

Staff Report 11

APPLICANT:

Raymond L. Drew, Jr., Trustee of the Raymond L. Drew, Jr. Declaration of Trust dated August 18, 2005

PROPOSED ACTION:

Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Calaveras River, adjacent to 4339 Yacht Harbor Drive, near Stockton, San Joaquin County.

AUTHORIZED USE:

Continued use and maintenance of an existing boat dock and four pilings previously authorized by the Commission and an existing utility conduit and water line not previously authorized by the Commission.

TERM:

10 years, beginning August 25, 2021.

CONSIDERATION:

\$140 per year, with an annual Consumer Price Index adjustment; and \$115 to compensate for the unauthorized occupation of state sovereign land for the period beginning October 29, 2020 through August 24, 2021.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee agrees and acknowledges that hazards associated with sea-level rise 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, 6501.1, 6503 and 6503.5;
California Code of Regulations, title 2, section 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On September 1, 2011, the Commission authorized a General Lease – Recreational and Protective Structure Use for an existing boat dock, access ramp, walkway, four pilings, and riprap to Raymond L. Drew, Jr., Trustee of the Raymond L. Drew, Jr. Declaration of Trust dated August 18, 2005 ([Item C32, September 1, 2011](#)). The lease expired on October 28, 2020. This lease was rent-free pursuant to former Public Resources Code section 6503.5. The legislature amended section 6503.5 to generally require rent for leases of private recreational docks occupying state lands after January 2012.

The Applicant owns the upland parcel adjoining the lease premises and is now applying for a General Lease – Recreational Use for the continued use and maintenance of the existing boat dock and four pilings previously authorized by the Commission and an existing utility conduit and water line not previously authorized by the Commission. The subject facilities are privately owned and maintained.

Since the former lease issued in 2011, staff has investigated the boundary between state-owned lands and private lands near the Applicant's upland parcel. What is today known as the Calaveras River channel was formerly the main channel of the San Joaquin River. This change was caused by dredging and intentional diversion of the River. An 1886 Channel Line is the best evidence known to staff for a historic natural location of the river bank. Using this evidence, staff determined that portions of the access ramp, walkway, and riprap previously under lease are not located within the Commission's leasing jurisdiction. The proposed lease and lease area are based on the most current information.

Staff recommends issuance of a new lease beginning August 25, 2021. Staff further recommends the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$115 for the period beginning October 29, 2020, the day after the Applicant's lease expired, through August 24, 2021, the day before the proposed lease begins.

The subject facilities are used for the docking and 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 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 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 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 located on the Calaveras River, which is a tidally influenced site vulnerable to flooding at current sea levels.

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 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 Calaveras River's inundation levels within the lease area. 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. 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 and affect access to structures within the lease premises during the term of the lease. The boat dock is adaptable to variable water levels, allowing it to rise and fall with storms and droughts and increasing its resiliency to some climate change impacts, but may require more frequent maintenance to ensure continued function during and after storm seasons and to avoid dislodgement. The fixed structures like the four pilings may need frequent maintenance and reinforcement to withstand higher levels of flood exposure.

The vegetation on the bank protection (not under lease) provides stability and reduces the amount of erosion and scour pressure it may experience during future events because of the underground root system created from the vegetation and trees on the bank but remains at risk of accelerated deterioration from currents and floods.

Regular maintenance, as required by the terms of the lease, will reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant 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 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 an 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. An applicant has no right to a new lease or to renewal of any previous lease. Denial of the application may result in a determination that the proposed activity on or use of state land is unauthorized and may result in legal action.
2. This action is consistent with the "Meeting Evolving Public Trust Needs" and "Leading Climate Activism" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
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 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; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of compensation from the Applicant in the amount of \$115 for the unauthorized occupation of State land for the period beginning October 29, 2020 through August 24, 2021.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning August 25, 2021, for a term of 10 years, for the continued use and maintenance of an existing boat dock and four pilings previously authorized by the Commission and an existing utility conduit and water line 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; annual rent in the amount of \$140, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 5934

LAND DESCRIPTION

A parcel of tide and submerged land in the bed of the Calaveras River (formerly the bed of the San Joaquin River), County of San Joaquin, State of California, lying adjacent to Lot 33, as shown on "Tract No. 308 Subdivisions of San Joaquin County Riviera Cliffs" dated May 1952 and filed in Book 13, Page 124 of Maps and Plats of San Joaquin County Records and more particularly described as follows:

Said parcel being bounded on the southwest by the northwesterly prolongation of the southwest line of said Lot 30; bounded on the northeast by the northwesterly prolongation of the northeast line of said lot; bounded on the southeast by the Ordinary High Water Mark of said river; bounded on the northwest by a line running parallel with and 50 feet perpendicular to said Ordinary High Water Mark.

