

**STAFF REPORT
C54**

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02/04/19
PRC 5577.1
G. Asimakopoulos

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

APPLICANT:

Joseph T. Zeiter

PROPOSED LEASE

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the historic bed of the San Joaquin River at Atherton Cove, adjacent to 3700 Country Club Boulevard, near Stockton, San Joaquin County.

AUTHORIZED USE:

Continued use and maintenance of two existing floating boat dock facilities consisting of an uncovered floating boat dock, four covered berth floating boat docks, three boat lifts, two ramps, a tri-level sundeck, 41 pilings, and bank protection.

LEASE TERM:

10 years, beginning March 23, 2019.

CONSIDERATION:

Two Existing Floating Boat Dock Facilities Consisting of an Uncovered Floating Boat Dock, Four Covered Berth Floating Boat Docks, Three Boat Lifts, Two Ramps, a Tri-Level Sundeck, and 41 Pilings: \$1,848 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.

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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 April 6, 2011, the Commission authorized a 10-year General Lease – Recreational and Protective Structure Use to Joseph Tony Zeiter, for the continued use, and maintenance of two existing floating boat dock facilities consisting of an uncovered floating boat dock, four covered berth floating boat docks, three boat lifts, two ramps, a tri-level sundeck, 41 pilings, and bank protection ([Item C24, April 6, 2011](#)). That lease will expire on March 22, 2019. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use. Staff recommends issuance of a new lease beginning March 23, 2019.

The adjacent upland parcel is privately owned and developed with a residence. The existing floating boat docks and appurtenant facilities have existed at this location for many years and are located directly adjacent to the Applicant's upland property. The subject boat docks, three boat lifts, two ramps, and pilings are privately owned and maintained, and are for the docking and mooring of boats. These facilities are used for recreational boating. Recreational boating is a water-dependent use 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 existing tri-level sundeck is not associated with traditional Public Trust uses. While sundecks are generally not favored, sundecks that have been in place for years have been permitted if, as is the case in this instance, they do not significantly interfere with trust activities. However, the lease contains provisions that the existing tri-level sundeck may not be expanded nor rebuilt if significantly destroyed. The tri-level sundeck has been in place for many years and occupies a small area of the riverbed. The tri-level sundeck does not substantially interfere with the needs and values of the Public Trust at this location, at this time, and for the foreseeable term of the proposed non-exclusive lease.

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The proposed lease includes certain provisions including 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 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 bank 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:

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 San Joaquin River, 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 two floating dock facilities with an uncovered floating boat dock, four covered berth floating boat docks, three boat lifts, two ramps, a tri-level sundeck, 41 pilings, and bank protection.

The California Ocean Protection Council updated the State of California Sea-Level Rise Guidance in 2018 to provide a synthesis of the best available science on sea-level rise projections and rates. Commission staff evaluated the "high emissions," "medium-high risk aversion" scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. The San Francisco tide gauge was used for the projected sea-level rise scenario for the region as listed in Table 1.

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Table 1. Projected Sea-Level Rise for San Francisco

Year	Projection (feet)
2030	0.8
2040	1.3
2050	1.9
2100	6.9

Source: Table 13, State of California Sea-Level Rise

Guidance: 2018 Update

Note: Projections are with respect to a 1991 to 2009 baseline.

This effect could increase the San Joaquin River’s inundation levels within the lease area, and this risk of flood exposure is likely to increase with time. In addition, 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, 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 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 and affect access 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 facilities 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 and potentially leading to increased wear-and-tear on the pilings and dock. Lowered water levels could also reduce navigability of the channel, thereby increasing hazards and impacting the function and utility of the lease area structures.

The floating boat docks and adjustable ramps are adaptable to variable water levels, allowing them to rise and fall with storms and droughts and increasing their resiliency to some climate change impacts. However, they may require more frequent maintenance or replacement to ensure continued function during and after storm seasons and to avoid dislodgement. The fixed sundeck, riprap protection, and pilings may need

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reinforcement and possibly replacement to withstand higher levels of flood exposure and more frequent storm events. Any exposed portions of the existing protective structure could be vulnerable to future events, and an alternative bank protection strategy, such as bank restoration, may be required to protect the anchoring points of the other structures in the lease premises and reduce flood impacts to the upland parcel. 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; 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

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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:

