

# Staff Report 24

## APPLICANT:

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

## PROPOSED ACTION:

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Issuance of a General Lease – Recreational and Protective Structure Use

## AREA, LAND TYPE, AND LOCATION:

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

## AUTHORIZED USE:

Use and maintenance of an existing boat dock, boat lift, two wood pilings, electric and water utility conduits, wood ramp and landing, and bank protection.

## TERM:

10 years, beginning May 24, 2022.

## CONSIDERATION:

\$467 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 agrees and acknowledges that the hazards associated with sea level rise may require additional maintenance or protection strategies regarding the improvements on the lease premises.

## STAFF ANALYSIS AND RECOMMENDATION:

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### AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 6501.1, 6503, 6503.5, and 6505.5; California Code of Regulations, title 2, sections 2000 and 2003.

### PUBLIC TRUST AND STATE'S BEST INTERESTS:

On May 24, 2012, the Commission authorized a 10-year 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 ([Item 46, May 24, 2012](#)). That lease will expire on May 23, 2022. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use, for the continued use and maintenance of an existing boat dock, boat lift, two wood pilings, electric and water utility conduits, wood ramp and landing, and bank protection.

The Applicant owns the upland adjoining the lease premises and the subject facilities have existed at this location for several years. The subject facilities are privately owned and maintained. The boat dock, boat lift, and appurtenant facilities are used for docking and mooring of boats and facilitate recreational boating.

Recreational boating is a water-dependent use that 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 land (Pub. Resources Code, § 6503.5). The bank protection will protect the upland property and 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 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.

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 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 on the Sacramento 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 region as listed in Table 1.

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. 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 existing floating boat dock with boat lift and electric and water utility conduits and the adjustable wood ramp are adaptable to variable water levels allowing them to rise and fall with increased or decreased water levels. The fixed features

like the two wood pilings, wood landing, and the bank protection may need reinforcement and possibly replaced to withstand higher levels of flood exposure and more frequent storm events. It is even more important to ensure that the electric utility outlet continue to function during and after storm seasons, so it does not become a public safety hazard or a danger for navigation within the channel.

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 remains** at risk of accelerated deterioration from currents and floods.

Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland are located in an area that may be subject to the 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; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

#### OTHER PERTINENT INFORMATION:

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1. Approval or denial of the application for a new lease 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, as prior lessee, may be required to remove the boat dock, boat lift, two wood pilings, electric and water utility conduits, wood ramp and landing, and bank protection and restore the premises to their original condition. Upon expiration or prior termination of the lease, the lessee has no right to a new lease or a renewal of any previous lease.
2. This action is consistent with the "Meeting Evolving Public Trust Needs" and the "Leading Climate Activism" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
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).

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:

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

## RECOMMENDED ACTION:

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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 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 proposed lease; is consistent with the common law 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 May 24, 2022, for a term of 10 years, for the continued use and maintenance of an existing boat dock, boat lift, two wood pilings, electric and water utility conduits, wood ramp and 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; annual rent in the amount of \$467, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**LEASE 8995**

