

**STAFF REPORT
C49**

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02/27/18
PRC 3937.1
J. Holt

GENERAL LEASE – RECREATIONAL AND PROTECTIVE STRUCTURE USE

APPLICANT:

Richard T. Stephens and Donna S. Stephens, Co-Trustees of the Richard and Donna Stephens Family Trust, (A Revocable Inter Vivos Trust), Under Agreement Dated January 31, 1992

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Calaveras River, adjacent to 4439 Yacht Harbor Drive, near Stockton, San Joaquin County.

AUTHORIZED USE:

Continued use and maintenance of an existing floating boat dock, pontoon, five pilings, platform, walkway, and bank protection.

LEASE TERM:

10 years, beginning March 13, 2018.

CONSIDERATION:

Floating boat dock, pontoon, five pilings, platform, and walkway:
\$203 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.

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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 3, 2007, the Commission authorized a 10-year General Lease – Recreational and Protective Structure Use to Richard T. Stephens and Donna S. Stephens, Co-Trustees of the Richard and Donna Stephens Family Trust, (A Revocable Inter Vivos Trust), Under Agreement Dated January 31, 1992 ([Item C17, December 3, 2007](#)). That lease will expire on March 12, 2018. The Applicant is now applying for a new General Lease – Recreational and Protective Structure Use, for the continued use and maintenance of an existing floating boat dock, pontoon, five pilings, platform, walkway, and bank protection in the Calaveras River.

The proposed lease includes the same facilities as the current lease. These facilities are used for recreational boating and fishing purposes. The existing facilities have existed at this location for many years. Recreational boating and fishing are water-dependent activities, 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 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 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.

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 subject facilities are located on the Calaveras River, in a tidally influenced site

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consisting of low-elevation reclaimed floodplains. This area is vulnerable to flooding at current sea levels and will be at higher risk of flood exposure given projected scenarios of sea-level rise.

The lease premises consist of an existing floating boat dock, pontoon, five pilings, platform, walkway, and bank 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 could result in increased flooding conditions and damage from storm-created debris and decreasing bank stability and structure. Climate change and sea-level rise will further influence riverine areas by changing erosion and sedimentation rates.

The combination of these projected conditions could increase the likelihood of damage to the fixed components (five pilings and bank protection) and they could be susceptible to damage from flooding events during the term of the lease. In addition, the fixed structures could require reinforcement in the future to withstand higher levels of flood exposure and more frequent storm events. These structures may also experience periodic or continuous inundation with rising water levels and more frequent flooding, creating a public safety hazard. Although the lease premises currently provide some bank protection, the area is also at risk of accelerated deterioration from higher and stronger currents and floods. The floating boat dock, pontoon, walkway, and platform 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 may require more frequent maintenance or replacement to ensure continued function during and after storm seasons or to avoid dislodgement. Regular maintenance, as required by the lease, will reduce the likelihood of severe structural degradation or dislodgement.

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.

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OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest level 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).

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 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 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:

Authorize issuance of a General Lease – Recreational and Protective Structure Use to Applicant beginning March 13, 2018, for a term of 10 years, for the continued use and maintenance of an existing floating boat dock, pontoon, five pilings, platform, walkway, and bank protection, as described in Exhibit A and shown on Exhibit B (for reference purposes

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only) attached and by this reference made a part hereof; consideration for the floating boat dock, pontoon, five pilings, platform, and walkway: \$203 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.

EXHIBIT A

PRC 3937.1

LAND DESCRIPTION

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

All those lands underlying an existing floating boat dock, pontoon, five pilings, platform and walkway lying adjacent to those parcels as described in Exhibit "A" of that Grant Deed recorded June 4, 1993, in Document 93065639 in Official Records of said County.

TOGETHER WITH any applicable impact area(s).

ALSO TOGETHER WITH that land lying immediately beneath any bank protection structure lying adjacent to said parcels.

EXCEPTING THEREFROM any portion(s) lying landward of the Ordinary High Water Mark of the left bank of the Calaveras River:

Accompanying plat is hereby made part of this description.

