

STAFF REPORT

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08/23/19

PRC 8999.1

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J. Holt

CONSIDER TERMINATION OF LEASE; WAIVER OF RENT, PENALTY, AND INTEREST; AND ISSUANCE OF A GENERAL LEASE – RECREATIONAL AND PROTECTIVE STRUCTURE USE

LESSEE:

Bank of the West, Successor by Merger with Union Safe Deposit Bank,
Successor Trustee of the Vivian Cerna Prince Trust dated December 31, 1982

APPLICANT:

Sandy Mawhsuan Chu and Mike Chiali Chu

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the historic bed of the San Joaquin River, adjacent to 13 Atherton Island, Stockton, San Joaquin County.

AUTHORIZED USE:

Use and maintenance of an existing boat dock, two pilings, ramp, landing, and bank protection.

LEASE TERM:

10 years, beginning August 23, 2019.

CONSIDERATION:

Boat dock, two pilings, ramp, and landing: \$140 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 that 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 August 14, 2012, the Commission authorized a 10-year General Lease - Recreational and Protective Structure Use to Bank of the West, Successor by Merger with Union Safe Deposit Bank, Successor Trustee of the Vivian Cerna Prince Trust dated December 31, 1982 ([Item C48, August 14, 2012](#)). That lease expires on August 13, 2022. On February 25, 2013, the upland was deeded to Vivian Prince. On June 23, 2016, the upland was deeded to Sandy Mawhsuan Chu and Mike Chiali Chu (Applicant). The Applicant is now applying for a General Lease – Recreational and Protective Structure Use, for the use and maintenance of an existing floating boat dock, two pilings, ramp, landing, and bank protection in the historic bed of the San Joaquin River.

Staff recommends termination of the existing lease, Lease No. PRC 8999.1, based on the Lessee's abandonment of the lease area. The title transfer occurred without a lease quitclaim deed or notification to staff. The Lessee has not paid rent since August 2012. Staff mailed annual rent invoices to the address on file that remained unpaid for several years. Based on the circumstances, staff believes it is not in the State's best interests to pursue collection of rent, penalty, and interest from the Lessee for the period of February 25, 2013, through August 22, 2019, since the Lessee was no longer the upland owner. Furthermore, staff believes that the cost of collection services far exceeds the past due rent amount.

Staff recommends acceptance of compensation from the Applicant in the amount of \$428, for the occupation of State land during the time period of June 23, 2016, the day the Applicant became the upland owner, through August 22, 2019, the day preceding issuance of the proposed new lease. Staff also recommends that the Commission issue a new lease to the Applicant, effective August 23, 2019.

The proposed lease would authorize the same facilities as the current lease. These facilities are used for recreational boating purposes and shoreline protection. Recreational boating is a water-dependent activity

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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 river channel, which will help protect the Public Trust resources for recreational and navigational use by the public. The existing floating boat dock, appurtenant facilities, and bank protection have existed at this location for many years.

The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The proposed 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 proposed 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 in the historic bed of the San Joaquin River, 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 a floating boat dock, two pilings, ramp, landing, 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 lease area 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.

Rising sea levels can lead to more frequent flood inundation in low-lying areas and larger tidal events and could increase the San Joaquin River's inundation levels within the lease area over the term of the lease. 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. 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 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. Lowered water levels could also reduce navigability of the channel, thereby increasing hazards related to the lease area structures.

The floating boat dock and ramp are adaptable to variable water levels. They can rise and fall with storms and droughts, increasing their resiliency to some climate change impacts. However, they may require more frequent maintenance to ensure continued functionality, especially during and after storm seasons, and to avoid dislodgement of dock facilities. The

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fixed features, such as pilings, landing, and bank protection may need reinforcement to withstand higher levels of flood exposure.

The vegetated bank 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 the bank remains at risk of accelerated deterioration from currents and floods. 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, Commission staff believes the issuance of this lease will not substantially interfere with Public Trust needs at this location and is consistent with the common law Public Trust Doctrine, and in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Applicant may be required to remove the existing boat dock, pilings, ramp, landing, and bank protection and restore the premises to their original condition. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.
2. 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.
3. Termination of the lease is not a project as defined by the California Environmental Quality Act (CEQA) 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).

