICANT/ASSIGNEE:

Frank Mario Carson, Jr.

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Sacramento River, adjacent to 6057 Garden Highway, near Sacramento, Sacramento County.

AUTHORIZED USE:

Continued use and maintenance of an existing covered single-berth floating boat dock, two support pilings, strong arm, gangway, electric and water utility outlet, portion of a deck, and bank protection.

LEASE TERM:

10 years, beginning April 26, 2013.

CONSIDERATION:

Covered Single-Berth Floating Boat Dock, Two Support Pilings, Strong Arm, Gangway, and Electric and Water Utility Outlet: No monetary consideration pursuant to Public Resources Code section 6503.5.

Portion of Deck: \$129 per year; with the State reserving the right to fix a different rent periodically during the lease term, as provided for in the lease.

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:

Insurance:

Liability insurance in an amount no less than \$1,000,000 per occurrence.

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Other:

The existing lease contains provisions requiring that:

1. The existing deck with railing cannot be expanded, and if repairs to any portion of the existing deck cost more than 50 percent of the base value of the deck with railing, the deck must be removed from the lease premises.
2. No permanent deck-related improvements are to be constructed or placed on the open dock area, including, but not limited to, wet bars, barbecues, grills, hot tubs, refrigerators, sinks, or sun shades.
3. No permanent enclosure is to be constructed or permitted on the open dock area.
4. Any use of the improvements that could be construed as a residential use (e.g., enclosed and covered patio, bathroom, sunroom, office, studio or apartment) is prohibited.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 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 April 26, 2013, the Commission authorized a 10-year General Lease – Recreational and Protective Structure Use to Demetrius Barmettler and Paula Barmettler ([Item C09, April 26, 2013](#)). The application for the lease was submitted to the Commission prior to March 11, 2011, thereby qualifying most facilities on the lease premises for rent-free use under Public Resources Code section 6503.5. A portion of the existing deck did not qualify for rent-free use because it is not a facility constructed for the docking and mooring of boats. The lease will expire on April 25, 2023. On January 15, 2016, interest in the upland parcel was deeded to Frank Mario Carson, Jr. The Applicant is now applying for an assignment of the lease. If authorized by the Commission, the assignment will be made effective January 15, 2016.

The lease facilities include an existing floating boat dock and appurtenant facilities, used for boating in the Sacramento River. Recreational boating is water-dependent and is generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private

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recreational boating facilities as an authorized use of Public Trust lands (Pub. Resources Code, § 6503.5).

The deck is not associated with traditional Public Trust uses. While new decks are generally disfavored, decks that have been in place for years have been permitted, if, as in this instance, they do not significantly interfere with Public Trust needs. The majority of the deck is located on the upland with a small portion extending over sovereign land. The deck does not interfere with the public right of navigation in the main channel of the Sacramento River, nor does it interfere with the public's access of the shore because it is covered with riprap and the upland is privately owned with no public access. However, the lease contains provisions that the deck may not be expanded or rebuilt if substantially destroyed.

The subject structures do not significantly alter the land, and the lease assignment 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 and restore the lease premises to their original condition.

The 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 bank protection will maintain and improve the integrity of the Sacramento River channel, which will help protect the Public Trust resources of the Sacramento River for recreational and navigational use by the public.

Climate Change Analysis:

Climate change impacts including sea-level rise, increased wave activity, storm events, and flooding are not limited to the open coast. The existing structures within the lease area are located along the Sacramento River within a region identified as tidally influenced. The subject facilities are vulnerable to flooding at current sea levels and at a higher risk of flood exposure given future projected scenarios of sea-level rise. The facilities associated with this lease area include an existing covered single-berth floating boat dock, two support pilings, strong arm, gangway, electrical and water utility outlet, a portion of a deck, and existing bank protection.

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By 2030, California's coast 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. Rising sea levels can lead to increased flooding through regular inundation and larger flooding events when combined with tidal events and storm surges. These climate change and sea-level rise impacts can also affect erosion and sedimentation rates through increased wave action and scour, which in turn can lead to decreased shoreline stability and structure. 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, drought, and storms (especially when coupled with sea-level rise).

