

CALENDAR ITEM

C53

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06/21/13

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PRC 5844.1

V. Caldwell

GENERAL LEASE – RECREATIONAL AND PROTECTIVE STRUCTURE USE

APPLICANTS:

Gerald E. Shipman and Patty Shipman, Trustees of the Gerald and Patty Shipman Family Trust, dated July 17, 2002

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the historic bed of the San Joaquin River, adjacent to 3444 Country Club Boulevard, in Atherton Cove, San Joaquin County

AUTHORIZED USE:

Continued use and maintenance of an existing covered single-berth floating boat dock, pilings, and gangway previously authorized by the Commission; and use and maintenance of a portion of an existing deck, boat lift, jet-ski float, electric and water utility outlet, and bank protection not previously authorized by the Commission.

LEASE TERM:

10 years, beginning June 21, 2013.

CONSIDERATION:

Covered Single-Berth Floating Boat Dock, Pilings, Gangway, Boat lift, Jet-Ski Float, Electric and Water Utility Outlet: No monetary consideration pursuant to Public Resources Code section 6503.5.

Portion of Deck: \$1,513 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:

Insurance:

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

CALENDAR ITEM NO. **C53** (CONT'D)

Other:

The proposed lease contains provisions requiring that:

1. The existing deck with railing cannot be expanded, and if repairs to any portion of the existing deck cost more than 50 percent of the base value of the deck with railing, the deck must be removed from the lease premises.
2. No permanent deck-related improvements are to be constructed or placed on the open dock area, including, but not limited to, wet bars, barbecues, grills, hot tubs, refrigerators, sinks, or sun shades.
3. No permanent enclosure is to be constructed or permitted on the open dock area.
4. Any use of the improvements that could be construed as residential use (e.g. enclosed and covered patio, bathroom, sunroom, office, studio, or apartment) is prohibited.

OTHER PERTINENT INFORMATION:

1. Applicants own the upland adjoining the lease premises.
2. On December 12, 1990, the Commission authorized a Recreational Pier Permit to Patrick Craig and Kathryn Craig for a floating boat dock and boat shed. That permit expired on December 11, 2000. The deck structure, boat lift, and jet-ski float were installed sometime in the late 1990's during the term of the above lease without authorization by the Commission.
3. On January 6, 1998, the upland property was transferred to Larry J. Celle. Staff made several attempts to bring Mr. Celle under lease, but was unsuccessful. Subsequently, on November 30, 2000, the property transferred to Gerald E. Shipman and Patty J. Shipman and in 2002 transferred to their trust. The Applicants are now applying for a General Lease - Recreational and Protective Structure Use.
4. On October 8, 2011, Chapter 585, Statutes of 2011 became law. The law became effective January 1, 2012. This law repeals section 6503.5 of the 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

CALENDAR ITEM NO. **C53** (CONT'D)

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.

Because the application was submitted to the Commission prior to March 31, 2011, the covered single-berth floating boat dock facility meets the statutory requirements for an exception to changes to section 6503.5 of the Public Resources Code for the term of this lease.

The existing deck is used for recreational purposes. However, it does not qualify for rent-free status because it is a facility not constructed for the docking and mooring of boats. Annual rent for the deck has been calculated based on the square footage of the portion of deck located on the Lease Premises.

- 5. On May 11, 2006, the U.S. Army Corps of Engineers issued a letter of permission to the Applicants allowing them to retain the unauthorized facilities under the condition that they would mitigate for the loss of 0.21 acres of waters of the United States by purchasing 0.21 acres of shallow water habitat credit at the Kimball Island Mitigation Bank. Staff has received evidence of this purchase and recommends bringing the placement of the existing facilities under lease.
- 6. The bank protection will mutually benefit both the public and the Applicants. The bank of the historic bed of the San Joaquin River will have additional protection from wave action provided at no cost to the public.
- 7. The 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.

CALENDAR ITEM NO. **C53** (CONT'D)

8. 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.