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4. Staff recommends that the Commission find that issuance of the lease 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.

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 termination of a lease; waiver of rent, penalty, and interest; and issuance of 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 Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize termination of Lease No. PRC 8999.1, a General Lease – Recreational and Protective Structure Use, issued to Bank of the West, Successor by Merger with Union Safe Deposit Bank, Successor Trustee of the Vivian Cerna Prince Trust dated December 31, 1982, effective June 22, 2016.
2. Waive annual rent, penalty, and interest due for the period of February 25, 2013, through August 22, 2019, and void annual rent invoice #35591, dated May 13, 2014; invoice #37505, dated May 14, 2015; invoice #40009, dated May 27, 2016; invoice #42458, dated June 13, 2017; invoice #45154, dated June 11, 2018; and invoice #47781, dated June 27, 2019; and any associated penalty and interest for Lease No. PRC 8999.1.

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3. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant, beginning August 23, 2019, for a term of 10 years, for the use and maintenance of an existing boat dock, two pilings, ramp, landing, and bank protection, 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 boat dock, pilings, ramp, and landing: \$140 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.

4. Authorize acceptance of compensation from the Applicant in the amount of \$428, for the occupation of State land during the time period of June 23, 2016, through August 22, 2019.

EXHIBIT A

PRC 8999.1

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 1299, patented March 10, 1873, County of San Joaquin, State of California and more particularly described as follows:

All those lands underlying an existing floating boat dock, two pilings, ramp and landing adjacent to that parcel as described in "Exhibit A" of that Grant Deed recorded June 23, 2016 as Document No. 2016-072603 in Official Records of said County.

TOGETHER WITH any applicable impact area(s).

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

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

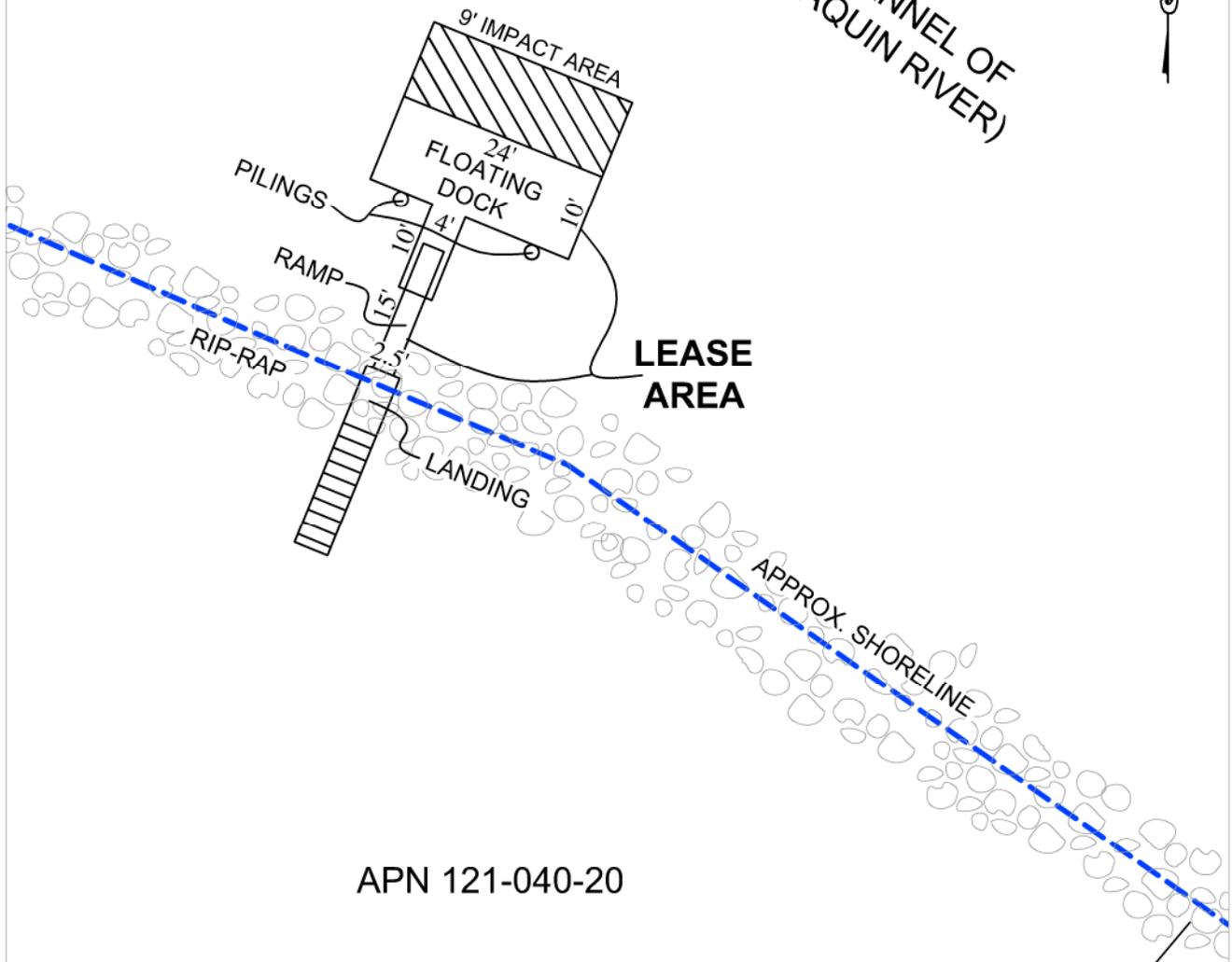
Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

