

Staff Report 19

APPLICANT:

Sacramento Municipal Utility District

PROPOSED ACTION:

Issuance of a General Lease – Right-of-Way Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the American River, adjacent to Howe Avenue, Sacramento, Sacramento County.

AUTHORIZED USE:

Continued use and maintenance of two 6-inch-diameter 12 kilovolt (kV) power-line conduits located within the Howe Avenue Bridge.

TERM:

25 years, beginning August 25, 2021.

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:

- Liability insurance in an amount no less than \$1,000,000 per occurrence; Lessee may satisfy all or part of the insurance requirements through maintenance of a staff-approved self-insurance program as outlined in the lease.

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 December 19, 1968, the Commission authorized a 49-year Public Agency Permit (Right-of-Way), to Sacramento Municipal Utility District for the installation of power lines encased in conduit located within the Howe Avenue Bridge ([Item C17, December 19, 1968](#)). That permit expired March 31, 2017. The Applicant has applied for a new lease. The lease is subordinate to rights, terms, and conditions of the lease for the Howe Avenue Bridge.

On February 23, 2021, the Commission authorized a General Lease – Public Agency Use, Lease 3927, to the City of Sacramento for the continued use and maintenance of an existing bridge, known as the Howe Avenue Bridge ([Item C18, February 23, 2021](#)). The bridge was constructed in 1969. The Applicant has a right to use the upland adjoining the lease premises.

The California Legislature has identified, through Public Resources Code section 6221, that public use made of sovereign land by any instrumentality, district, agency, or political subdivision of the state shall be permitted consistent with other laws. In the present case, the Applicant is a publicly owned utility district and the two 6-inch-diameter 12 kilovolt (kV) power-line conduits cross sovereign land overlying the American River providing electric service to the surrounding region and bridge. As such, Commission staff believes this use of public land, by a public agency, for a public benefit is consistent with the common law public trust doctrine.

The lines are located within the existing Howe Avenue Bridge and are not visible from the outside of the bridge, thus they do not interfere with Public Trust needs and values at this location, at this time, and for the foreseeable term of the proposed lease. The lease does not alienate the State's sovereign interest or permanently impact public rights.

The lease term is limited to a 25-year term and does not grant the lessee exclusive rights to the lease premises. Upon termination of the lease, the lessee may be required to remove any improvements and restore the lease premises to their original condition. Additionally, 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.

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 within the Howe Avenue Bridge over the American River, which is 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.

This effect could increase the American River's inundation levels in 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 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. However, because the

power lines are located within the bridge at a high elevation, these projected conditions are unlikely to result in damage to the facilities within the lease area.

CONCLUSION:

For the reasons stated above, staff believes the approval of the proposed lease will not substantially impair the public rights to navigation, fishing, or other 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. 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" Strategic Focus Area 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, fishing, and commerce; or substantially interfere with the 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 – Right-of-Way Use to the Applicant beginning August 25, 2021, for a term of 25 years, for the continued use and maintenance of two 6-inch-diameter 12 kilovolt (kV) power-line conduits located within the Howe Avenue 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 interest; liability insurance in an amount no less than \$1,000,000 per occurrence; and Applicant may satisfy all or part of the insurance requirements through maintenance of a staff-approved self-insurance program as outlined in the lease.

EXHIBIT A

LEASE 4113

LAND DESCRIPTION

A strip of submerged land, 5 feet wide, situated in the bed of the American River, located within Howe Avenue bridge site, lying adjacent on the left bank to Section 10, Township 8 North, Range 5 East, M.D.B. & M. approved on April 22, 1865, and on the right bank to Lot 37 of the Rancho Del Paso surveyed on March 1857, County of Sacramento, State of California and lying 2.50 feet on each side of the following described centerline:

BEGINNING at a point on the north line of that certain Record of Survey titled "Portion of Sections 10, 11, 14 and 15, T. 8 N., R. 5 E., M.D.B.&M.", recorded in the office of the Recorder of Sacramento County on October 14, 1959 in Book 15 of Surveys, Map No. 2, from which point the northwest corner of said Record of Survey bears South 70° 31' 20" West 28.68 feet along the northerly line of said Survey; thence from said point of beginning North 0° 23' 45" East 900 feet more or less to a point on the right or northerly bank of the American River and the TERMINUS of the described centerline.

EXCEPTING THEREFROM any portion lying landward of the low water mark of the right and left banks of said river.

END OF DESCRIPTION

Based on original description prepared by State Lands Commission Boundary Division on November 6, 1968 as found in PRC 4113.9 file, W.O. N-0295, Resolution 5945.

Revised 04/13/2021 by the California State Lands Commission Boundary Unit.



NO SCALE

SITE

APN
295-0040-017

APPROX.
SHORELINE

LEASE AREA
(EXISTING
POWER LINES)

RIVER

HOWE
AVE.

AMERICAN

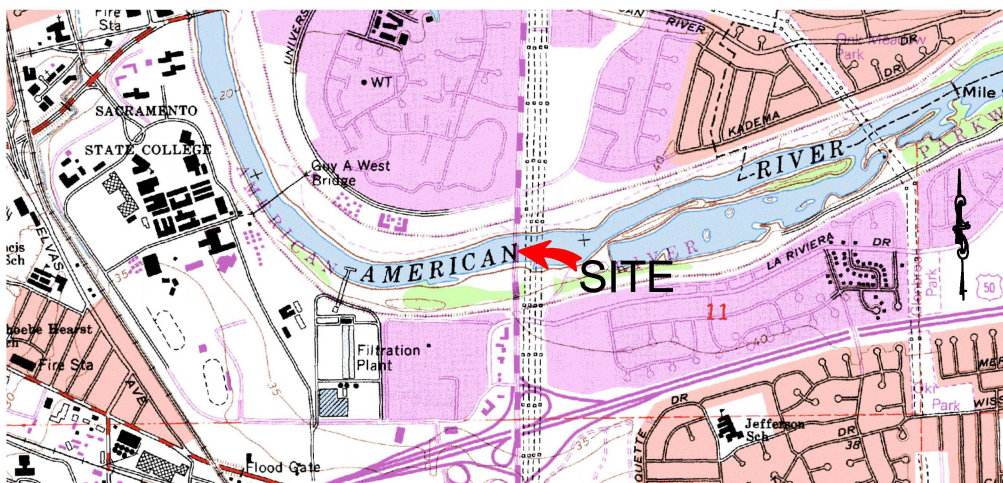
APPROX.
SHORELINE

APN
295-0040-016

HOWE AVENUE BRIDGE ACROSS AMERICAN RIVER

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

LEASE 4113
SACRAMENTO MUNICIPAL
UTILITY DISTRICT
APNs 295-0040-016, -017
GENERAL LEASE -
PUBLIC AGENCY USE
SACRAMENTO COUNTY



TS 04/13/2021