

Staff Report 46

LESSEE:

Parke M. Berolzheimer, Trustee of the Parke M. Berolzheimer Declaration of Trust dated December 10, 2008

APPLICANT:

Keith Nelson and Shelly Nelson, Trustees of the 2022 Nelson Family Trust Dated August 10, 2022

PROPOSED ACTION:

Acceptance of a Lease Quitclaim Deed; and Issuance of a General Lease – Recreational and Protective Structure Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the historic bed of the San Joaquin River, Atherton Cove, adjacent to 3614 Country Club Drive, near Stockton, San Joaquin County.

AUTHORIZED USE:

Use and maintenance of an existing covered boat dock, three pilings, gangway, utility conduits, solar-powered boat lift, and bank protection.

TERM:

10 years, beginning February 28, 2023.

CONSIDERATION:

\$430 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 climate change 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, 6503.5, and 6505.5; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On October 22, 2020, the Commission authorized a General Lease – Recreational and Protective Structure Use to Parke Berolzheimer, Trustee of the Parke M. Berolzheimer Declaration of Trust dated December 10, 2008, for an existing boat dock, solar-powered boat lift, gangway, three pilings, water and electrical conduit, and bank protection ([Item 19, October 22, 2020](#)). That lease will expire on December 9, 2030. The Lessee now wishes to execute a quitclaim deed to release their interest in the Lease.

On September 16, 2022, ownership interest in the upland parcel transferred to Keith Nelson and Shelly Nelson, Trustees of the 2022 Nelson Family Trust Dated August 10, 2022. The Applicant is applying for a General Lease – Recreational and Protective Structure Use, for use and maintenance of the existing covered boat dock, three pilings, gangway, utility conduits, solar-powered boat lift, and bank protection. Based on the lease application and Commission records, the facilities have existed at this location for many years.

Staff recommends the Commission accept the lease quitclaim deed, effective February 27, 2023, and approve the proposed lease February 28, 2023. The Commission's accounting records show that the Lessee paid annual rent through December 9, 2023 to facilitate the transfer of ownership interest in the upland parcel to the Applicant. Staff also recommends the rent paid for the time from February 28, 2023, to December 9, 2023, be applied against the first year's rent for the proposed lease.

The proposed lease will require the Applicant to indemnify the State for the entire period of unauthorized occupation from September 16, 2022 through February 27, 2023, ensuring the State is protected.

The Applicant owns the upland adjoining the lease premises. The existing covered single-berth floating boat dock, three pilings, gangway, utility conduits, and solar-

powered boat lift are privately owned and maintained and are used for the 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, which has existed for many years at this location, is located directly waterward of the upland property and occupies a relatively small area of the riverbank. The bank protection is not used for the docking and mooring of boats and generally is not inconsistent with the Public Trust Doctrine. However, the bank protection does not substantially interfere with the public's right of navigation or access. The bank protection will protect the upland property and maintain and improve the integrity of the San Joaquin River, 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 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 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 lease area is in a tidally influenced site on the San Joaquin River and is 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 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, creeks, 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.

The floating boat dock, boat lift, and ramp are adaptable to higher water levels allowing them to rise and fall with storms and droughts and increasing their resiliency to some climate change impacts but may require more frequent maintenance or replacement to ensure continued function during and after storm seasons and to avoid dislodgement of the facilities. The pilings, utility conduits, and bank protection are fixed and therefore more vulnerable to sea level rise and more frequent flood events. These structures may need additional fortification or repair and maintenance to ensure they do not become dislodged or degraded, as they could pose risks to public safety and navigation.

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:

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 covered boat dock, three pilings, gangway, utility conduits, and solar-powered boat lift, and restore the premises to their original condition. The lessee has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Leading Climate Activism" and "Meeting Evolving Public Trust Needs" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. Acceptance of a lease quitclaim deed 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).

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 acceptance of a lease quitclaim deed 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 common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of a lease quitclaim deed, effective February 27, 2023, of Lease Number 8905, a General Lease - Recreational and Protective Structure Use, issued to Parke Berolzheimer, Trustee of the Parke M. Berolzheimer Declaration of Trust dated December 10th, 2008, wherein the Lessee quitclaims to the State all right, title, and interest in the leased lands described in attached Exhibit A.
2. Authorize proration of rent paid for the period from February 28, 2023, to December 9, 2023, to be applied against the first year's rent of the proposed lease.
3. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning February 28, 2023, for a term of 10 years, for the use and maintenance of an existing covered boat dock, three pilings, gangway, utility conduits, solar-powered boat lift, 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 \$430, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 8905

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 dock, boat lift, gangway and appurtenant structures lying adjacent to and southerly of those lands as described in Parcel 2 of "Exhibit A" of that Grant Deed, recorded December 24, 2008 in Document Number 2008-196746 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 11/18/22 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



