

**CALENDAR ITEM
C46**

A 17, 26

05/24/12

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W 26531
V. Caldwell

GENERAL LEASE – RECREATIONAL AND PROTECTIVE STRUCTURE USE

APPLICANTS:

Phillip C. Berolzheimer and Anne C. Berolzheimer, Co-Trustees of the Phillip C. Berolzheimer and Anne C. Berolzheimer Revocable Family Trust dated September 18, 2007

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the historic bed of the San Joaquin River, Atherton Cove, adjacent to 3548 Country Club Boulevard, near the city of Stockton, San Joaquin County.

AUTHORIZED USE:

Use and maintenance of an existing uncovered floating boat dock with boat lift, two wood pilings, electric and water utility outlet, wood landing, gangway, and bank protection not previously authorized by the Commission.

LEASE TERM:

10 years, beginning May 24, 2012.

CONSIDERATION:

Uncovered Floating Boat Dock with Boat Lift, Two Wood Pilings, Electric and Water Utility Outlet, Wood Landing, and Gangway: \$327 per year, with the State reserving the right to fix a different rent periodically during the lease term, as provided 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 interest.

SPECIFIC LEASE PROVISIONS:

Liability insurance with coverage of no less than \$1,000,000.

CALENDAR ITEM NO. **C46** (CONT'D)

OTHER PERTINENT INFORMATION:

1. Applicants own the uplands adjoining the lease premises.
2. In 2010, while performing a nearby site inspection, Commission staff became aware that the dock facilities at this location had not been previously authorized by the Commission. Staff notified the upland owners of the unauthorized use and the leasing requirements of the Commission. On February 6, 2012, an application for a General Lease – Recreational and Protective Structure Use was submitted by the Applicants to retain the existing uncovered floating boat dock with boat lift, two wood pilings, electric and water utility outlets, wood landing, gangway, and bank protection. Staff recommends bringing these facilities under lease.
3. The U.S. Army Corps of Engineers (Corps) is currently consulting with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on applicable mitigation fees, and staff understands that the Corps is planning on issuing a Letter of Permission to retain the existing facilities. The Applicants have also applied to the Central Valley Flood Protection Board to obtain an after-the-fact permit.
4. Prior to construction of the upland residence, Reclamation District No.1614 required the Applicants to enhance the integrity of the levee by placing rip rap on the bank as part of 2002/2003 Delta levee erosion repair project. The bank protection will mutually benefit both the public and the Applicants. The bank of the historic bed of the San Joaquin River in Atherton Cove will have additional protection from wave action provided at no cost to the public.
5. On October 8, 2011, Chapter 585, Statutes of 2011 became law. The law is effective January 1, 2012. This new law repeals section 6503.5 of the Public Resources Code, which had allowed rent-free use of State-owned land by certain private parties for their recreational piers. It replaced the former section with a new section 6503.5 which provides that the State Lands Commission “shall charge rent for a private recreational pier constructed on state lands.” The law provides for two exceptions to the imposition of rent. Those exceptions are for:
 - A. A lease in effect on July 1, 2011, through the remaining term of that lease. If a lease in effect on July 1, 2011, expires or is otherwise terminated, any new lease will be subject to rent; and
 - B. A lease for which the lease application and application fees were submitted to the Commission prior to March 31, 2011.

CALENDAR ITEM NO. **C46** (CONT'D)

The Applicants do not qualify for an exception and the lease is subject to rent because the application was received after March 31, 2011.

6. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15061), the staff has determined that this activity is exempt from the requirements of 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.

7. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

APPROVALS REQUIRED:

U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, National Marine Fisheries Service, and Central Valley Flood Protection Board

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).

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

CALENDAR ITEM NO. **C46** (CONT'D)

AUTHORIZATION:

Authorize issuance of a General Lease – Recreational and Protective Structure Use to Phillip C. Berolzheimer and Anne C. Berolzheimer, Co-Trustees of the Phillip C. Berolzheimer and Anne C. Berolzheimer Revocable Family Trust dated September 18, 2007, beginning May 24, 2012, for a term of 10 years, for the use and maintenance of an existing uncovered floating boat dock with boat lift, two wood pilings, electric and water utility outlets, wood landing, gangway, and bank protection not previously authorized by the Commission, 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 uncovered floating boat dock with boat lift, two wood pilings, electric and water utility outlet, wood landing, and gangway: \$327 per year, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease; consideration for the bank protection: the public use and benefit with the State reserving the right at any time to set a monetary rental if the Commission finds such action to be in the State's best interest; and liability insurance in the amount of no less than \$1,000,000.

