

CALENDAR ITEM

43

A 8
S 5

02/01/10
W 26365
V. Caldwell
J. Frey

**CONSIDER AUTHORIZATION OF LITIGATION
FOR TRESPASS AND EJECTMENT**

PARTIES:

Lance Bishop and John R. Soto

AREA, LAND TYPE, AND LOCATION:

Sovereign lands in Elk Slough, adjacent to 41020 Waukeena Road, near the town of Clarksburg, Yolo County.

UNAUTHORIZED USE:

Floating residence with an attached walkway and a gangway.

BACKGROUND INFORMATION:

This item involves a floating residence that is currently located on State sovereign lands in Elk Slough, Yolo County. Until June 2008, the floating residence was owned by another Commission Lessee, Jeanne Taylor, and was moored to her dock in the Sacramento River, adjacent to 11779 State Highway 160, in Courtland, Sacramento County. At the December 3, 2007 Commission meeting, the Commissioners denied a lease application submitted by Jeanne Taylor and authorized a holdover tenancy agreement until such time as Ms. Taylor could comply with the terms of her lease by removing the residential uses, including the floating residence. The residential use was inconsistent with the Public Trust and the Commission's standard lease covenants. The floating residence included a fully equipped kitchen, living room with fireplace, bedroom, bathroom and covered porches on either end. Ms. Taylor complied with the holdover agreement and removed the residential uses and sold the floating residence.

In June 2008, Commission staff became aware of the current location of the floating residence when a member of the public contacted staff to report it was tied up next to the levee in Elk Slough. On July 30, 2008, staff conducted a site visit and found the floating residence was tied to an unauthorized dock in Elk Slough as well as to trees on the bank of the levee. In addition, a section of

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floating dock was attached to the floating residence and used as a walkway on the waterward side of the unit. Staff determined that the floating residence was purchased by Lance Bishop and that the unauthorized dock and the upland property were owned by John R. Soto.

On August 11, 2008, staff wrote Mr. Soto that the floating residence must be removed immediately from State-owned land and if Mr. Soto wanted to retain the unauthorized dock, a lease application must be submitted for consideration by the Commission and all necessary permits obtained from other state and federal agencies with jurisdiction over docking facilities in Elk Slough. Staff had an initial discussion with Mr. Soto in which he expressed his desire to work with staff and said he was removing the dock. Mr. Soto was unaware that the floating residence was in trespass on State-owned lands and wanted to assist in remedying the situation and provided additional contact information for Mr. Bishop.

During the following months, staff had several contacts with Mr. Bishop by telephone where staff explained the Commission's jurisdiction and allowable public trust uses and requested he work on a plan to remove the residence. After no response to our request for removal of the floating residence, on December 15, 2008, staff again wrote Mr. Bishop and Mr. Soto informing them that the residential use was in trespass and must be removed. For the next seven months, staff made several site visits and numerous attempts to contact Mr. Bishop with no results.

On August 5, 2009, staff again wrote the Mr. Bishop and Mr. Soto requesting a meeting prior to taking an enforcement action to the Commission. On August 19, 2009, staff met with Mr. Bishop at the site where he demonstrated that he had installed an engine onboard and that his "houseboat" was fully functional to navigate. Staff believes that the operation as a "houseboat" is limited because its size, shape, and lack of visibility for proper steering make it inoperable for normal and safe navigation. At the time of the site inspection and in previous conversations, Mr. Bishop explained his difficulty in finding a marina or other location that would accommodate the floating residence and that he had been turned away from several marinas because the marina operators didn't want any conflicts with Commission staff. At the time, staff offered to contact those marinas not located on State-owned lands within 30 days to confirm that Commission staff has no objection to the floating residence being located on non-State owned lands; however, Mr. Bishop did not respond.

On January 7, 2010, staff informed Mr. Bishop and Mr. Soto that adequate time has been provided to remove the floating residence and that an enforcement

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action would be taken to the Commission if the floating residence was not removed by February 1, 2010.

