

**CALENDAR ITEM
C48**

A 17, 26

08/14/12

W 26574

S 5

V. Caldwell

GENERAL LEASE – RECREATIONAL AND PROTECTIVE STRUCTURE USE

APPLICANT:

Bank of the West, Successor by Merger with Union Safe Deposit Bank,
Successor Trustee of the Vivian Cerna Prince Trust dated December 31, 1982

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the historic bed of the San Joaquin River at Atherton Cove,
adjacent to 13 Atherton Island, city of Stockton, San Joaquin County.

AUTHORIZED USE:

Use and maintenance of an existing uncovered floating boat dock, two wood pilings, wood landing, ramp, and bank protection not previously authorized by the Commission.

LEASE TERM:

10 years, beginning August 14, 2012.

CONSIDERATION:

Uncovered Floating Boat Dock, Two Wood Pilings, Wood Landing, and Ramp: \$134 per year, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

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 interest.

SPECIFIC LEASE PROVISIONS:

Liability insurance with coverage of no less than \$1,000,000.

OTHER PERTINENT INFORMATION:

1. Applicant owns the uplands adjoining the lease premises.
2. On October 8, 2011, Chapter 585, Statutes of 2011 became law. The law is effective January 1, 2012. This new law repeals section 6503.5 of the

CALENDAR ITEM NO. **C48** (CONT'D)

Public Resources Code, which had allowed rent-free use of State-owned land by certain private parties for their recreational piers. It replaced the former section with a new section 6503.5 which provides that the State Lands Commission “shall charge rent for a private recreational pier constructed on state lands.” The law provides for two exceptions to the imposition of rent. Those exceptions are for:

- A. A lease in effect on July 1, 2011, through the remaining term of that lease. If a lease in effect on July 1, 2011, expires or is otherwise terminated, any new lease will be subject to rent; and
- B. A lease for which the lease application and application fees were submitted to the Commission prior to March 31, 2011.

The Applicants do not qualify for an exception and the lease is subject to rent because the application was received after March 31, 2011.

- 3. The Applicant is applying for a General Lease – Recreational and Protective Structure Use for an existing uncovered floating boat dock, two wood pilings, wood landing, ramp, and bank protection that have existed for many years but have not been previously authorized by the Commission. The dock facilities were constructed approximately 50 years ago and the U.S. Army Corps of Engineers has permitted the existing dock under a “grandfathered status.” The Central Valley Flood Protection Board has received an application to permit the facilities but has not yet issued a permit. The lease requires submission of a copy of the permit to the Commission. Staff recommends bringing the dock facilities under lease.
- 4. The bank protection will mutually benefit both the public and the Applicant. The bank of the historic bed of the San Joaquin River in Atherton Cove will have additional protection from wave action provided at no cost to the public.
- 5. Pursuant to the Commission’s delegation of authority and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15061), the staff has determined that this activity 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).

CALENDAR ITEM NO. **C48** (CONT'D)

Authority: Public Resources Code section 21084 and California Code of Regulations, Title 14, section 15300 and California Code of Regulations, Title 2, section 2905.

6. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

APPROVALS OBTAINED:

U.S. Army Corps of Engineers

APPROVALS REQUIRED:

Central Valley Flood Protection Board

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).

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

Authorize issuance of a General Lease – Recreational and Protective Structure Use to Bank of the West, Successor by Merger with Union Safe Deposit Bank, Successor Trustee of the Vivian Cerna Prince Trust dated December 31, 1982, beginning August 14, 2012, for a term of 10 years, for the use and maintenance of an existing uncovered floating boat dock, two wood pilings, wood landing, ramp, and bank protection not previously authorized by the Commission, as described in Exhibit A and shown on

CALENDAR ITEM NO. **C48** (CONT'D)

Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration for the uncovered floating boat dock, two wood pilings, wood landing, and ramp: \$134 per year, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease; 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 interest; and liability insurance in the amount of no less than \$1,000,000.

EXHIBIT A

W 26574

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 1299, patented March 10, 1873, County of San Joaquin, State of California and more particularly described as follows:

All those lands underlying an existing uncovered floating boat dock, two pilings, ramp and landing adjacent to "Exhibit A" of that Grant Deed recorded October 22, 2010 as Instrument Number 10137909 in Official Records of said County.

TOGETHER WITH a 10 foot use area.

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 right bank of the historic San Joaquin River.

