

Staff Report 24

General Lease – Public Agency Use

APPLICANT:

East Bay Municipal Utility District

PROPOSED ACTION:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Mokelumne River, adjacent to 800 East Woodbridge Road, Woodbridge, San Joaquin County.

AUTHORIZED USE:

Continued use and maintenance of two existing conduits attached to an existing pedestrian bridge, one for electrical power and one for telephone service, used for data collection from the Woodbridge Irrigation Dam Gauging Station.

TERM:

20 years, beginning August 1, 2020.

CONSIDERATION:

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 interests.

SPECIFIC LEASE PROVISIONS:

- Before July 31, 2021, Lessee or its licensed contractor shall perform an external inspection of the Lease Improvements and at least once per year thereafter. Furthermore, Lessee or its licensed contractor shall perform a condition assessment of the Lease improvements before July 31, 2021, and at least once every 5 years thereafter. Additionally, Lessee or its licensed contractor shall perform an external inspection and condition assessment of the Lease improvements when warranted by extraordinary circumstances such as an accident, a major flood, or a significant seismic event.

- Lessee agrees and acknowledges that the hazards associated with climate change may require additional maintenance or protection strategies regarding the improvements in the lease premises.
- Liability insurance in an amount no less than \$1,000,000 per occurrence.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

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

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On September 27, 1990, the Commission authorized issuance of a 30-year General Permit – Public Agency Use to the East Bay Municipal Utility District (District), ([Item C19, September 27, 1990](#)). The lease expired on July 31, 2020. The District is applying for a General Lease – Public Agency Use for the continued use and maintenance of two existing conduits attached to an existing pedestrian bridge over the Mokelumne River in Woodbridge, San Joaquin County. The conduits are for electrical power and telephone service, used for data collection purposes. The Commission authorized the pedestrian bridge under Lease 5028, issued to the Woodbridge Golf and Country Club, a California corporation ([Item 34, June 23, 2020](#)).

The proposed lease area will contain the same improvements as the prior lease. The subject facilities (and pedestrian bridge) cross State-owned sovereign land. The improvements do not obstruct access to Public Trust resources in the Mokelumne River. There is sufficient clearance for nonmotorized boating, kayaking, and rafting along the river. The improvements are regularly inspected and maintained by the District for long-term use and operations. The District partners with the Woodbridge Irrigation Dam Gauging Station and the U.S. Fish and Wildlife Service to collect and monitor data on water conditions.

The subject improvements provide an ancillary public benefit that supports habitat preservation and environmental sustainability for local wildlife and the broader ecosystem. The conduits house power and communication cables to transmit information regarding the state of the river and water temperature data. This allows continuous monitoring of river flows as part of the Applicant's 1997 Lower Mokelumne River Joint Settlement Agreement with the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife, to maintain a reliable, high-quality water supply, and to ensure the protection of the ecosystem on the lower Mokelumne River downstream of Camanche Dam. The streamflow data collected from this gauging

station is published on the U.S. Geological Survey National Water Information System web interface for use by the public.

The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The proposed lease is limited to a 20-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. The proposed lease requires the lessee to indemnify the State for any liability incurred as a result of the lessee's activities thereon. On 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.

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 located on the Mokelumne 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 Francisco¹

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: ¹ Projections are with respect to a 1991 to 2009 baseline.

Rising sea levels can lead to more frequent flood inundation in low-lying areas and larger tidal events and could increase the river's inundation levels within the lease area over the term of the lease. 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 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. For example, the potential for more frequent and stronger storm events may expose the lease area structures to higher flood risks and cause facilities to be damaged or dislodged, presenting hazards to public safety as well as dangers for navigation within the channel. Conversely, climate-change induced droughts could decrease river levels and flow for extended periods of time, exposing previously submerged structures to the elements and potentially leading to increased wear-and-tear on the support structure. Lowered water levels could also reduce navigability of the channel, thereby increasing hazards and impacting the function and utility of the lease area structures. 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 combination of these projected conditions could increase the likelihood of damage to the footings of the pedestrian bridge to which the conduits are attached during the term of the lease. However, the two fixed conduits are attached to the deck of the bridge outside of the railing and are unlikely to be affected by these conditions. Pursuant to the proposed lease, the District acknowledges that the lease premises are located in an area that may be subject to effects of climate change, including sea-level rise.

CONCLUSION:

For all the reasons above, staff believes the issuance of this lease will not substantially impair the public rights to navigation and fishing or substantially interfere with Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; 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 District, as the prior lessee, may be required to remove the two existing conduits attached to the pedestrian bridge and restore the premises to their original condition. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.

2. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
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:

- 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).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the issuance of the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Public Agency Use to the Applicant beginning August 1, 2020, for a term of 20 years, for the continued use and maintenance of two existing conduits attached to an existing pedestrian bridge, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration: 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 interests; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT "A"

LAND DESCRIPTION

LEASE 7452

A strip of tide and submerged land, being 15 feet in width, lying in the State-owned bed of the Mokelumne River, San Joaquin County, State of California, said strip lying 7.5 feet on each side of the following described centerline:

COMMENCING at the northwest corner of the northeast quarter of Section 34, T4N, R6E, MDM; thence along the west line of said quarter section S 01° 34' E, 548.26 feet; thence S 82° 10' 41" E, 1092.64 feet to the TRUE POINT OF BEGINNING; thence N 22° 41' 40" E, 170 feet to the end of the herein-described centerline.