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 Gerald E. Shipman and Patty Shipman, Trustees of the Gerald and Patty Shipman Family Trust, dated July 17, 2002, beginning June 21, 2013, for a term of 10 years, for the continued use and maintenance of an existing covered single-berth floating boat dock, pilings, and gangway previously authorized by the Commission; and use and maintenance of an existing deck, boat lift, jet-ski float, electric and water utility outlet, and bank protection not previously authorized by the Commission 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 covered single-berth floating boat dock, pilings, gangway, boat lift, jet-ski float, electric and water utility outlet: no monetary consideration pursuant to Public Resources Code section 6503.5; consideration for a portion of deck: annual rent in the amount of \$1,513, 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

CALENDAR ITEM NO. **C53** (CONT'D)

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 an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 5844.1

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 444, patented December 19, 1867, County of San Joaquin County, State of California and more particularly described as follows:

All those lands underlying an existing covered boat slip, boat lift, gangway and deck lying adjacent to and southwesterly of those lands as described in "Schedule C" of that Grant Deed, recorded November 30, 2000 in Document Number 00140976 in Official Records of said County.

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 5/23/13 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



APN
121-030-41

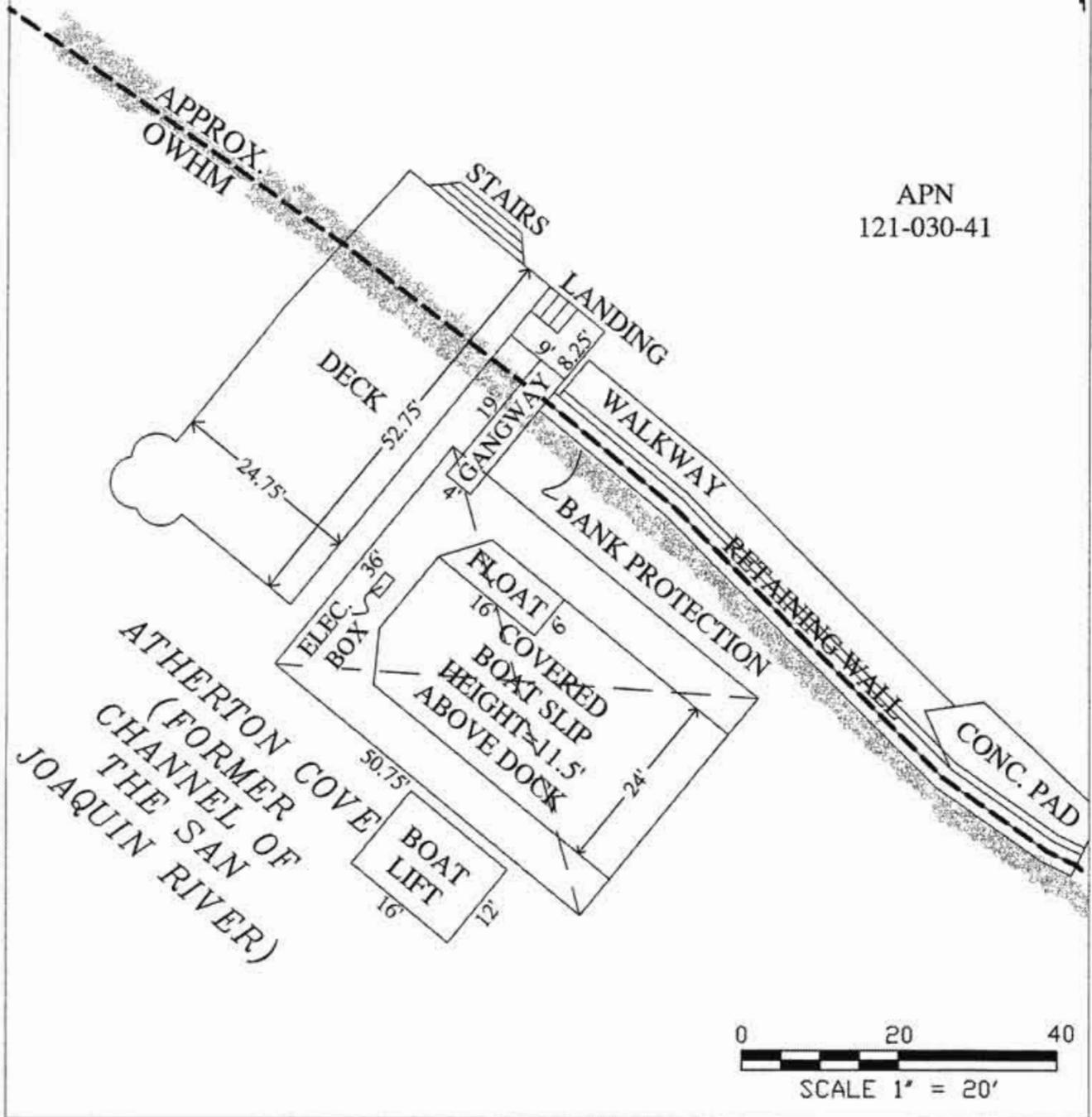


EXHIBIT A

Page 2 of 2

MJF 5/23/13

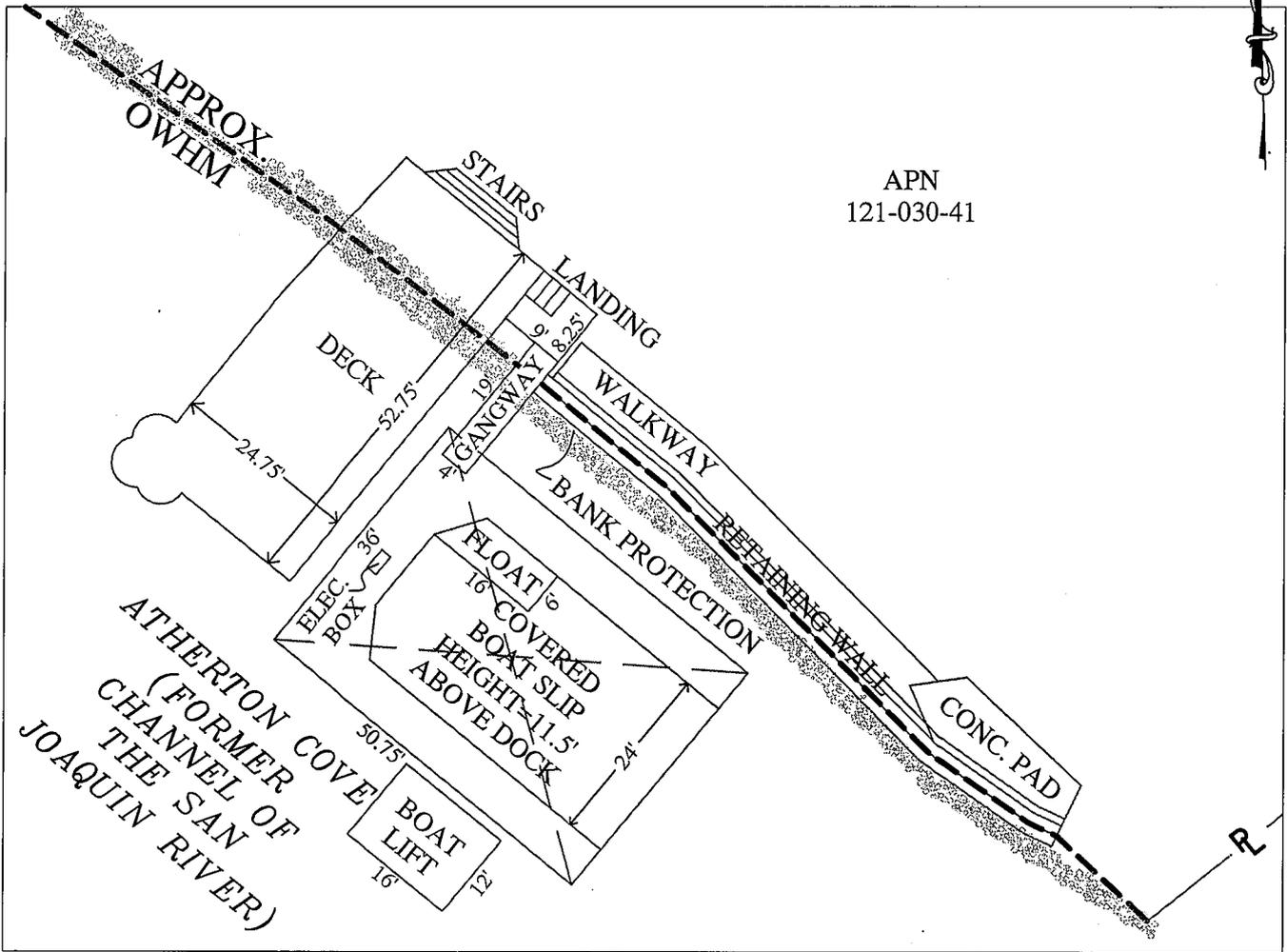
LAND DESCRIPTION PLAT
PRC 5844.1, SHIPMAN
SAN JOAQUIN COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE



3444 Country Club Blvd. , Atherton Cove - Stockton

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 5844.1
 SHIPMAN
 APN 121-030-41
 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.