

**STAFF REPORT
C48**

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10/18/18
PRC 7089.1
G. Asimakopoulos

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

APPLICANT:

Jeffery Moreno

PROPOSED LEASE

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Georgiana Slough at Andrus Island, adjacent to 17161 Terminous Road near Isleton, Sacramento County.

AUTHORIZED USE:

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

LEASE TERM:

10 years, beginning October 18, 2018.

CONSIDERATION:

Covered Single-Berth Floating Boat Dock with Boat Lift, Gangway, Walkway, Four Pilings, and Electrical and Water Utility Outlets: \$285 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 June 7, 2004, the Commission authorized a 10-year General Lease – Recreational and Protective Structure Use to Donald R. Kenny and Alberta M. Kenny, for the continued use and maintenance of an existing covered floating boat dock, gangway, walkway, pilings, and bank protection ([Item C03, June 7, 2004](#)). That lease expired on June 30, 2014.

On December 23, 2011, ownership of the upland parcel was transferred to the Applicant. The boat lift and electrical and water utility outlets have existed for many years but were not previously authorized by the Commission. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use, for the continued use and maintenance of an existing covered single-berth floating boat dock, gangway, walkway, four pilings, and bank protection previously authorized by the Commission, and a boat lift and electrical and water utility outlets not previously authorized by the Commission. Staff recommends issuance of a new lease beginning October 18, 2018. Staff also recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State lands in the amount of \$1,210 for the period beginning July 1, 2014, the day following expiration of the prior lease, to October 17, 2018, the day preceding issuance of the proposed new lease.

The subject dock and appurtenant facilities are for the docking and mooring of boats. These facilities are used for recreational boating and shoreline protection. 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 bank protection will maintain and improve the integrity of the slough channel, which will help protect the Public Trust resource of the slough for recreational and navigational purposes by the public.

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. The proposed lease includes certain provisions protecting the public use of the proposed lease area, including

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a limited lease term of 10 years and a non-exclusive use provision. The facilities will not significantly alter the land, the lease does not alienate the State's fee simple interest, and neither permanently impairs 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.

Climate Change:

Climate change impacts, including sea-level rise, are not limited to the open coast and may involve increased wave activity, storm events, and flooding. The existing structures within the proposed lease area are located along the Georgiana Slough within a tidally influenced region. The subject facilities are vulnerable to flooding at current sea levels and at higher risk of flood exposure given future projected scenarios of sea-level rise. The facilities associated with this lease area include a covered single-berth floating dock with boat lift, electrical and utilities outlets on the floating dock, adjustable gangway, fixed walkway, four pilings, and bank protection in Georgiana Slough.

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 regular inundation levels and dynamic tidal events within the lease area, and lead to more frequent flooding in low lying areas. As stated in *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, drought, 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 is because warming temperatures will result in more water falling as rain rather than snow, earlier spring snowmelt, and less snowpack overall. In sloughs 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

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at higher altitudes in snowpack. Conversely, climate-change induced droughts could decrease slough 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 sloughs and tidally-influenced waterways, flooding and storm flow will likely increase scour, decreasing bank stability and structure.

The combination of these projected conditions could potentially raise 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 structures 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, potentially leading to increased wear and tear on the pilings, dock, and lifts, reduce navigability of the channel, thereby increasing hazards and impacting the functionality and utility of the lease area structures.

The covered single-berth floating boat dock with boat lift, electrical and utilities outlets on the floating dock, and adjustable gangway can rise and fall with tides, storm surges, and droughts to some extent, but may require more frequent maintenance to ensure continued function during and after storm seasons and to avoid dislodgement of lease structures. The fixed features like the pilings, walkway, and electrical and water conduits (even though they are on a floating dock) may need reinforcement to withstand higher levels of flood exposure. The electrical conduits need to be monitored closely during storms or floods, so they don't become a public safety hazard.

The bank is also vegetated, which 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 of the single-berth floating dock, adjustable gangway, fixed walkway, and appurtenant structures required by the terms of the lease will reduce the likelihood of severe structural degradation or dislodgement. The lease includes an acknowledgment that the lease premises may be subject to the effects of sea-level rise and may require additional maintenance or protection as a result, for which the lessee agrees to be solely responsible.

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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).

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 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.

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AUTHORIZATION:

1. Authorize acceptance of compensation from the Applicant in the amount of \$1,210 for the unauthorized occupation of State land for the period beginning July 1, 2014, through October 17, 2018.