1. Find that for a limited period, continuing use and maintenance of the two existing floating boat dock facilities consisting of an uncovered floating boat dock, four covered berth floating boat docks, three boat lifts, two ramps, 41 pilings, and bank protection will not substantially interfere with Public Trust needs and values at this location, at this time, and for the foreseeable term of the proposed lease; and,
2. Find that for a limited period, continuing use and maintenance of the tri-level sundeck is not generally consistent with the Public Trust doctrine, but the current use does not substantially interfere with the trust; and,
3. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Recreational and Protective Structure Use to Joseph T. Zeiter beginning March 23, 2019, for a term of 10 years, for use and maintenance of two existing floating boat dock facilities consisting of an uncovered floating boat dock, four covered berth floating boat docks, three boat lifts, two ramps, a tri-level sundeck, 41 pilings, and bank protection, 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 two existing floating boat dock facilities consisting of an uncovered floating boat dock, four covered berth floating boat docks, three boat lifts, two ramps, a tri-level sundeck, and 41 pilings: \$1,848 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 5577.1

LAND DESCRIPTION

A portion of Section 6 (six), Township 1 (one) North, Range 6 (six) East, Mount Diablo Base and Meridian, County of San Joaquin, State of California, and more particularly described as follows:

Commencing at a 3/4" Iron Pin tagged RCE 8714 at the most Northwesterly corner of Parcel "5C" as shown on that certain Parcel Map filed the 5th day of February, 1985 in Book 13 (thirteen) of Parcel Maps at Page 71 (seventy-one), San Joaquin County Records; thence along the boundaries of said Parcel "5C" on the following 3 (three) courses:

1. South 18°12'00" East, a distance of 172.49 feet to a 3/4" Iron Pin tagged RCE 8714;
2. Thence South 71°48'00" West, a distance of 103.15 feet to a 2" Iron Pipe;
3. Thence South 18°12'00" East, a distance of 410.16 feet to the right bank of the historic channel of the San Joaquin River (Atherton Cove) and being the

True Point of Beginning; thence along said right bank, North 62°10'21" East, a distance of 299.62 feet to the Easterly line of said Parcel "5C"; thence perpendicular to said right bank, South 27°49'39" East, a distance of 76.68 feet; thence along the following 7 (seven) courses:

1. South 61°24'13" West, a distance of 58.52 feet;
2. Thence North 27°53'39" West, a distance of 8.33 feet;
3. Thence South 61°28'00" West, a distance of 43.82 feet;
4. Thence North 28°56'25" West, a distance of 32.62 feet;
5. Thence South 61°49'51" West, a distance of 114.49 feet;
6. Thence South 29°59'04" East, a distance of 53.09 feet;
7. Thence South 60°02'52" West, a distance of 84.21 feet to a line being perpendicular to said right bank; thence along said perpendicular line, North 27°49'39" West, a distance of 93.92 feet to the **True Point of**

Beginning.

Excepting therefrom any portion lying above the body of the ordinary high water mark of said River.