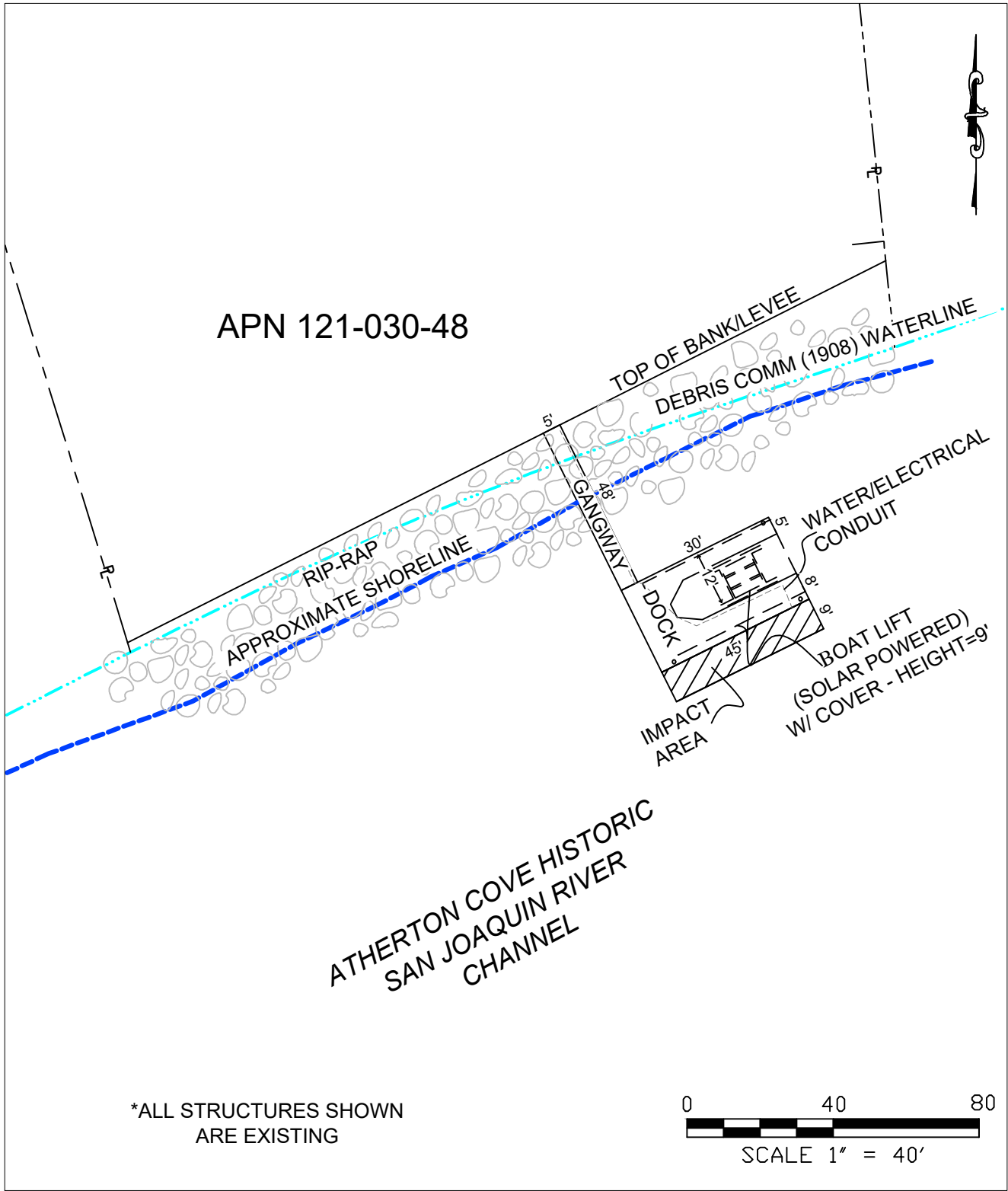


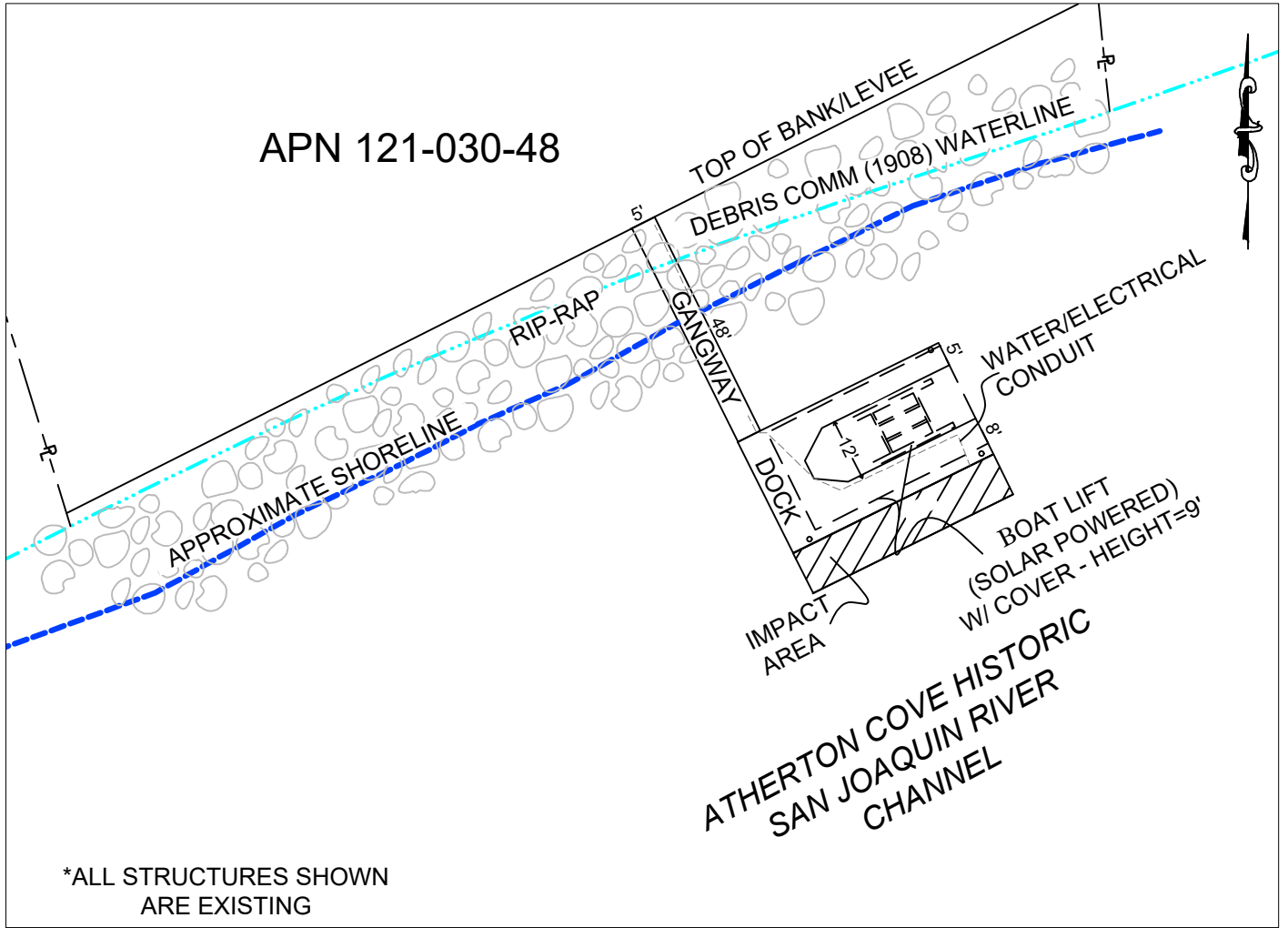
EXHIBIT A



NO SCALE

SITE

APN 121-030-48



*ALL STRUCTURES SHOWN ARE EXISTING

3614 COUNTRY CLUB BLVD., NEAR STOCKTON

