

**STAFF REPORT
31**

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10/24/19
Lease 6865.1
A2100
J. Holt

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GENERAL LEASE – PROTECTIVE STRUCTURE USE

APPLICANT:

Couchman Bros., a California General Partnership

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Tuolumne River, adjacent to 3131 Illinois Avenue, near Modesto, Stanislaus County.

AUTHORIZED USE:

Continued use and maintenance of existing bank protection.

LEASE TERM:

10 years, beginning November 20, 2019.

CONSIDERATION:

\$140 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.

- Lessee acknowledges and agrees that hazards associated with climate change may require additional maintenance or protection strategies regarding the improvements on the lease premises and assumes the risks associated with these potential hazards.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

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Public Trust and State's Best Interests Analysis:

On June 28, 2010, the Commission authorized a 10-year General Lease – Protective Structure Use to Verda Marie Couchman, Jerald Paul Couchman and Janis Collyer, Trustees of the Verda Couchman Revocable Survivor's Trust dated March 3, 2003; and Verda Marie Couchman, Trustee of the Homer Couchman Irrevocable Family Trust dated March 3, 2003 ([Item C29, June 28, 2010](#)). On March 29, 2012, the Commission authorized an assignment of the lease from the lessee to Couchman Bros., a California General Partnership ([Item C60, March 29, 2012](#)). The lease will expire on November 19, 2019. The Applicant is now applying for a General Lease – Protective Structure Use, for the continued use and maintenance of existing bank protection in the Tuolumne River.

The proposed lease area contains the same facilities as the prior lease. These facilities are designed for flood protection of the upland parcel, as well as enhancement of the river channel and adjacent shoreline. The bank protection will maintain and improve the integrity of the river channel, by reducing erosion of the natural shoreline, which will help protect the Public Trust resources of the Tuolumne River for recreational and navigational use by the public. The bank protection may also mitigate potential flooding of the upland parcel (not within the lease area), commonly used for agricultural purposes.

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 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:

The project area is not tidally influenced and therefore, would not be subject to sea-level rise. However, 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. In rivers, more frequent

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and powerful storms can result in increased flooding conditions and damage from storm-created debris. Conversely, prolonged droughts could dramatically reduce river flow and water levels, leading to loss of public access and navigability. Climate change will further influence riverine areas by changing erosion and sedimentation rates, and flooding and storm flow, as well as runoff, will likely increase scour, decreasing bank stability at a faster rate. Due to these potential changes, the bank protection may need reinforcement in the future to withstand higher levels of flood exposure and more frequent storm events.

Regular maintenance, as required by the lease, will reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises are located in an area that may be subject to effects of climate change.

Conclusion:

For all the reasons above, staff believes the issuance of this lease will not substantially interfere with the public rights to navigation, fishing, and commerce, or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and is 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 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. 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).

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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 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:

Find that the proposed lease will not substantially interfere with public rights to navigation and fishing or with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Protective Structure Use to the Applicant beginning November 20, 2019, for a term of 10 years, for the continued use and maintenance of existing 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; annual rent in the amount of \$140, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 6865.1

LAND DESCRIPTION

A parcel of submerged land situate in the bed of the Tuolumne River, lying adjacent to Sections 14 and 15, Township 4 South, Range 8 East, MDM, as shown on Official Government Township Plat approved June 18, 1870, County of Stanislaus, State of California, and more particularly described as follows:

All those lands lying immediately beneath any bank protection structure adjacent to that parcel described in that certain Grant Deed recorded October 4, 2011 in Document No. 2011-0081689 in Official Records of said County.

EXCEPTING THEREFROM any portion lying landward of the low water mark of the right bank of said river.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 09/11/2019 by the California State Lands Commission Boundary Unit.





NO SCALE

PL

EXISTING
BANK
PROTECTION
300' x 20'

LEASE
AREA

APN
017-036-010

PL

EXISTING
BANK
PROTECTION
300' x 50'