Climate change could have a number of impacts for the 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 is because warming temperatures will result 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 lease is a General Lease – Recreational and Protective Structure Use that began on April 26, 2013, and may be subject to the climate change effects of the projected scenario of 1 foot of sea-level rise (from year 2000 levels) by 2030 provided above. Regular maintenance and implementing best management practices, as required by the terms of the lease, will help reduce the likelihood of severe structural degradation, dislodgement, or hazards from the electrical conduits. Further climate change impact analyses on the leased facilities will be conducted at the time the lease expires in 2023 if a new lease is proposed and would be based on projected sea-level rise scenarios at that time.

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Conclusion:

For all the reasons above, Commission staff believes the assignment of the lease does not substantially interfere with the Public Trust needs and values at this location, at this time and for the foreseeable term of the lease, and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. The assignment of the lease 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. Authorizing the lease assignment is not a project as defined by the California Environmental Quality Act 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).

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease assignment will not 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, and is in the best interests of the State.

AUTHORIZATION:

Authorize the assignment of Lease No. PRC 9044.1, a General Lease – Recreational and Protective Structure Use, of sovereign land as described in Exhibit A, Land Description, and shown on Exhibit B, Site and Location Map (for reference purposes only), attached and by this reference made a part hereof, from Demetrius Barmettler and Paula Barmettler, to Frank Mario Carson, Jr.; effective January 15, 2016.

EXHIBIT A

PRC 9044.1

LAND DESCRIPTION

A parcel of tide and submerged land, situate in the bed of the Sacramento River lying adjacent to Swamp and Overflowed Lands Survey 898 patented January 29, 1868, County of Sacramento, State of California, and more particularly described as follows:

All those lands underlying an existing covered floating dock, gangway and appurtenant structures and deck adjacent to that parcel as described in "Exhibit A" of that Deed of Trust recorded October 5, 2000 as Book 20001006 Page 0175 in Official Records of said County.

TOGETHER WITH all those lands underlying existing bank protection lying adjacent to said deed.

ALSO TOGETHER WITH a 10 foot impact area.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of said river

Accompanying plat is hereby made a part of this description.