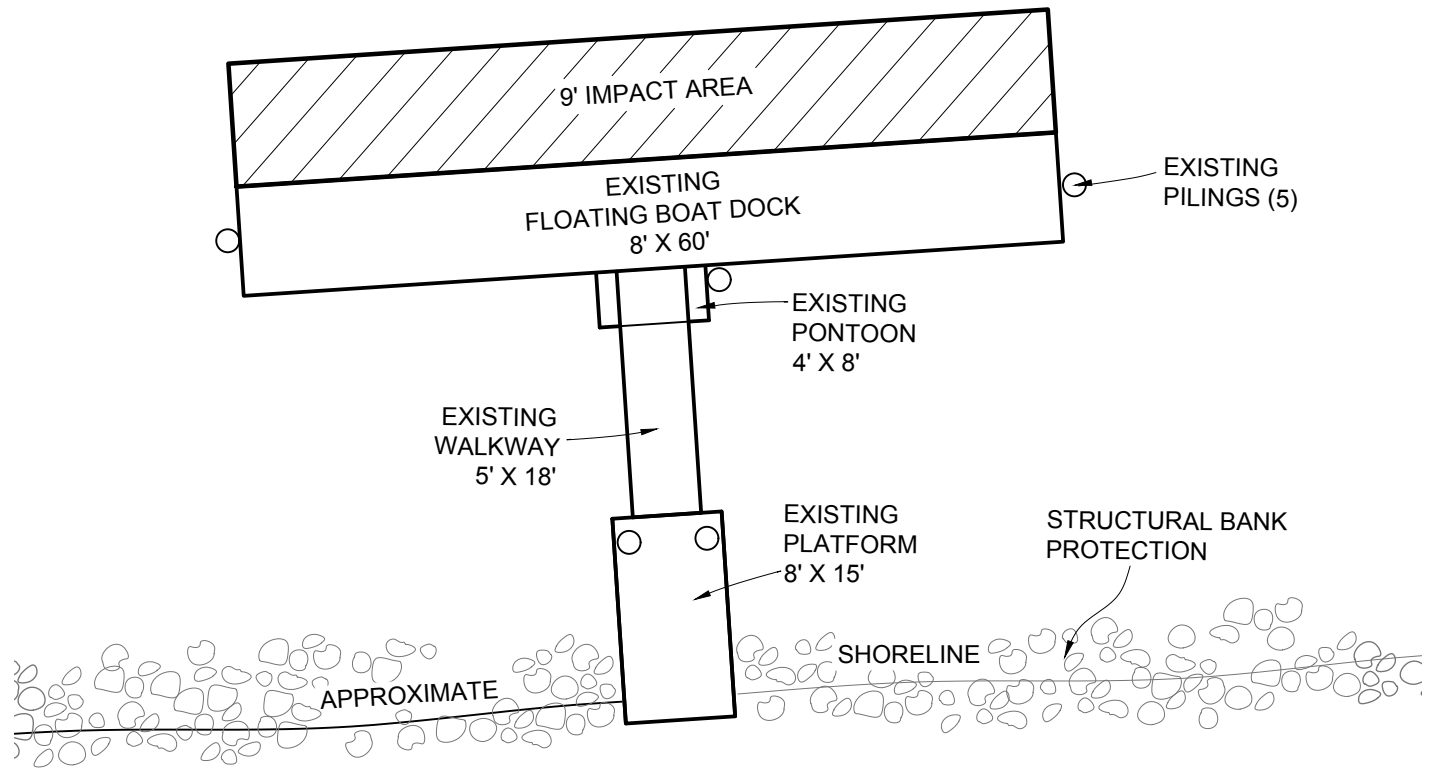
END OF DESCRIPTION

Prepared September 14, 2017 by the California State Lands Commission Boundary Unit.





← Calaveras River



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EXHIBIT A

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LAND DESCRIPTION PLAT
 PRC 3937.1, STEPHENS, TRUSTEES
 SAN JOAQUIN COUNTY

