

**STAFF REPORT
25**

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GENERAL LEASE – RECREATIONAL AND PROTECTIVE STRUCTURE USE

APPLICANT:

Kathryn K. Jackson, Thomas B. Klein, and Steven D. Klein, Co-Trustees of the Survivor's Trust c/u/t Bud D. Klein and Jane G. Klein Revocable Trust Agreement dated October 6, 2005

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the historic bed of the San Joaquin River, adjacent to 11 Atherton Island, Stockton, San Joaquin County.

AUTHORIZED USE:

Use and maintenance of an existing boat dock, boat lift, ramp, five pilings, and bank protection.

LEASE TERM:

10 years, beginning October 22, 2019.

CONSIDERATION:

Boat dock, boat lift, ramp, and five pilings: \$223 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:

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

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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 October 22, 2009, the Commission authorized a 10-year General Lease - Recreational and Protective Structure Use to Bud D. Klein and Jane D. Klein, Co-Trustees of the Bud D. Klein and Jane E. Klein Revocable Family Trust, dated June 12, 1989 ([Item C23, October 22, 2009](#)). That lease expired on October 21, 2019. Sometime during the lease term, the previously authorized boathouse was removed from the boat dock. On May 5, 2011, the upland was transferred to Kathryn K. Jackson, Thomas B. Klein, and Steven D. Klein, Co-Trustees of the Survivor's Trust c/u/t Bud D. Klein and Jane G. Klein Revocable Trust Agreement dated October 6, 2005. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use, for the use and maintenance of an existing boat dock, boat lift, ramp, five pilings, and bank protection in the historic bed of the San Joaquin River.

The proposed lease will contain the existing boat dock, boat lift, appurtenant facilities, and bank protection. These facilities are used for recreational boating and shoreline protection. Recreational boating is a water-dependent activity 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 boat dock, boat lift, 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. On termination of the proposed 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

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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 facility is located near Atherton Cove 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 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.

Table 1. Projected Sea-Level Rise for San Francisco¹

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: ¹ 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. 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

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erosion and sedimentation rates. Although the banks within the lease area are vegetated, 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 related to the lease area structures.

The floating dock is adaptable to variable water levels, allowing it to rise and fall with storms and droughts, and increasing its resiliency to some climate change impacts, but may require more frequent maintenance to ensure continued functionality during and after storm seasons and to avoid dislodgement. The fixed pilings and bank protection may need reinforcement to withstand higher levels of flood exposure.

Regular maintenance, as required by the terms of the lease, will reduce the likelihood of severe structural degradation. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland (not under lease) 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 is consistent with the common law Public Trust Doctrine 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 boat dock, boat lift, ramp, five pilings, and bank protection and restore the premises to their original condition. Upon

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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 14, section 15301.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300.

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that this 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 14, section 15301.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the 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:

Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning October 22, 2019, for a term of 10 years, for the use and maintenance of an existing boat dock, boat lift, ramp, five pilings, 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, boat lift,

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ramp, and five pilings: \$223 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

LEASE 8851.1

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 605, patented August 2, 1871, County of San Joaquin, State of California, and more particularly described as follows:

All those lands underlying an existing dock, boat lift, ramp and five (5) pilings lying adjacent to and northwesterly of those lands as described in that Grant Deed, recorded December 4, 2017 in Document Number 2017-141164 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 11/12/19 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



