

Staff Report 12

APPLICANT:

David H. Johnson and Jeane P. Johnson, Trustees of the David H. Johnson and Jeane P. Johnson 2001 Family Trust, dated September 18, 2001; and Timothy J. Maimone and Jessica L. Maimone, Trustees of the 2016 Timothy J. Maimone and Jessica L. Maimone Trust

PROPOSED ACTION:

Issuance of a General Lease – Recreational and Protective Structure Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Steamboat Slough, adjacent to 13990 Grand Island Road, near Walnut Grove, Sacramento County.

AUTHORIZED USE:

Continued use and maintenance of an existing boat dock, gangway, walkway, four pilings, and bank protection.

TERM:

10 years, beginning August 25, 2021.

CONSIDERATION:

\$143 per year, with an annual Consumer Price Index adjustment; and \$302 to compensate for the unauthorized occupation of state sovereign land for the period beginning July 17, 2019 through August 24, 2021.

Boat dock, gangway, walkway, and four pilings: \$143 per year, with an annual Consumer Price Index adjustment.

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 interests.

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, 6321, 6321.2, 6501.1, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On October 22, 2009, the Commission authorized a General Lease - Recreational and Protective Structure Use for an existing boat dock, gangway, landing, walkway, eight pilings, and bank protection to David H. Johnson and Jeane P. Johnson, Trustees of the David H. and Jeane P. Johnson 2001 Family Trust, dated September 18, 2001, and James S. Johnson ([Item C24, October 22, 2009](#)). On January 29, 2015, James S. Johnson died. His interest in the upland property transferred to his daughter, Jessica Maimone. On July 14, 2016, she transferred her interest to Timothy J. Maimone and Jessica L. Maimone, Trustees of the 2016 Timothy J. Maimone and Jessica L. Maimone Trust. Also in 2016, the deteriorating wooden walkway, landing, and four pilings were removed and replaced with a metal walkway. The lease expired on July 16, 2019.

The Applicant is now applying for a General Lease – Recreational and Protective Structure Use for the continued use and maintenance of the existing facilities that they privately own and maintain. The Applicant also owns the upland parcel adjoining the lease premises. 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 bank protection has existed at this location for several years. The bank protection will maintain and improve the integrity of the slough, which helps protect the Public Trust resources for public recreation and navigation.

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, except for the bank protection, which provides a public benefit.

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 \$302 for the period beginning July 17, 2019, the day after the Applicant's lease expired, through August 24, 2021, the day before the proposed lease begins.

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 Sacramento 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 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.

Rising sea levels can lead to more frequent flood inundation in low lying areas and larger tidal events and could increase the Sacramento 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. 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. 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, prolonged drought conditions could lower water levels, exposing previously submerged structures to the elements and potentially leading to increased wear and tear on the pilings, dock, gangway, landing, and walkway. Lowered water levels could also reduce navigability of the channel, thereby increasing hazards and impacting the function and utility of the lease area structures.

The floating dock and gangway are adaptable to variable water levels, allowing them to rise and fall with storms and droughts, and increasing their resiliency to some climate change impacts, but may require more frequent maintenance to ensure continued functionality during and after storm seasons and to avoid dislodgement. The fixed pilings may need reinforcement to withstand higher levels of flood exposure.

Pursuant to the proposed lease, the applicant acknowledges that the lease premises and adjacent upland (not within the lease area) 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 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 Applicant, as the owner of the improvements on state land, may be required to remove the boat dock, gangway, walkway, four pilings, and bank protection 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 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 \$302 for unauthorized occupation of State land for the period beginning July 17, 2019 through August 24, 2021.
2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning August 25, 2021, for a term of 10 years, for the use and maintenance of an existing boat dock, gangway, walkway, four pilings, and bank protection, 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 boat dock, gangway, walkway, and four pilings: \$143 per year, with an annual Consumer Price Index adjustment; 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 an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 5696

LAND DESCRIPTION

A parcel of tide and submerged land in the bed of Steamboat Slough adjacent to Swamp and Overflowed Lands Survey 494 patented February 28th, 1871, Sacramento County, State of California, and being more particularly described as follows:

All those lands underlying an existing dock, gangway, lying adjacent to those lands as described in that Grant Deed, recorded July 14, 2016 in Book 20160714, Page 0914 in Official Records of said County.

TOGETHER WITH any applicable impact area(s).

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 said Slough.

Accompanying plat is hereby made a part of the description.

END OF DESCRIPTION

Prepared 6/30/2021 by the California State Lands Commission Boundary Unit.