**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 any applicable impact area(s).

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

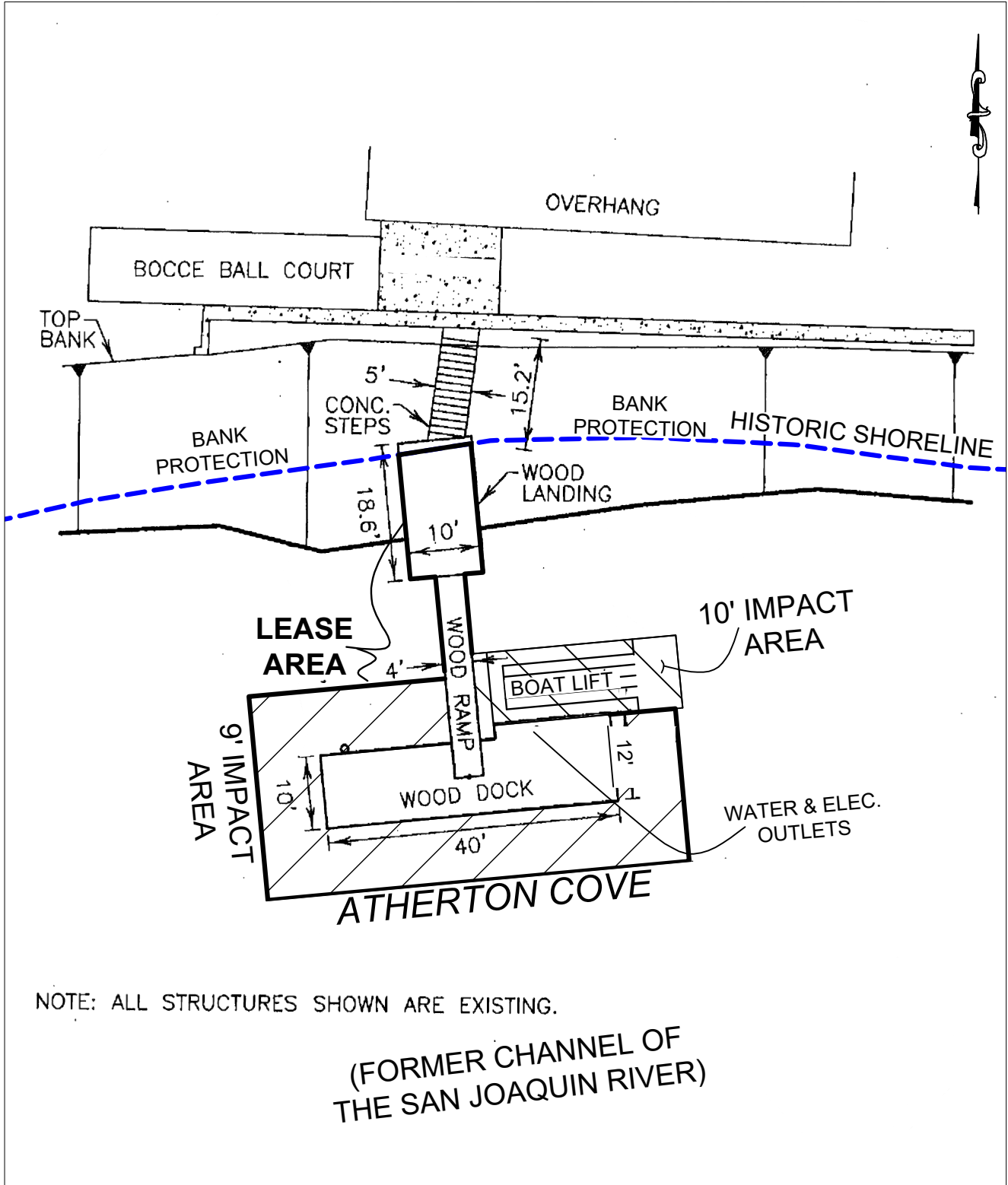
Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

PREPARED 11/03/2021 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



NO SCALE



NOTE: ALL STRUCTURES SHOWN ARE EXISTING.

(FORMER CHANNEL OF  
THE SAN JOAQUIN RIVER)