PREPARED 6/11/19 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



ATHERTON
COVE
(FORMER CHANNEL OF
THE SAN JOAQUIN RIVER)



APN 121-040-20

*ALL STRUCTURES
SHOWN
ARE EXISTING

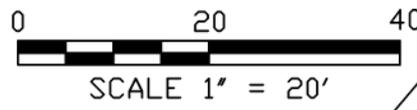


EXHIBIT A

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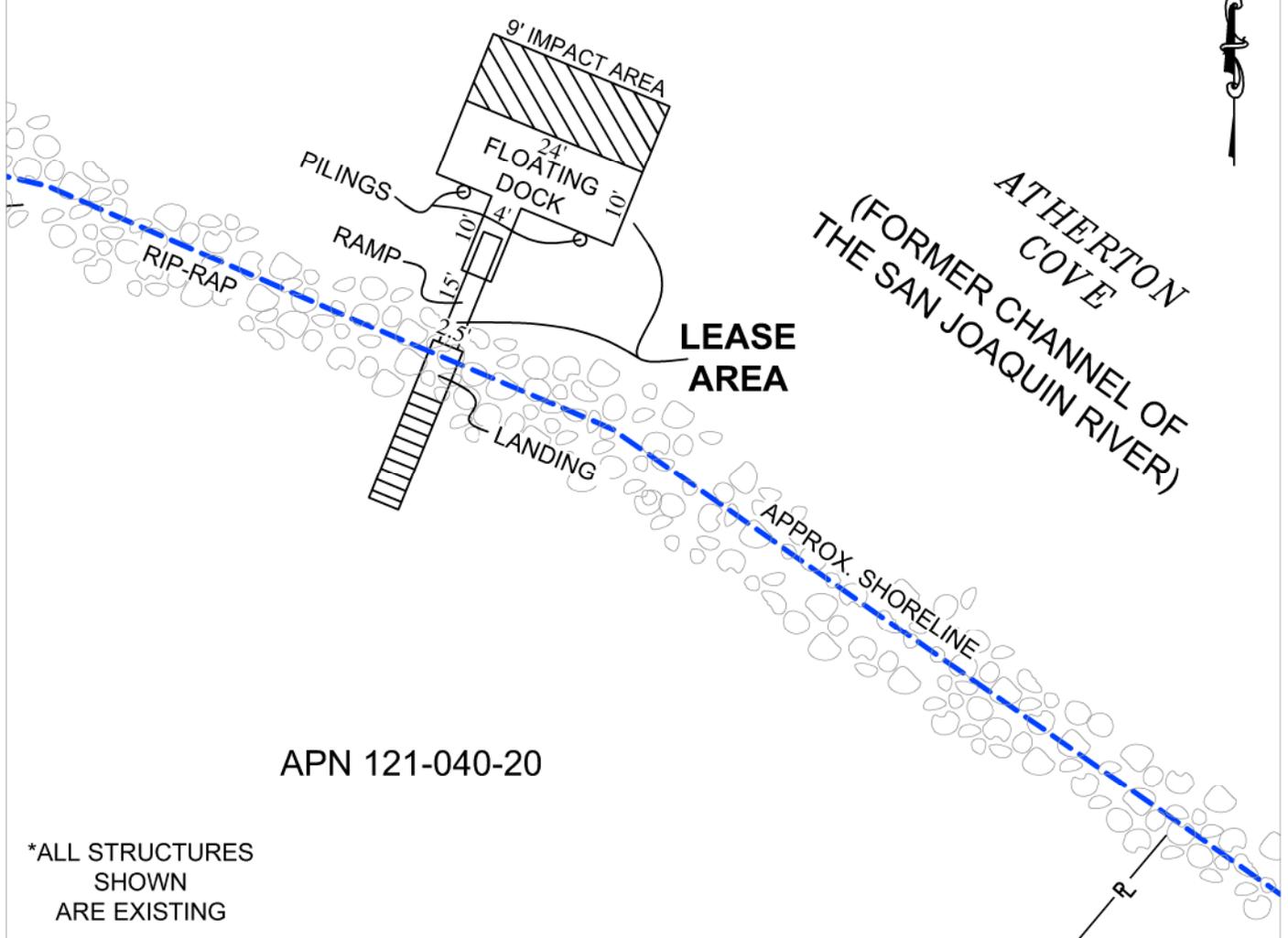
LAND DESCRIPTION PLAT
PRC 8999.1 - CHU