2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning October 18, 2018, for a term of 10 years, for the continued use and maintenance of an existing covered single-berth floating boat dock, gangway, walkway, four pilings, and bank protection previously authorized by the Commission, and a boat lift and electrical and water utility outlets 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 covered single-berth floating boat dock with boat lift, gangway, walkway, four pilings, and electrical and water utility outlets: \$285 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 7089.1

LAND DESCRIPTION

A parcel of tide and submerged land situate in the bed of the Georgiana Slough, lying adjacent to Swamp and Overflowed Land Survey 849 patented April 2, 1873, County of Sacramento, State of California and more particularly described as follows:

All those lands underlying an existing single berth covered floating boat dock with boat lift, gangway, walkway, electric and water utility outlets and four pilings lying adjacent to that parcel described in Grant Deed, recorded December 23, 2011 in Book 20111223 at Page 0313 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 adjacent to said parcel.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the right bank of said slough.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 07/30/18 by the California State Lands Commission Boundary Unit



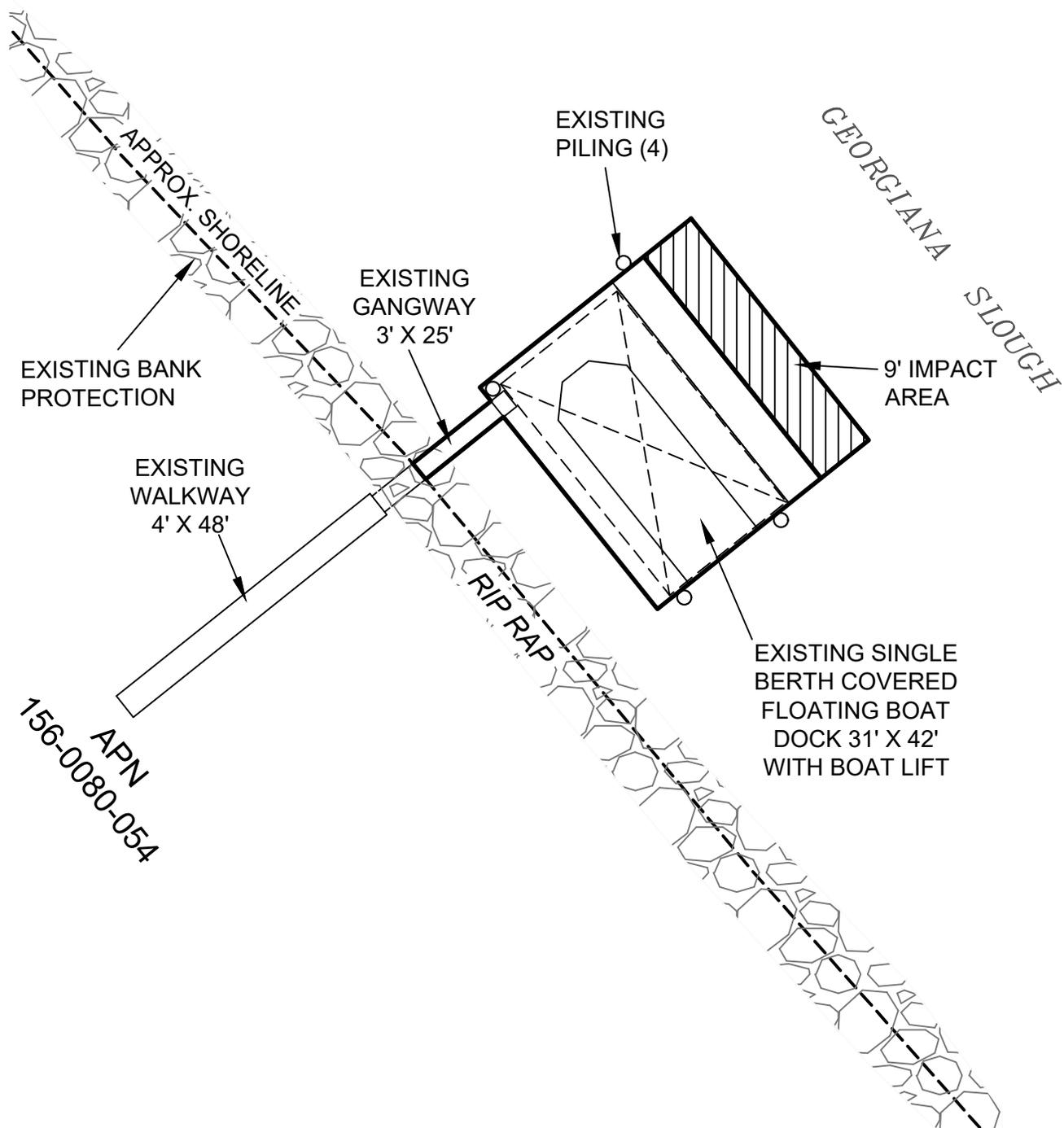


EXHIBIT A



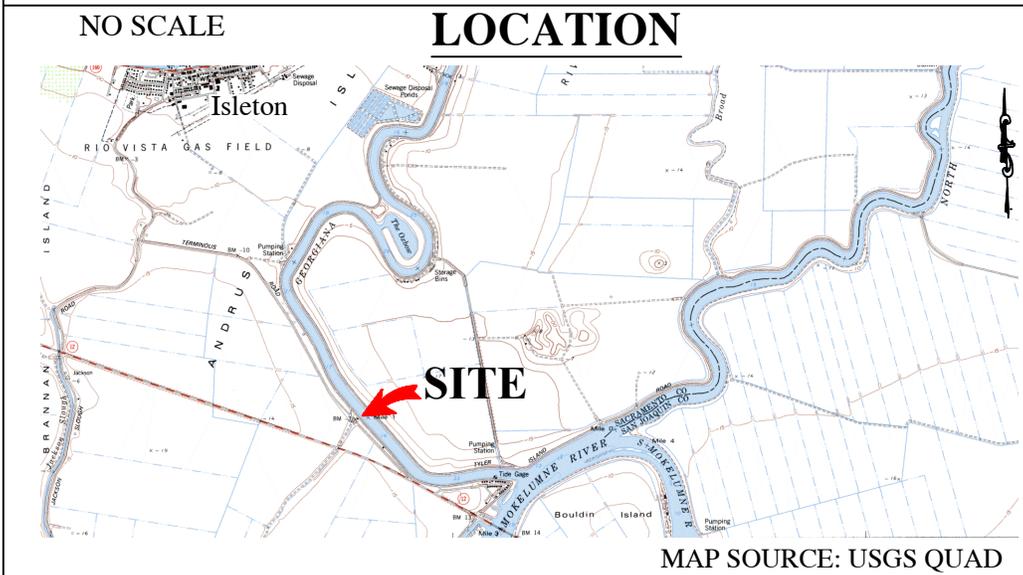
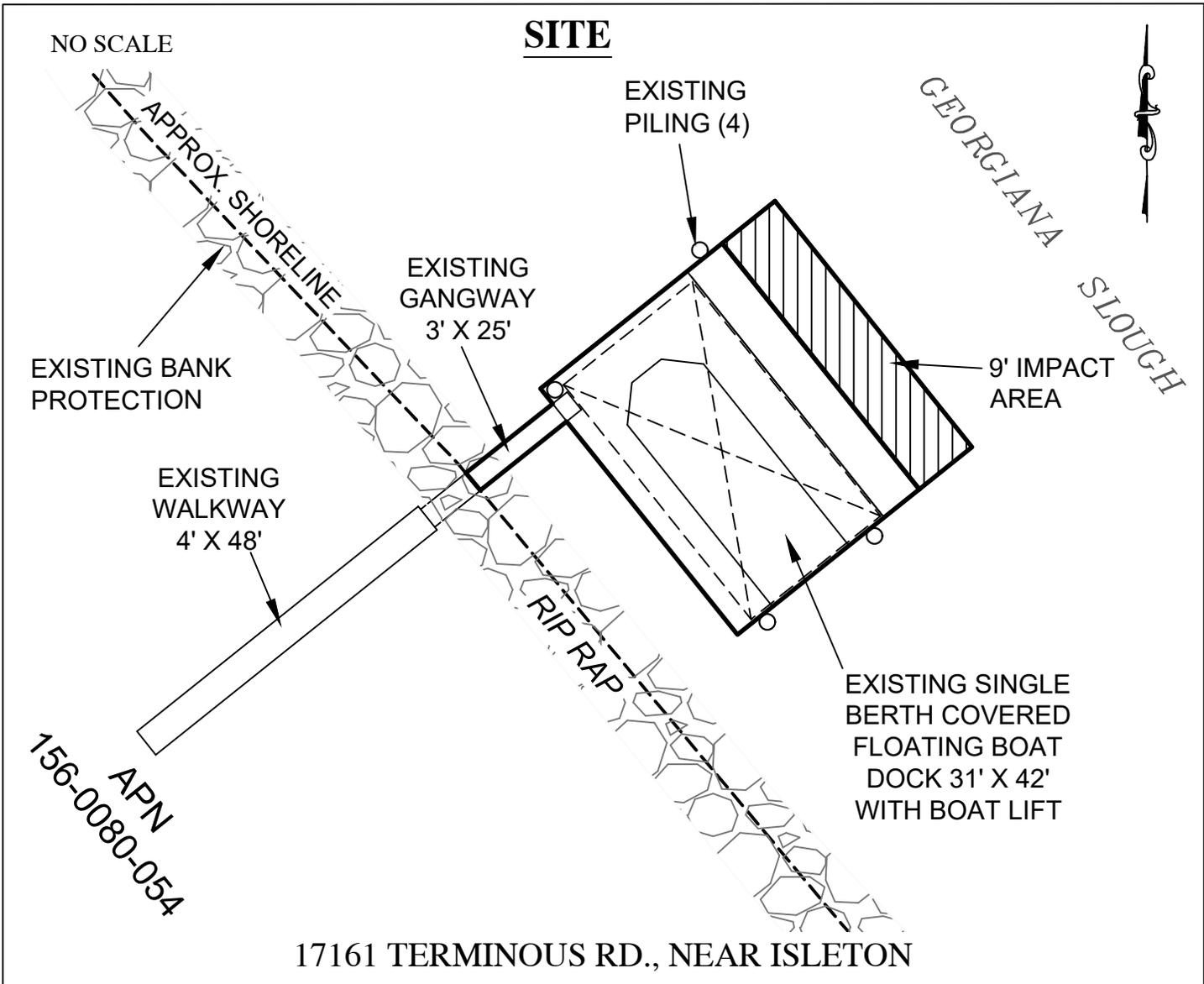


Exhibit B

PRC 7089.1
 MORENO
 APN 156-0080-054
 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.