END OF DESCRIPTION

PREPARED 6/21/17 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



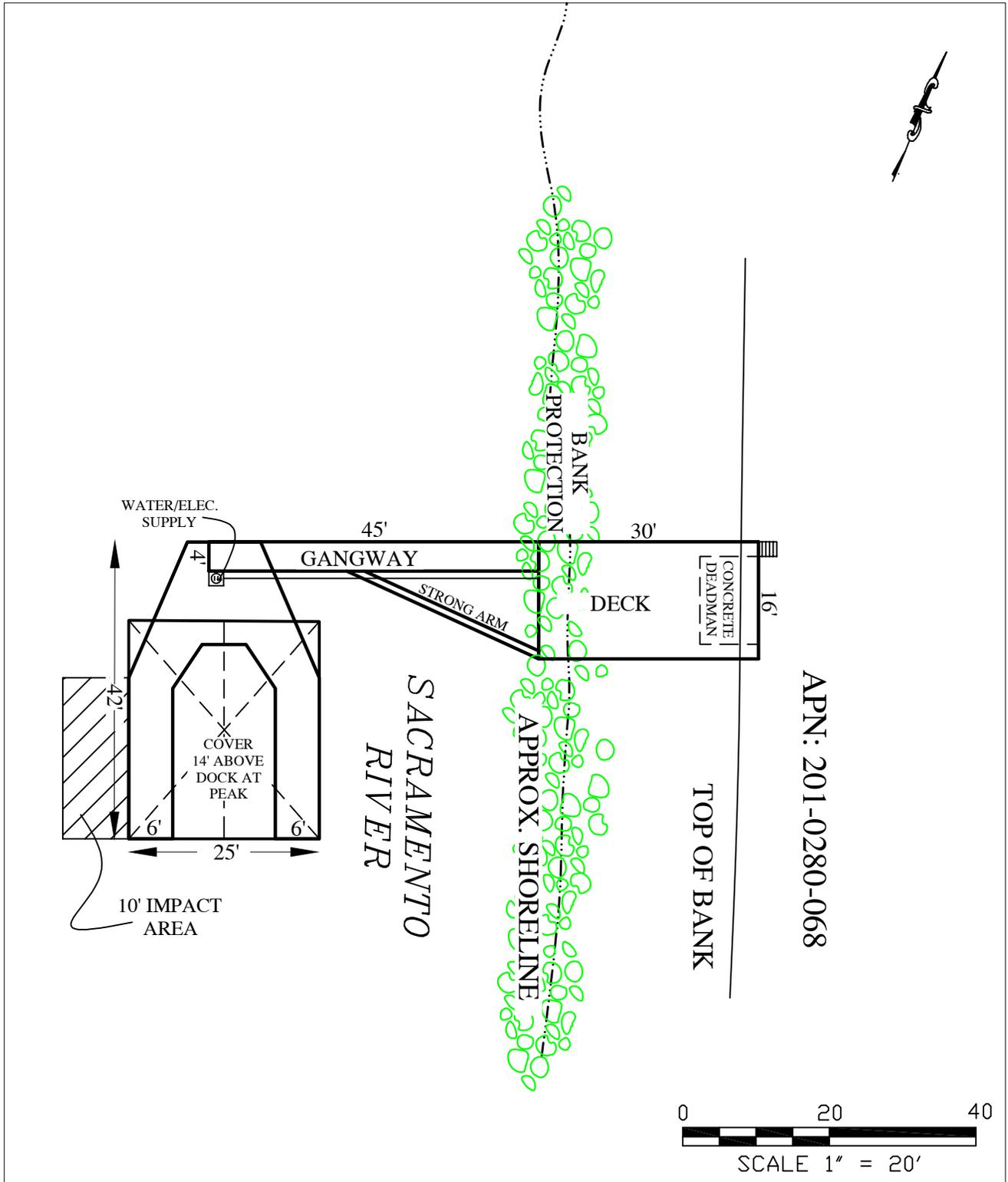


EXHIBIT A

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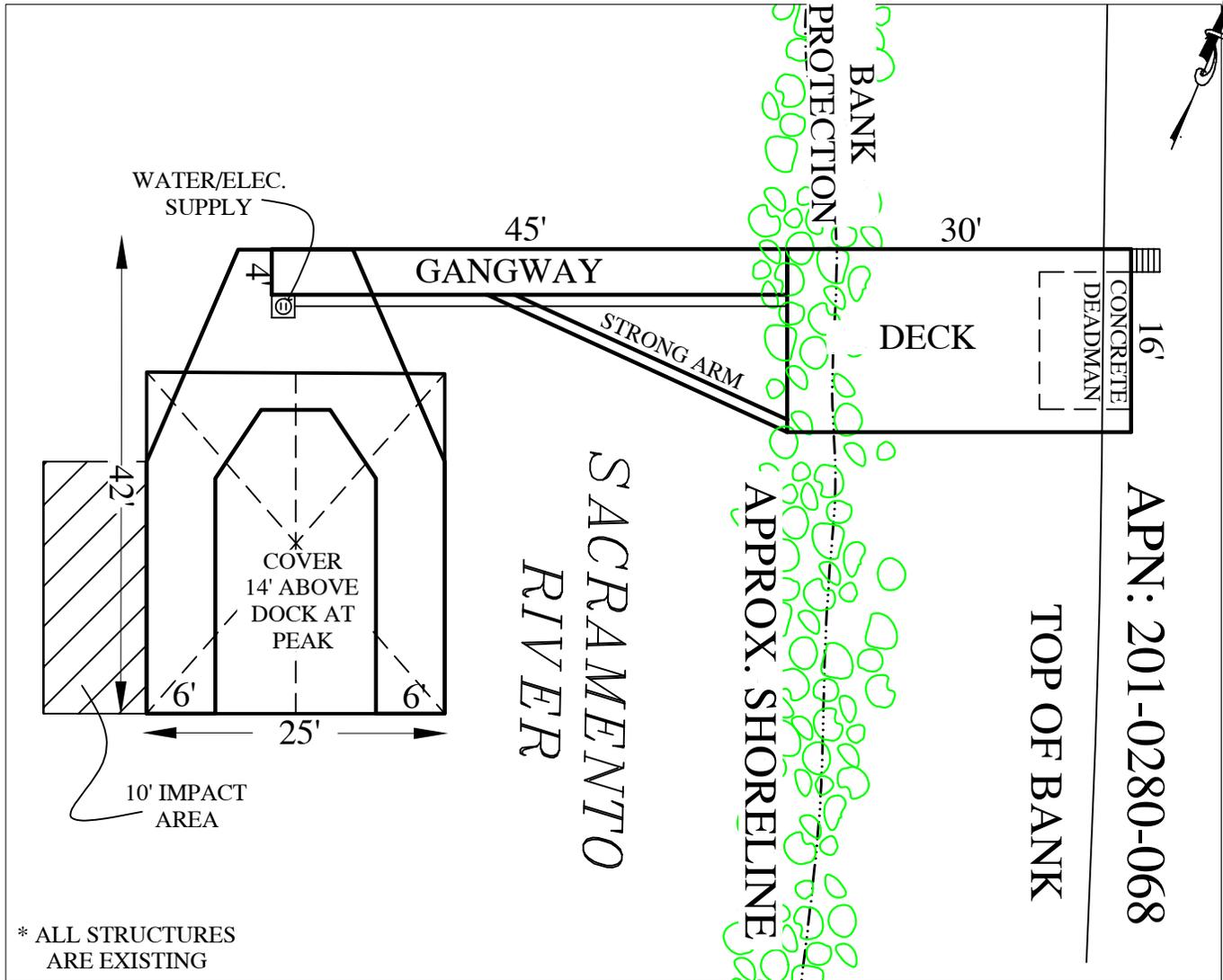
LAND DESCRIPTION PLAT
 PRC 9044.1, CARSON