EXHIBIT A

W 26531

LAND DESCRIPTION

A parcel of tide and submerged land, whether filled or unfilled, situate in the bed of the Atherton Cove (formerly the bed of the San Joaquin River), lying adjacent to Swamp and Overflowed Land Survey 443, patented December 19, 1867, County of San Joaquin, State of California, and more particularly described as follows:

All those lands underlying an existing uncovered floating boat dock, boat lift, ramp and landing lying adjacent to and southerly of those lands as described in "Exhibit A" of that Grant Deed, recorded May 27, 1999 in Document Number 99069693 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 use area.

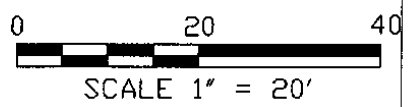
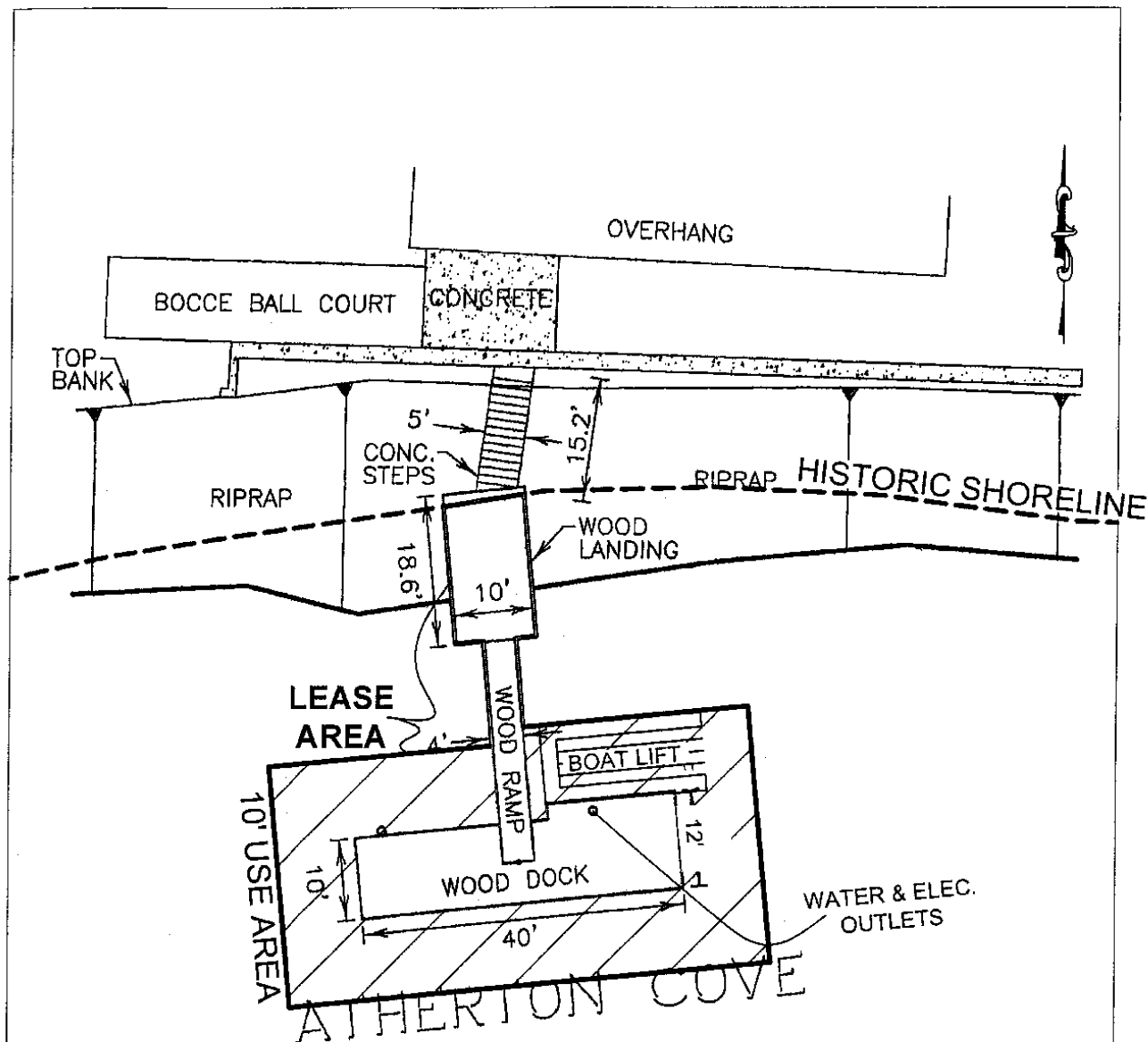
EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the right bank of the historic San Joaquin River.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

PREPARED 3/08/12 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT





NOTE: ALL STRUCTURES SHOWN ARE EXISTING.