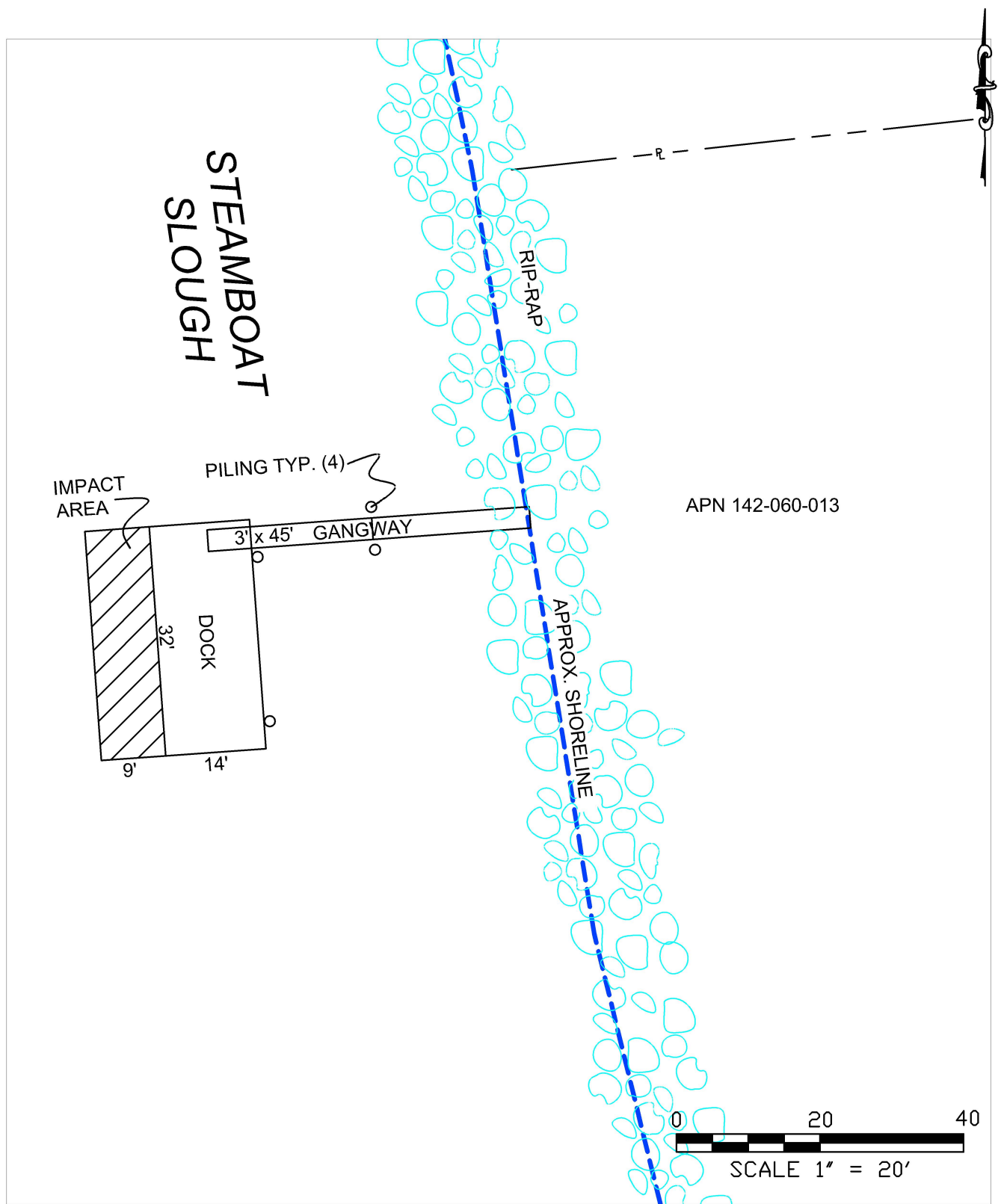


EXHIBIT A

PAGE 2 OF 2

MJF 6/30/2021

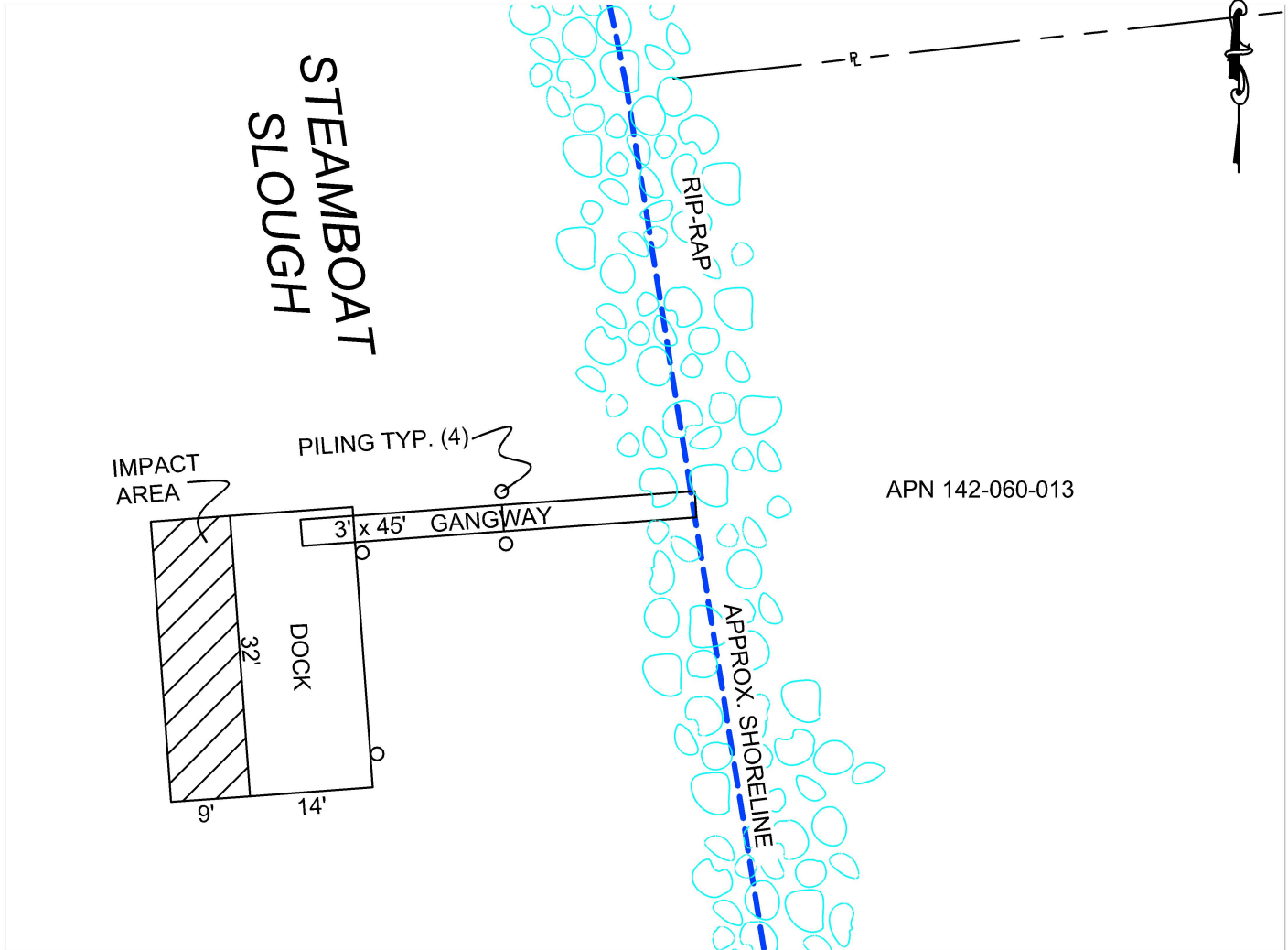
LAND DESCRIPTION PLAT
LEASE 5696,
JOHNSON FAMILY TRUST, ET. AL
SACRAMENTO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