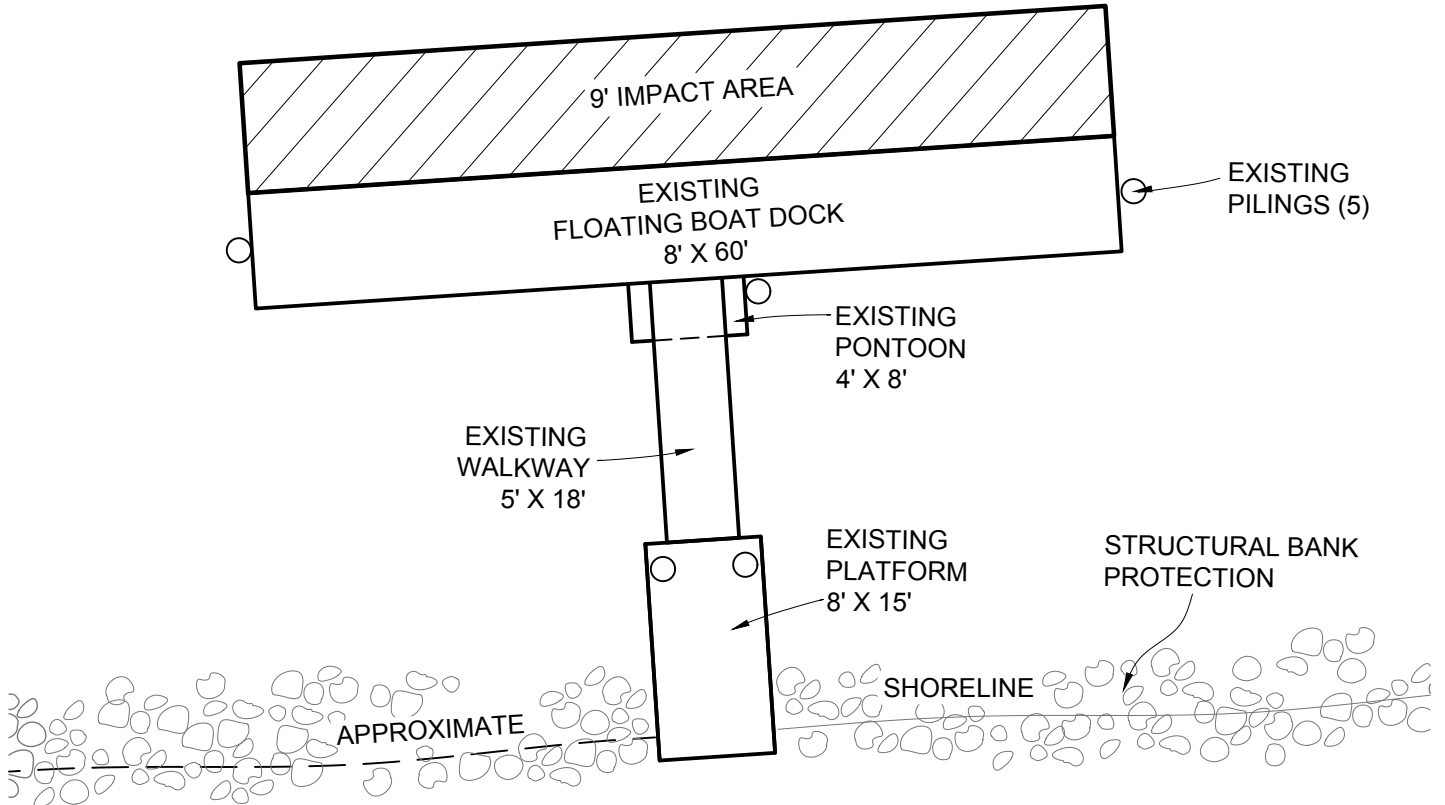
CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

SITE

← Calaveras River

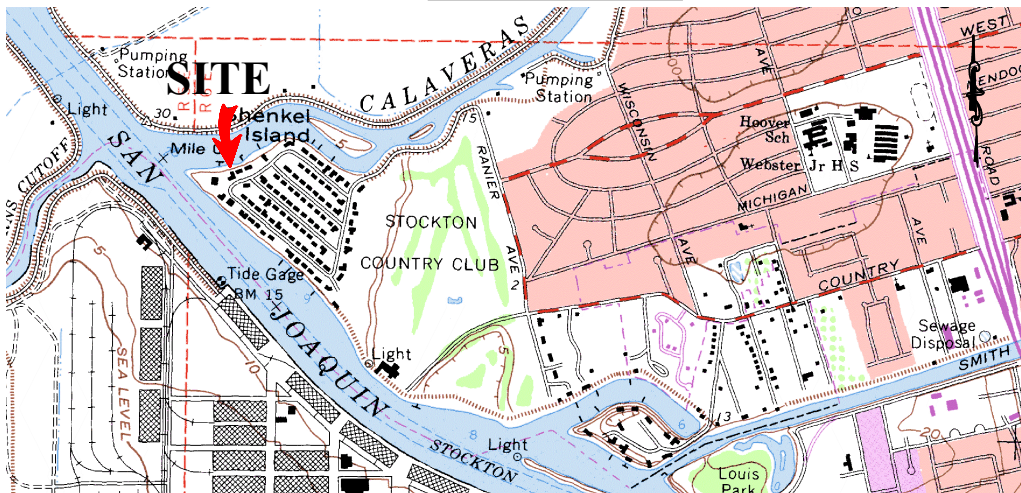


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4439 YACHT HARBOR DRIVE, STOCKTON

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 3937.1
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 SAN JOAQUIN COUNTY



SITE

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.

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