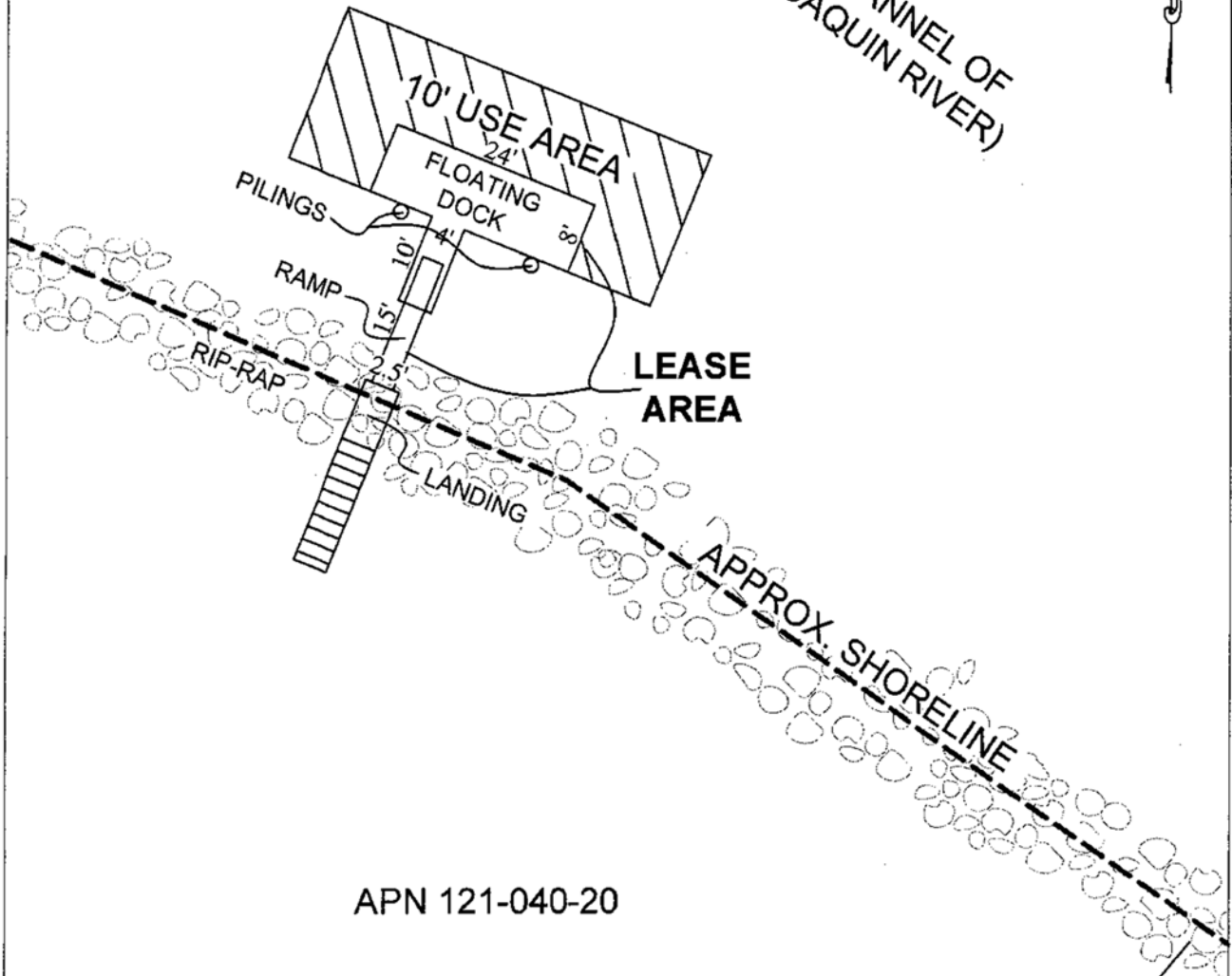
Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

PREPARED 6/27/12 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



(FORMER CHANNEL OF
THE SAN JOAQUIN RIVER)