LEASE
AREA

APPROX.
SHORELINE
TUOLUMNE RIVER

LEGEND



- BANK
PROTECTION



- LEASE AREA

EXHIBIT A

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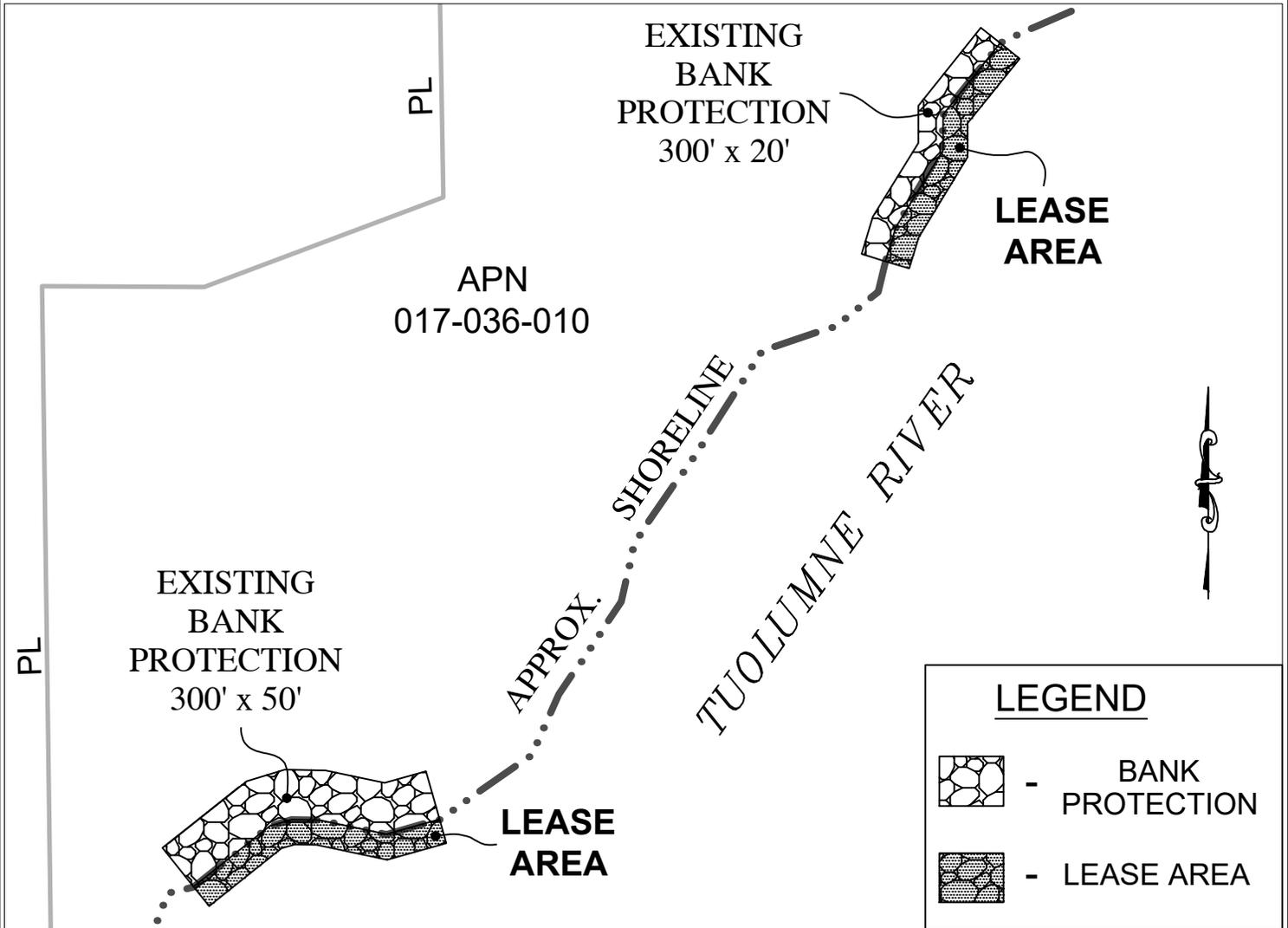
LAND DESCRIPTION PLAT
LEASE 6865.1 COUCHMAN BROS.
STANISLAUS COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

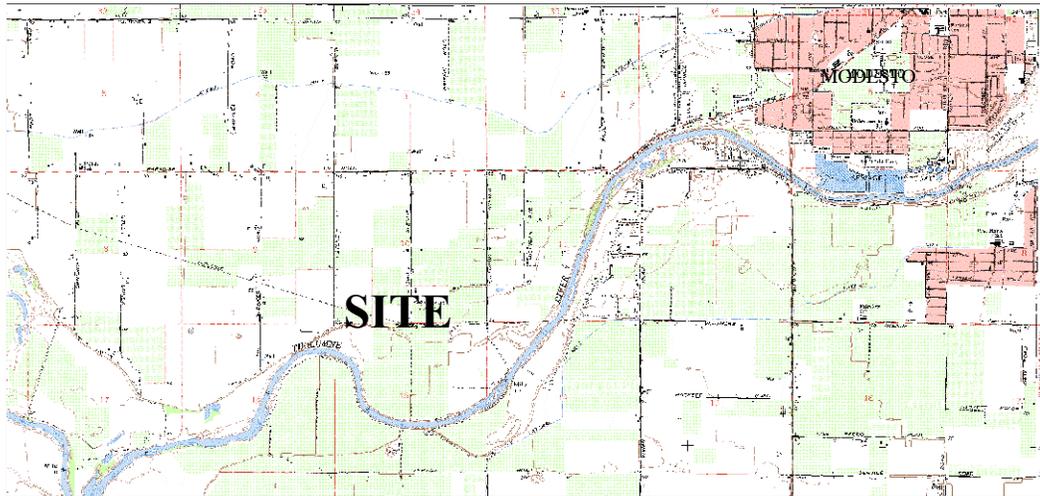
SITE



3131 ILLINOIS AVE., MODESTO

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B
 LEASE 6865.1
 COUCHMAN BROS.
 APN 017-036-010
 GENERAL LEASE -
 PROTECTIVE
 STRUCTURE USE
 STANISLAUS 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.