 SACRAMENTO COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

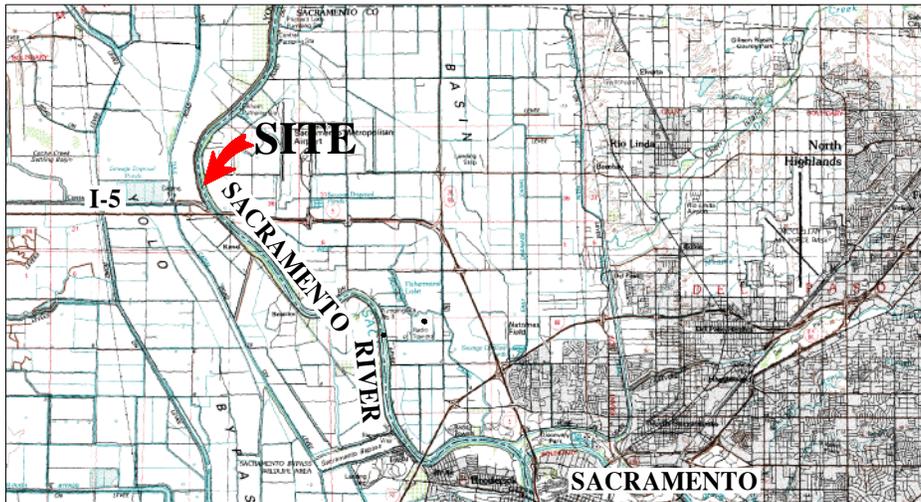
SITE



6057 Garden Highway, Sacramento River

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 9044.1
 CARSON
 APN: 201-0280-068
 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.