Since staff has made many unsuccessful attempts over the past 18 months to resolve the situation and since Mr. Soto continues to permit Mr. Bishop to retain access to the unauthorized floating residence from his upland property, staff is now requesting that the Commission consider authorizing Commission staff and the Office of the Attorney General to take all necessary steps including litigation for trespass, trespass damages, ejectment, and removal of the floating residence with an attached walkway and a gangway.

OTHER PERTINENT INFORMATION:

1. John R. Soto owns the upland property identified as Assessor's Parcel Nos. 043-040-21, 22, and 23 that adjoin the State's sovereign land in the Elk Slough.
2. Pursuant to the Commission's delegation of authority and State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of CEQA because it is not a "project" as defined by CEQA and State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

EXHIBIT:

- A. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the activity is not subject to the requirements of CEQA pursuant to Title 14, California Code of Regulations, section 15060 (c)(3) because the activity is not a project as defined by Public Resources Code section 21065 and Title 14, California Code of Regulations, section 15378.

AUTHORIZATION:

1. Ratify staff's finding that Lance Bishop and John R. Soto are in trespass on state-owned sovereign land located in Elk Slough as shown on the attached Exhibit A.

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2. Authorize staff of the State Lands Commission and the Office of the Attorney General to take all steps necessary, including litigation, to eject Lance Bishop and John R. Soto; to remove the floating residence, attached walkway, and gangway from sovereign lands in Elk Slough as shown on the attached Exhibit A and lying adjacent to Assessor's Parcel Nos. 043-040-21, 22, and 23, near the town of Clarksburg, Yolo County; to restore the sovereign lands at this location to their condition prior to placement of floating residence; and to recover the Commission's damages and costs.