SAN JOAQUIN COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

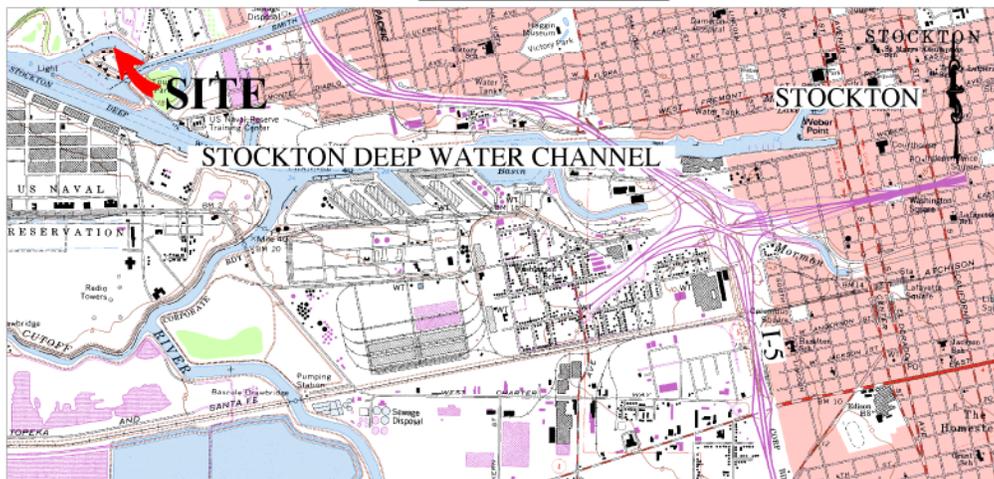
SITE



13 Atherton Island, Stockton - Atherton Cove

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 8999.1
 CHU
 APN 121-040-20
 GENERAL LEASE -
 RECREATIONAL &
 PROTECTIVE STRUCTURE USE
 SAN JOAQUIN COUNTY



MJF 6/11/19

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.