APN 121-040-20

*ALL STRUCTURES
SHOWN
ARE EXISTING

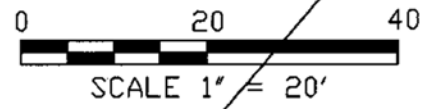


EXHIBIT A

Page 2 of 2

MJF 6/28/12

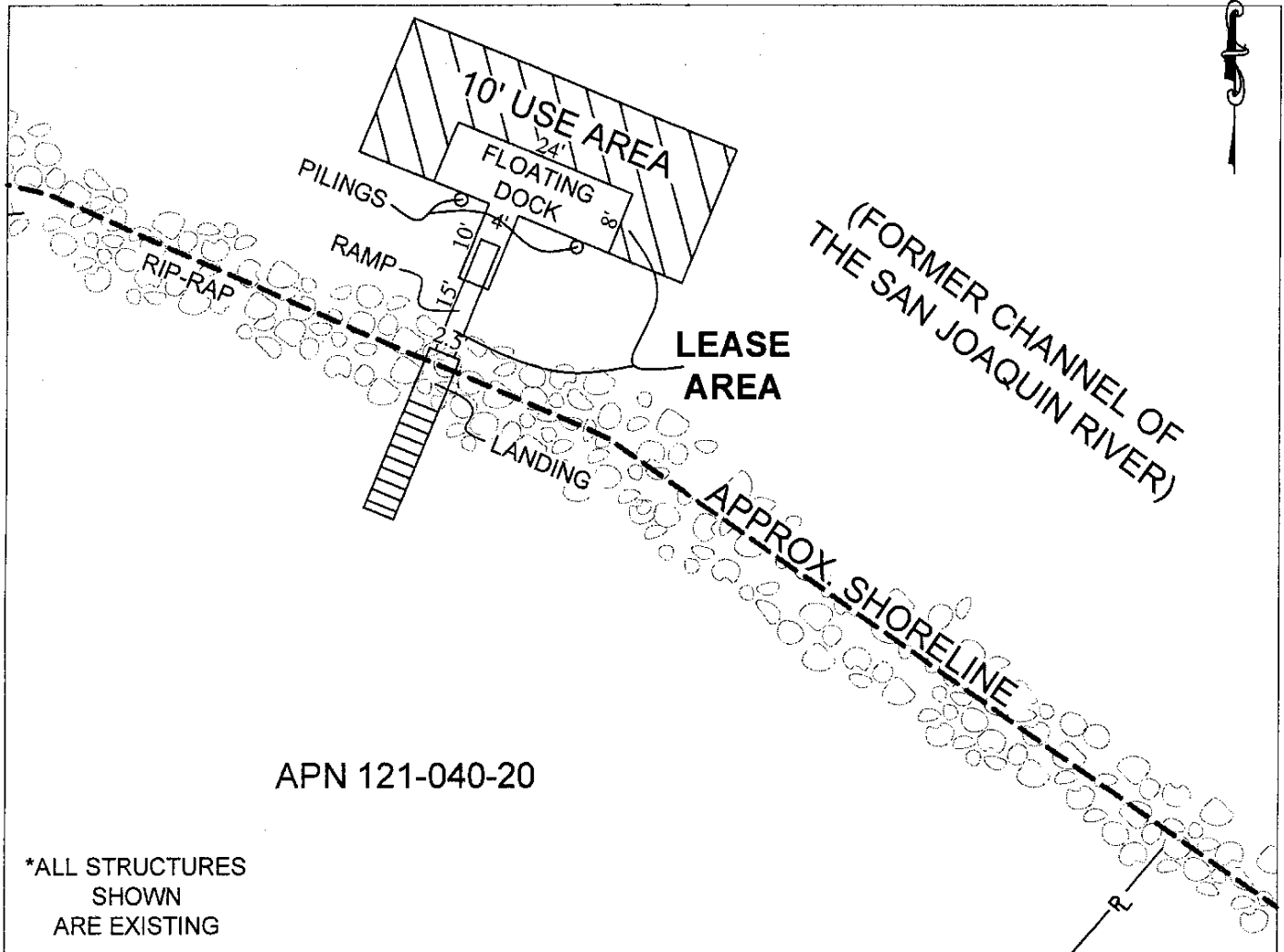
LAND DESCRIPTION PLAT
W 26574 - VIVIAN CERNA PRINCE TRUST
SAN JOAQUIN COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE



13 Atherton Island, Stockton - Atherton Cove

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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

W 26574
 VIVIAN CERNA PRINCE TRUST
 APN 121-040-20
 GENERAL LEASE -
 RECREATIONAL &
 PROTECTIVE STRUCTURE USE
 SAN JOAQUIN COUNTY



MJF 6/27/12