

Staff Report 27

APPLICANT:

City of San Jose

PROPOSED ACTION:

Issuance of a General Lease – Public Agency Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the historic bed of the Guadalupe River, near Alviso, San Jose, Santa Clara County.

AUTHORIZED USE:

Use and maintenance of a public street and a portion of a bridge.

TERM:

25 years, beginning March 1, 2019.

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:

- Following any major storm or flooding event that affects the Lease Premises and that occurs outside the normal interval of inspections conducted by the California Department of Transportation (Caltrans), Lessee shall conduct a visual inspection of the bridge and improvements within the Lease Premises as soon as site conditions allow and shall provide Lessor with a written narrative of the report within 30 days of the inspection. Should any damage be identified or suspected, Lessee shall also conduct an in-water inspection, and in consultation with Caltrans, shall prepare a remedial action plan for Lessor's review as soon as practical following the inspection.

- Lessee agrees and acknowledges 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, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On August 26, 1970, the Commission authorized a 49-year Public Agency Permit to Santa Clara Flood Control and Water District ([Item 10, August 26, 1970](#)) for maintenance of a public thoroughfare. The permit expired on February 28, 2019. The Applicant is now applying for a General Lease – Public Agency Use, for the use and maintenance of an existing public street and a portion of a bridge.

The subject public street and portions of a bridge are located in the historic bed of the Guadalupe River at Gold Street in the community of Alviso in San Jose, Santa Clara County, approximately 0.4 mile north of State Route 237. The existing infrastructure is now owned and maintained by the City of San Jose (City) and provides both a pedestrian and vehicular crossing. The bridge was originally built in 1964. In 1989, the bridge superstructure was raised 7 feet to improve flood control. Gold Street is a public roadway and provides means for an alternative route to access State Route 237 and connection to central Santa Clara County's roadways.

Caltrans conducts periodic inspections of the bridge structure on the City's behalf. Based on these inspections, Caltrans provides the City with an inspection report that describes the findings and recommends repairs as needed that the City is then responsible for implementing. Above-water inspections occur on a 2-year interval, and below-water inspections occur on a 5-year interval. The most recent inspection was a below-water inspection conducted in February 2021. The inspection report made no recommendations for repairs to either the superstructure or the substructure, but did identify spalling on the road's concrete deck surface and recommended applying a sealer.

The proposed lease includes a limited lease term of 25 years and a non-exclusive use provision. The facilities do not significantly alter the land, and the lease does not alienate the State's fee simple interest, nor permanently impair public rights. 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 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 existing bridge is located in San Jose near the Guadalupe 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 lease area 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 River’s inundation levels within the lease area, and this risk of flood exposure is likely to increase with time. 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 adjacent to the bridge at a faster rate.

Based on the Caltrans February 2021 inspection report, the height from the ordinary high-water mark to the top of the concrete rail of the bridge is approximately 18.6 feet; therefore, it is unlikely that changes from climate change will affect the structure or adjacent upland within the lease area during the lease term.

Regular maintenance, as referenced in the lease, along with the current Caltrans inspections and additional inspections required under the lease terms following major storm or flooding events, may reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant also acknowledges that the lease premises and adjacent upland are located in an area that may be subject to the effects of climate change, including sea level rise.

CONCLUSION:

For the reasons above, staff believes the issuance of this lease will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed 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. If the Commission denies the application, the Applicant may be required to remove the improvements and restore the premises to their original condition. An applicant has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Leading Climate Activism" and "Meeting Evolving Public Trust Needs" 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 FINDINGS:

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)(1).

PUBLIC TRUST AND STATE’S BEST INTERESTS:

Find that the proposed lease will not 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 – Public Agency Use to the Applicant beginning March 1, 2019, for a term of 25 years, for the use and maintenance of a public street and a portion of a 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 being 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.

EXHIBIT A

LEASE 4491

LAND DESCRIPTION

An 80-foot-wide strip of land in the historic bed of the Guadalupe River, situate in the City of San Jose, County of Santa Clara, State of California, the centerline being more particularly described as follows:

BEGINNING at the point of intersection of the centerlines of Gold Street and Moffat Street in the City of San Jose; thence southerly along the centerline of said Gold Street, South 0°53'19" West 325 feet to the terminus of the centerline of said strip.

EXCEPTING THEREFROM any portions lying landward of the ordinary high-water marks on the right and left banks of the historic bed of the Guadalupe River.

END OF DESCRIPTION

Prepared 8/18/2021 by the California State Lands Commission Boundary Unit.



NO SCALE

SITE



MOFFAT STREET

GOLD STREET

HISTORIC SHORELINES

LEASE AREA

HISTORIC BED GUADALUPE RIVER

APPROXIMATE SHORELINES

GOLD STREET, CITY OF SAN JOSE

NO SCALE

LOCATION

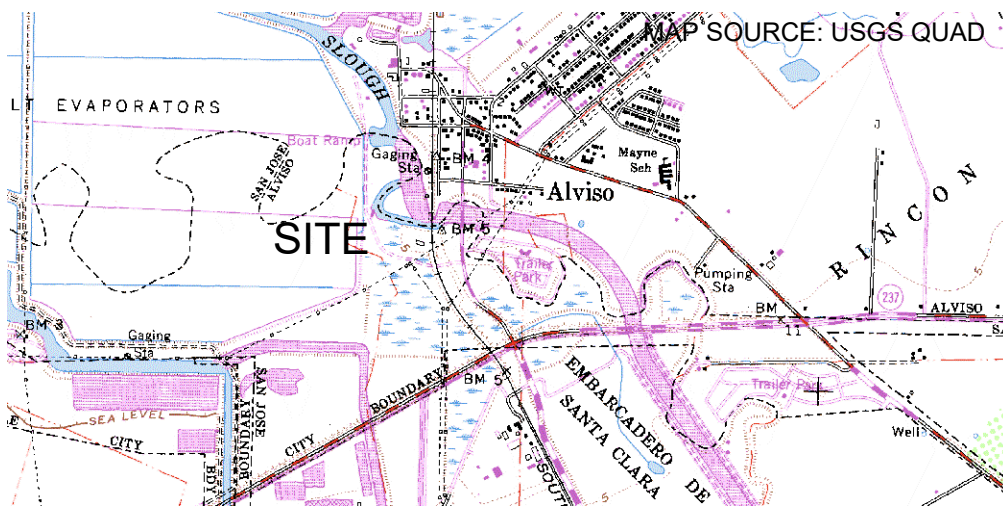


EXHIBIT B

LEASE 4491
 CITY OF SAN JOSE
 GENERAL LEASE -
 PUBLIC AGENCY USE
 SANTA CLARA 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.

JWP 8/18/2021