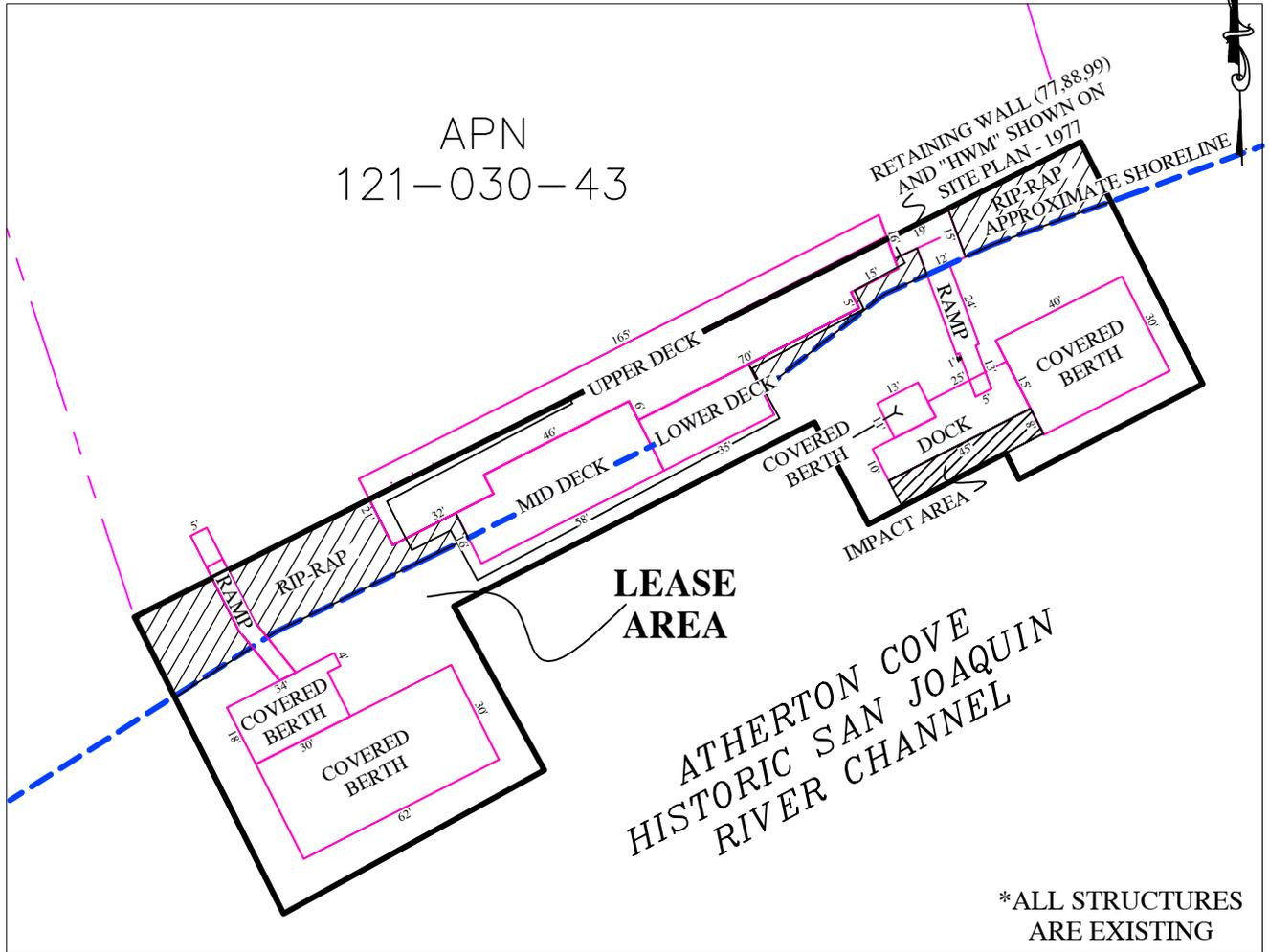
Michael L. Quartaroli

10.4.10

NO SCALE

SITE

APN
121-030-43



LEASE AREA

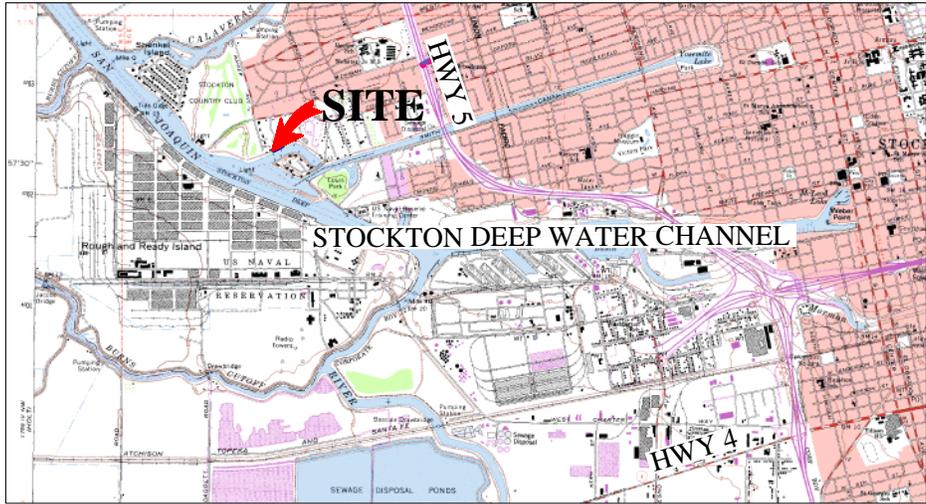
**ATHERTON COVE
HISTORIC SAN JOAQUIN
RIVER CHANNEL**

*ALL STRUCTURES
ARE EXISTING

3700 Country Club Blvd., Stockton

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 5577.1
 ZEITER
 APN 121-030-43
 GENERAL LEASE
 RECREATIONAL &
 PROTECTIVE STRUCTURE USE
 SAN JOAQUIN 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.