NO SCALE

LOCATION

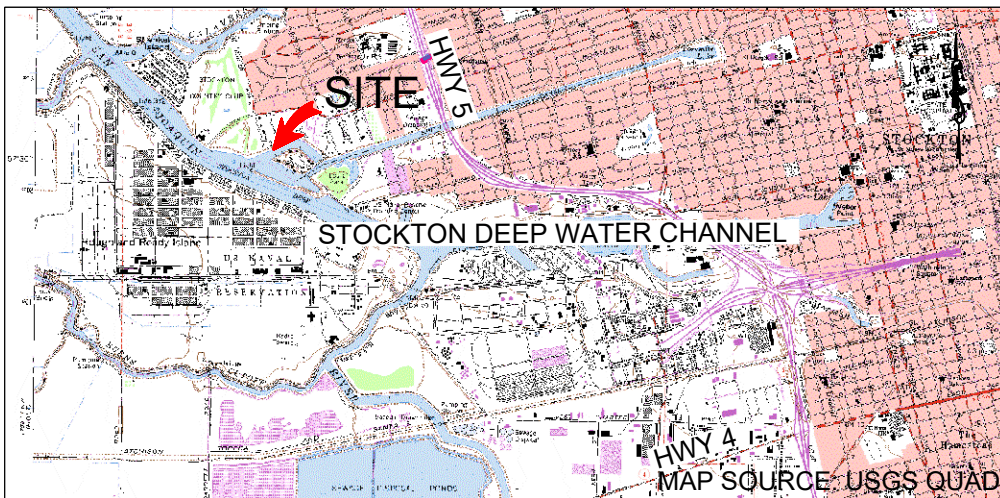


EXHIBIT B

LEASE 8905
 NELSON FAMILY TRUST
 APN 121-030-48
 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.

MJF 11/18/2022