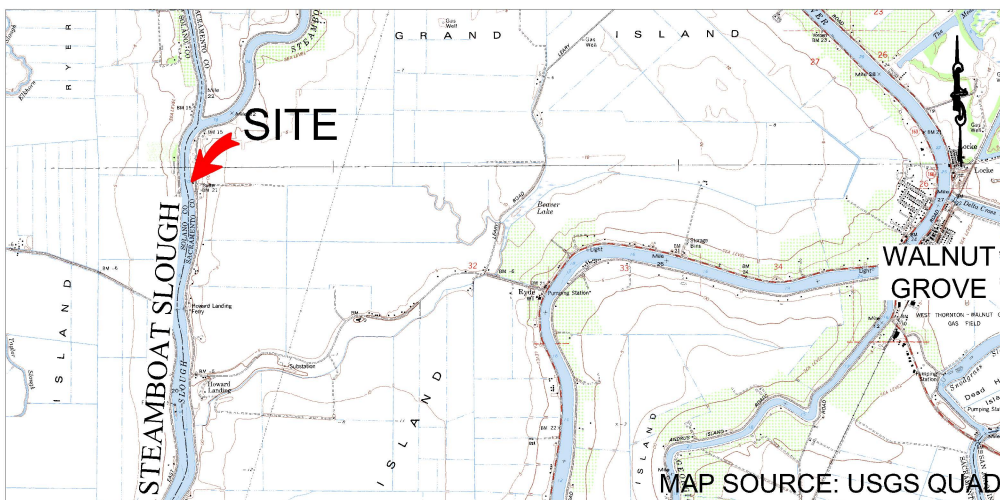
SITE



13990 GRAND ISLAND ROAD, STEAMBOAT SLOUGH

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 5696
JOHNSON FAMILY TRUST, ET. AL
APN 142-0160-013
GENERAL LEASE -
RECREATIONAL & PROTECTIVE
STRUCTURE USE
SACRAMENTO COUNTY



MJF 6/30/2021