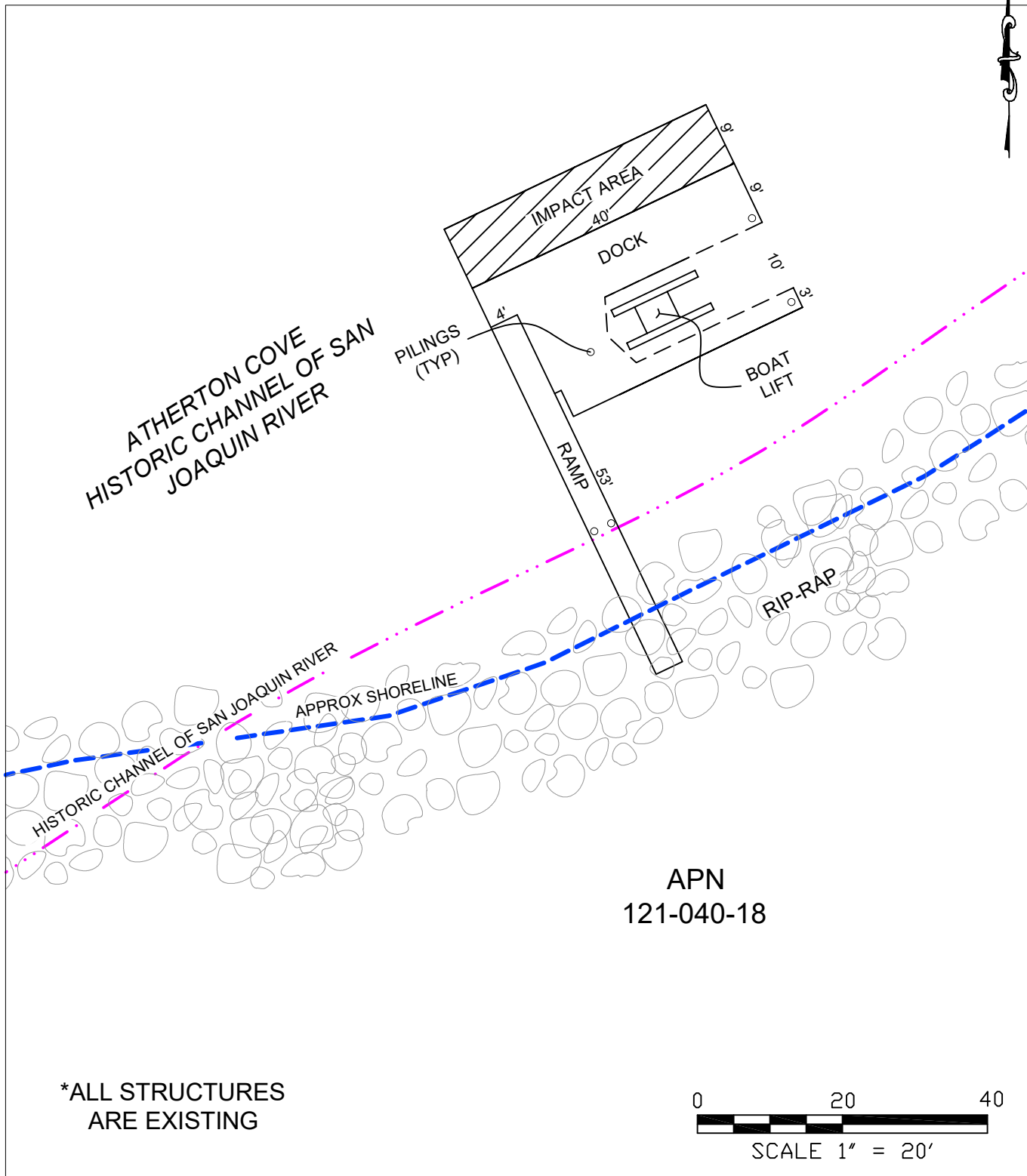


EXHIBIT A

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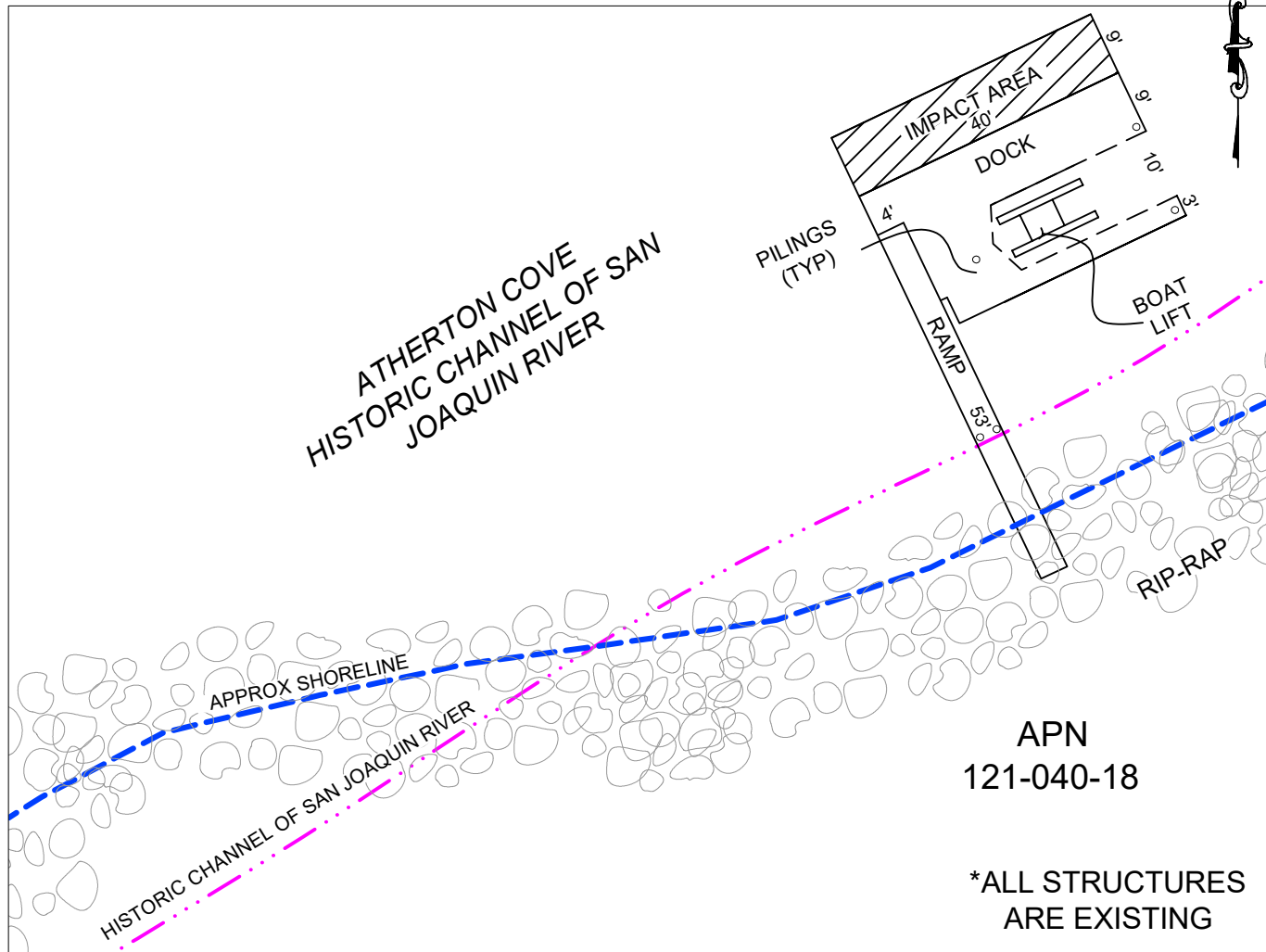
LAND DESCRIPTION PLAT
LEASE 8851.1, KLEIN TRUST
SAN JOAQUIN COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

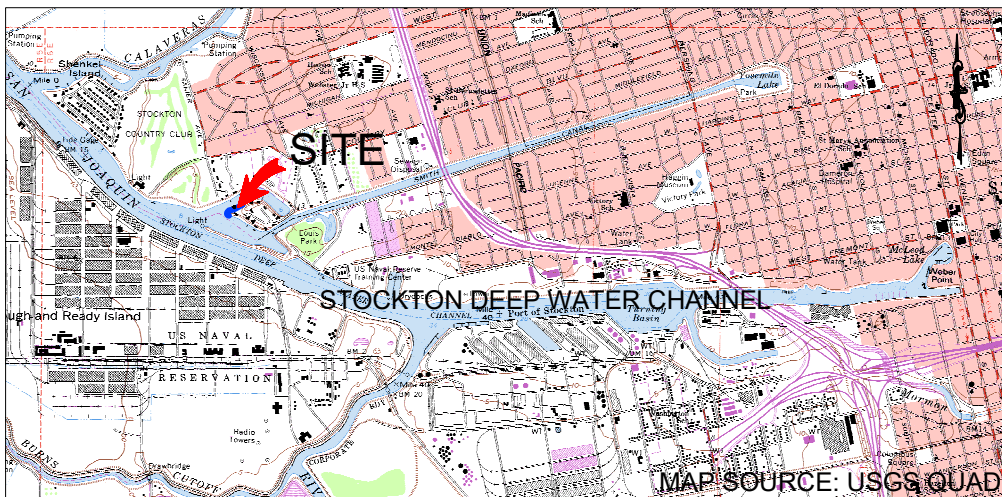
SITE



11 ATHERTON ISLAND, STOCKTON

NO SCALE

LOCATION



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

LEASE 8851.1
 KLEIN TRUST
 APN 121-040-18
 GENERAL LEASE -
 RECREATIONAL & PROTECTIVE
 STRUCTURE USE
 SAN JOAQUIN COUNTY



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