### EXHIBIT A

PAGE 2 OF 2

MJF 1/25/2022

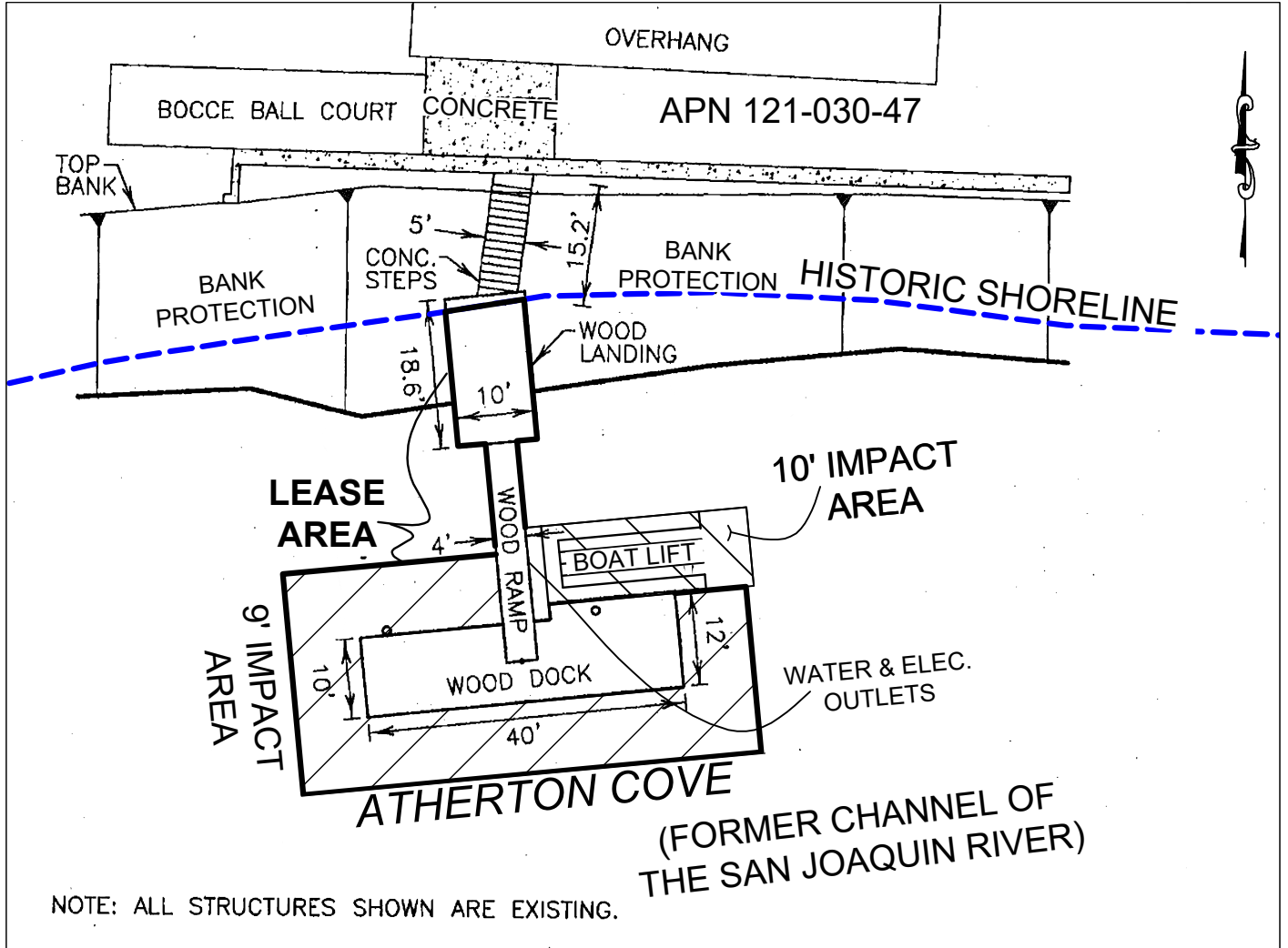
LAND DESCRIPTION PLAT  
LEASE 8995, BEROLZHEIMER  
SAN JOAQUIN COUNTY

CALIFORNIA STATE  
LANDS COMMISSION



NO SCALE

# SITE

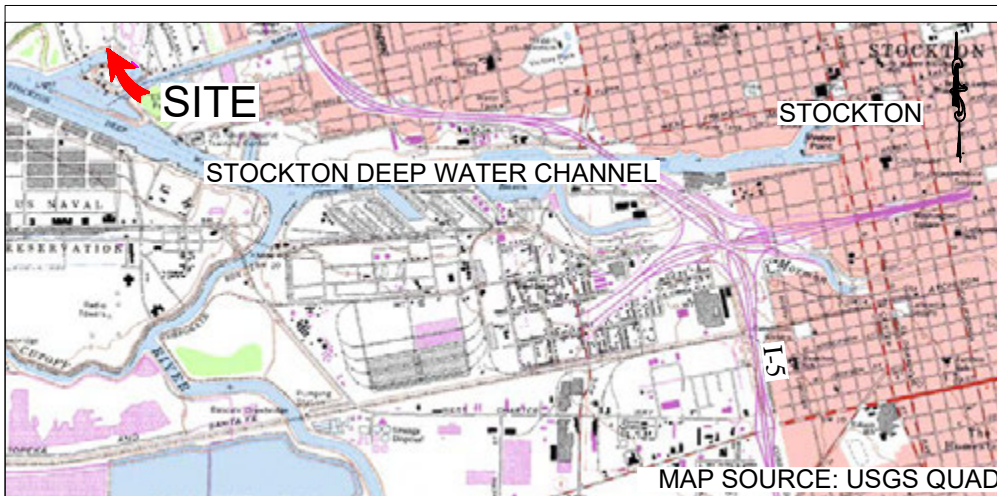


NOTE: ALL STRUCTURES SHOWN ARE EXISTING.

3548 COUNTRY CLUB BLVD., STOCKTON - ATHERTON COVE

NO SCALE

# LOCATION



# EXHIBIT B

LEASE 8995  
 BEROLZHEIMER  
 APN 121-030-47  
 GENERAL LEASE -  
 RECREATIONAL & PROTECTIVE  
 STRUCTURE USE  
 SAN JOAQUIN COUNTY



MJF 1/25/2022

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.