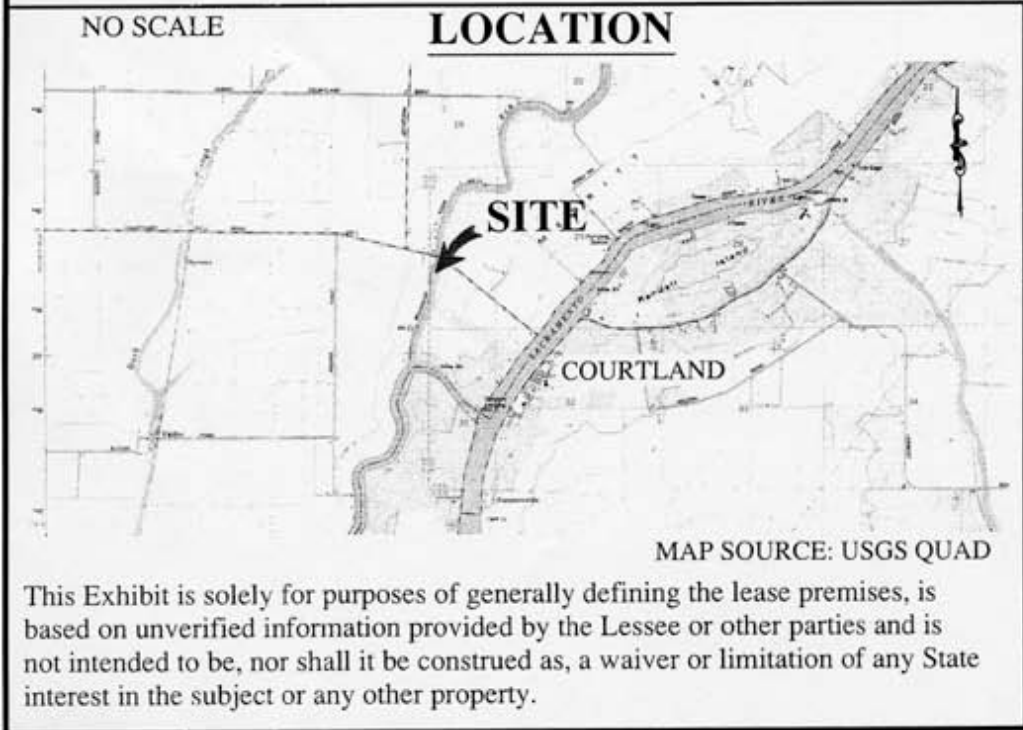
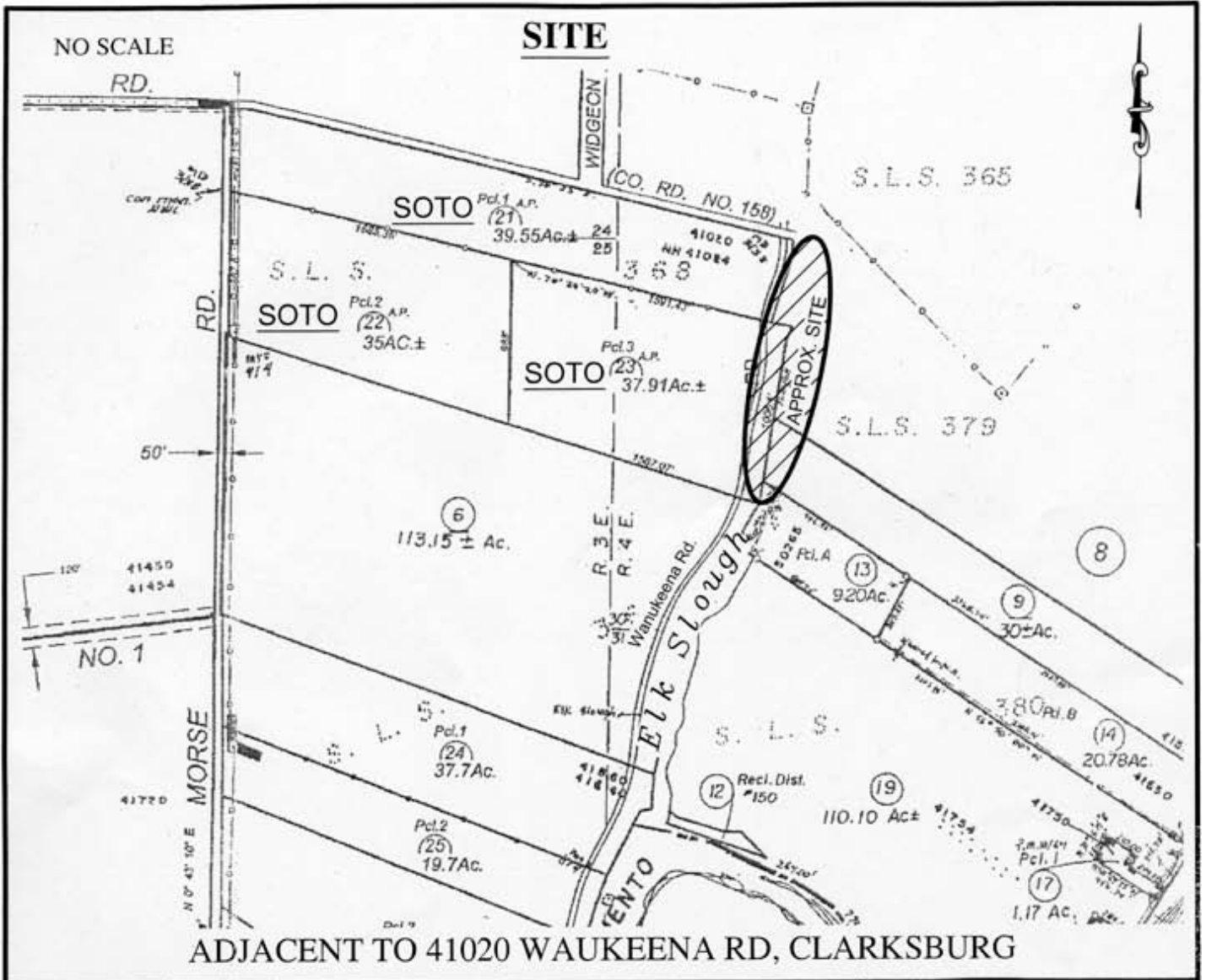


Exhibit A

W 26365
 APN 043-040-21,22,23
 BISHOP/SOTO
 TRESPASS/EJECTMENT
 ELK SLOUGH
 YOLO COUNTY

This inset map shows the state of California with a black arrow pointing to the location of the site in the northern part of the state. The word "SITE" is written next to the arrow.

JAK 01/10