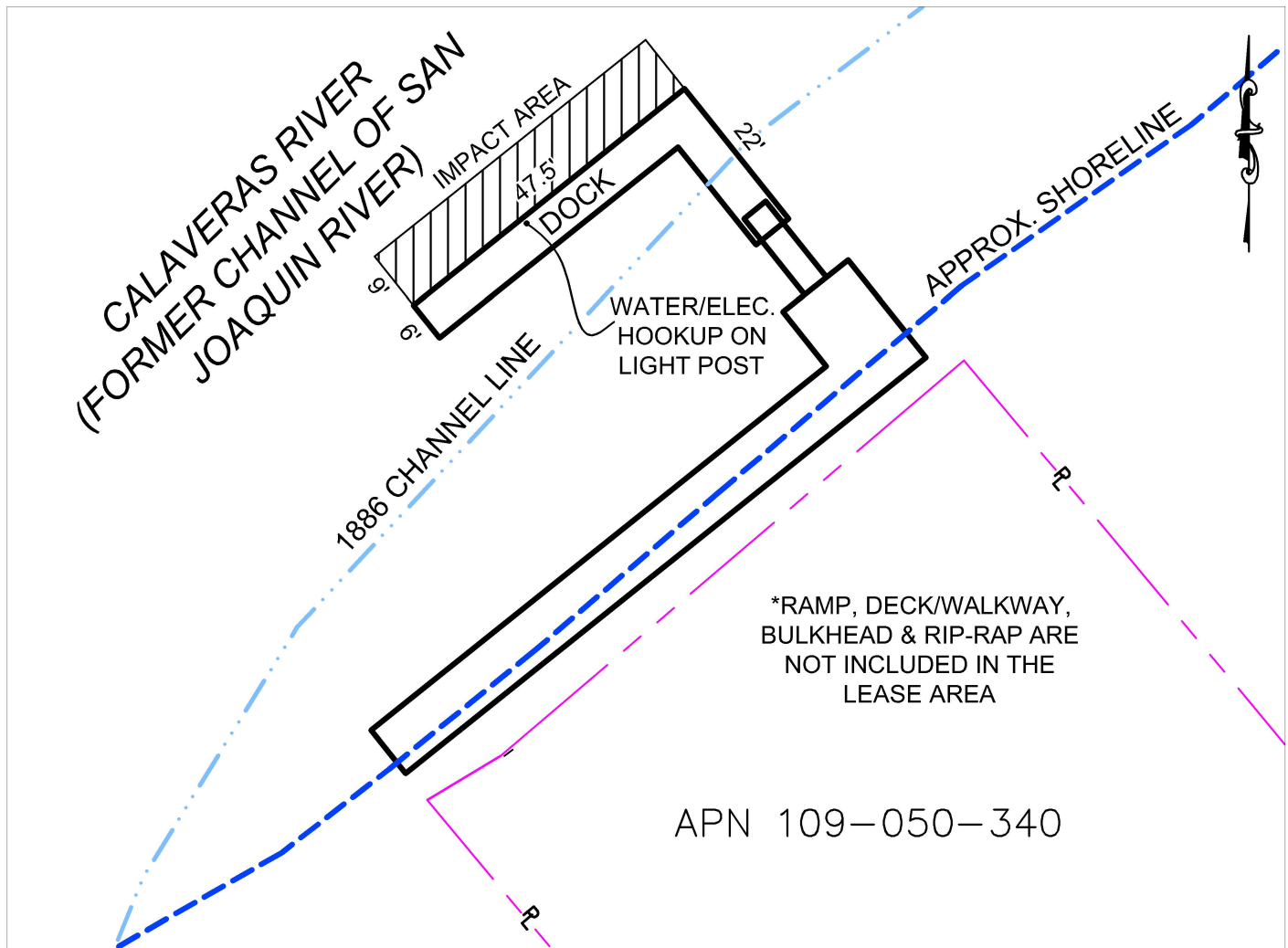
END OF DESCRIPTION

PREPARED 6/23/2021 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



NO SCALE

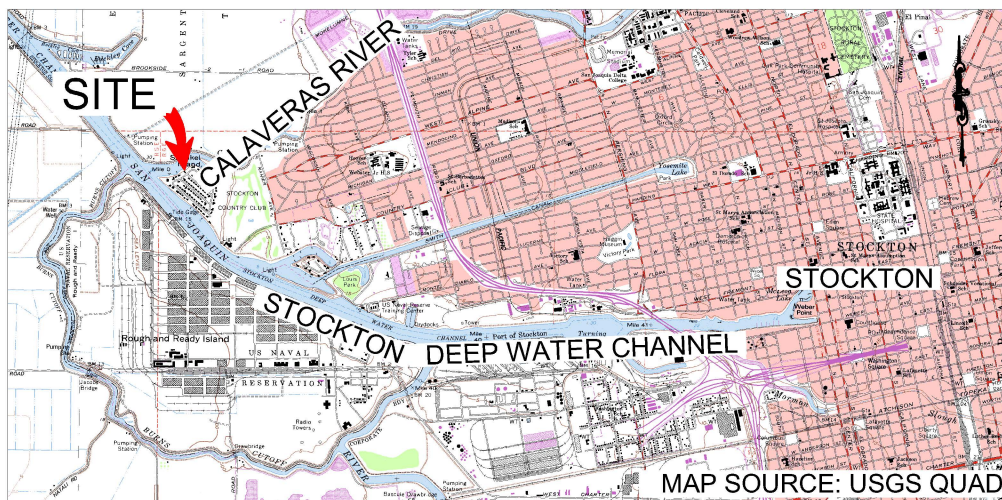
SITE



4339 YACHT HARBOR DRIVE - CALAVERAS RIVER, NEAR STOCKTON

NO SCALE

LOCATION



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

LEASE 5934
RAYMOND L. DREW, JR. TRUST
APN 109-050-340
GENERAL LEASE -
RECREATIONAL USE
SAN JOAQUIN COUNTY



MJF 7/08/2021