(FORMER CHANNEL OF THE SAN JOAQUIN RIVER)

EXHIBIT A

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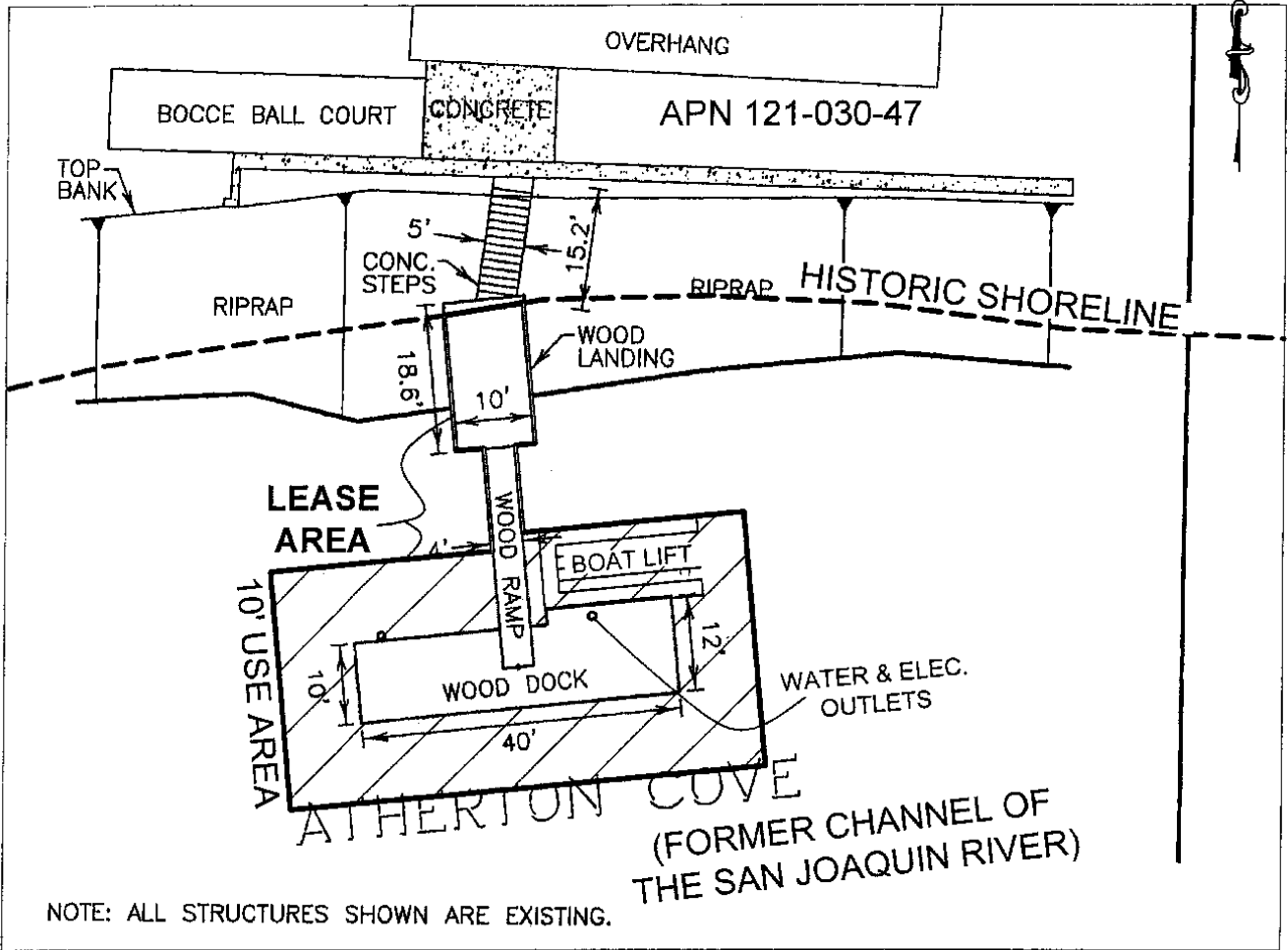
LAND DESCRIPTION PLAT
W 26531 - BEROLZHEIMER
SAN JOAQUIN COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE



3548 Country Club Blvd., Stockton - Atherton Cove

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

W 26531
 BEROLZHEIMER
 APN 121-030-47
 GENERAL LEASE -
 RECREATIONAL &
 PROTECTIVE STRUCTURE USE
 SAN JOAQUIN COUNTY



MJF 3/08/12