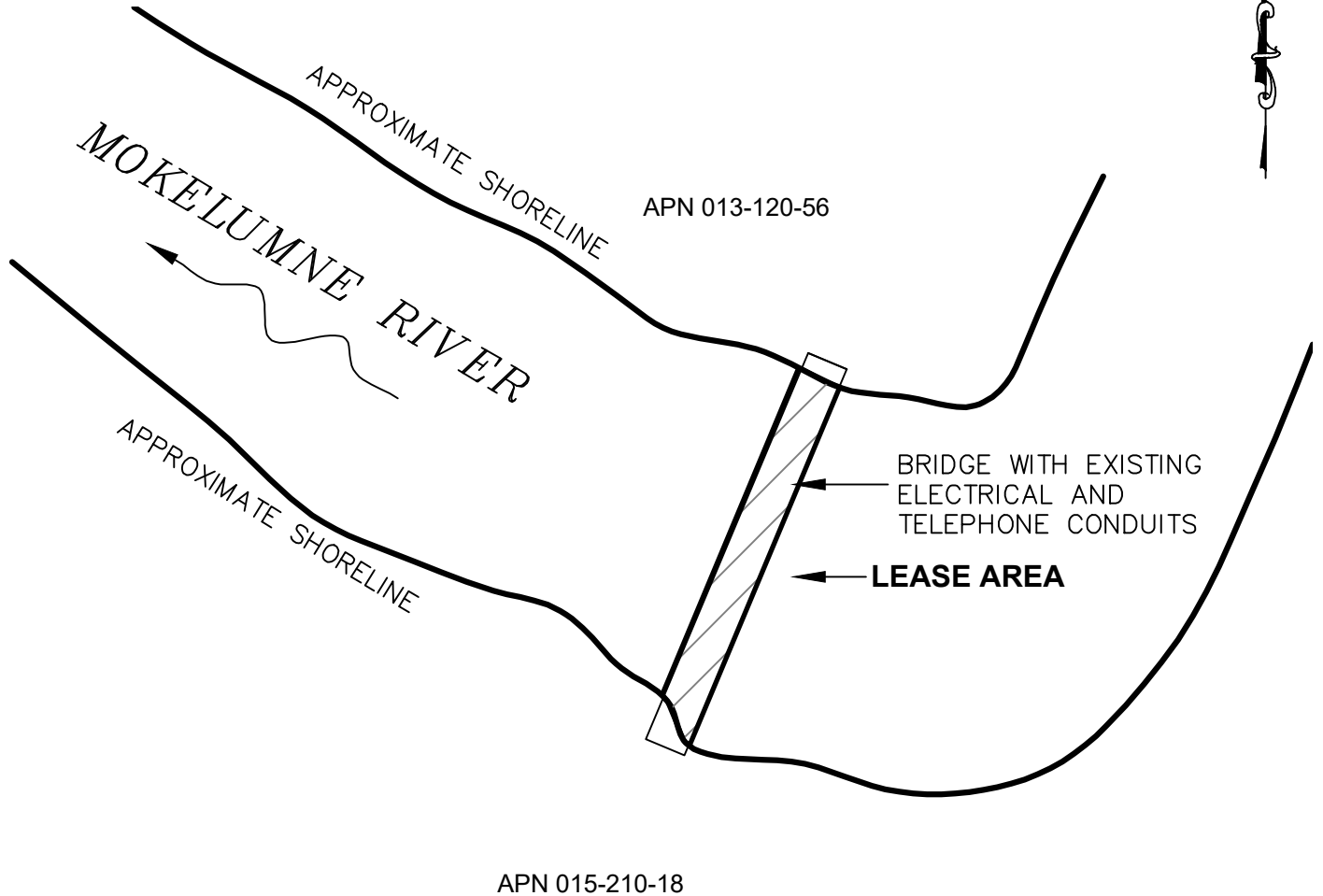
EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the Mokelumne River.

END OF DESCRIPTION

PREPARED JULY 20, 1990 BY LLB.

NO SCALE

SITE



800 EAST WOODBRIDGE ROAD, WOODBRIDGE

NO SCALE

LOCATION

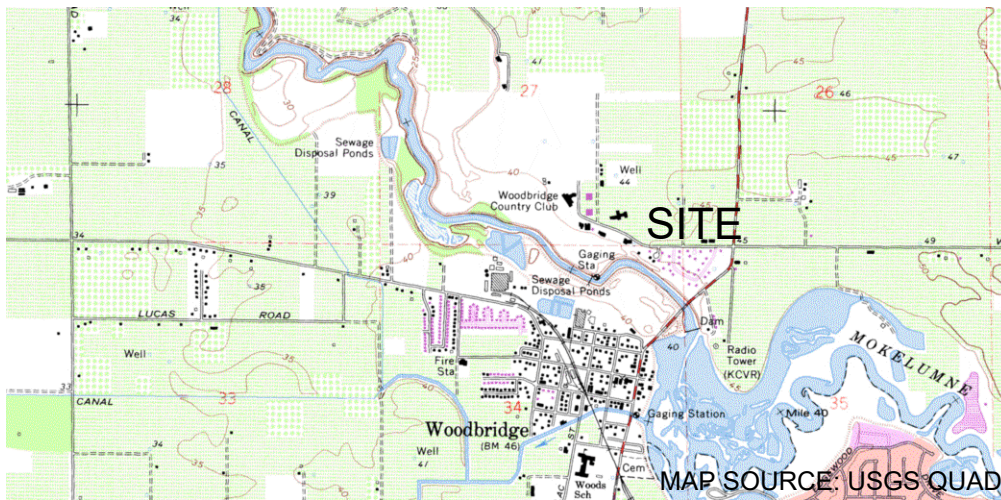


EXHIBIT B

LEASE 7452
 EAST BAY MUNICIPAL UTILITY DISTRICT
 GENERAL LEASE - PUBLIC AGENCY USE
 SAN JOAQUIN COUNTY



DJF 7/10/2020

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.