

Staff Report 18

APPLICANT:

Michael L. Gurev, Trustee of the Maxwell M. Freeman Qualified Personal Residence Trust dated October 20, 2003

PROPOSED ACTION:

Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the San Joaquin River at Atherton Cove, adjacent to 2300 Virginia Lane near Stockton, San Joaquin County.

AUTHORIZED USE:

Use and maintenance of an existing boat dock, gangway, four pilings, and three electrical conduits.

TERM:

10 years, beginning August 23, 2022.

CONSIDERATION:

\$211 per year, with an annual Consumer Price Index adjustment and \$121 to compensate for the unauthorized occupation of state sovereign land for the period prior to August 23, 2022.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee agrees and acknowledges that the 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, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On January 26, 2012, the Commission authorized a 10-year General Lease – Recreational Use to Michael L. Gurev, Trustee of the Maxwell M. Freeman Qualified Personal Residence Trust Dated October 20, 2003 ([Item 30, January 26, 2012](#)). That lease expired on January 25, 2022. The Applicant is now applying for a General Lease – Recreational Use, for the use and maintenance of an existing boat dock, gangway, four pilings, and three electrical conduits.

The Applicant owns the upland adjoining the lease premises, and the subject facilities have existed at this location for several years. The subject facilities are privately owned and maintained. The boat dock and appurtenant facilities are used for 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).

Staff recommends the Commission accept compensation from the Applicant in the amount of \$121 for the unauthorized occupation of state land for the existing Boat dock and appurtenant Facilities, for the period beginning January 26, 2022, the day that the prior lease ended, through August 22, 2022, the day preceding issuance of the proposed lease.

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.

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 payment of annual rent to compensate the people of 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 subject facilities are located on the San Joaquin 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.

This effect could increase the San Joaquin 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 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 existing boat dock, gangway, and electrical conduits are adaptable to variable water levels allowing them to rise and fall with increased or decreased water levels. The fixed features like the four wood pilings may need reinforcement

and possible replacement to withstand higher levels of flood exposure and more frequent storm events.

The vegetated bank provides additional stability and reduces the amount of erosion and scour pressure experienced during future events because of the vegetation's underground root system; but remains at risk of accelerated deterioration from currents and floods.

Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland are in an area that may be subject to the effects of climate change, including sea-level rise.

CONCLUSION:

For all 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; 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 for a new lease 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 prior lessee may be required to remove the facilities occupying state lands and restore the premises to their original condition. The lessee has no right to a new lease or a renewal of any previous lease.
2. This action is consistent with the "Meeting Evolving Public Trust Needs" and the "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 the 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.

AUTHORIZATION:

1. Authorize acceptance of compensation from the Applicant in the amount of \$121 for unauthorized occupation of State land for the period beginning January 26, 2022 to August 22, 2022.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning August 23, 2022, for a term of 10 years, for the use and maintenance of an existing boat dock, gangway, four pilings, and three electrical conduits, 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 \$211, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 6075

LAND DESCRIPTION

A parcel of tide and submerged land situate in Atherton Cove within the original bed of the San Joaquin River, lying adjacent to Swamp and Overflow Survey 443, patented December 19, 1867, in the County of San Joaquin, State of California, and more particularly described as follows:

All those lands underlying an existing dock, gangway, three electrical conduits and landing lying adjacent to that parcel described in Trust Transfer Quitclaim Deed recorded May 21, 2004 as Document Number 2004-111297 in Official Records of said County.

TOGETHER WITH any applicable Impact Area(s).

EXCEPTING THEREFROM any portion lying landward of the Ordinary High Water Mark of the original right bank of the San Joaquin River.

Accompanying plat is hereby made a part of this description.

END OF DESCRIPTION

Prepared February 8, 2022 by the California State Lands Commission Boundary Unit.



NO SCALE

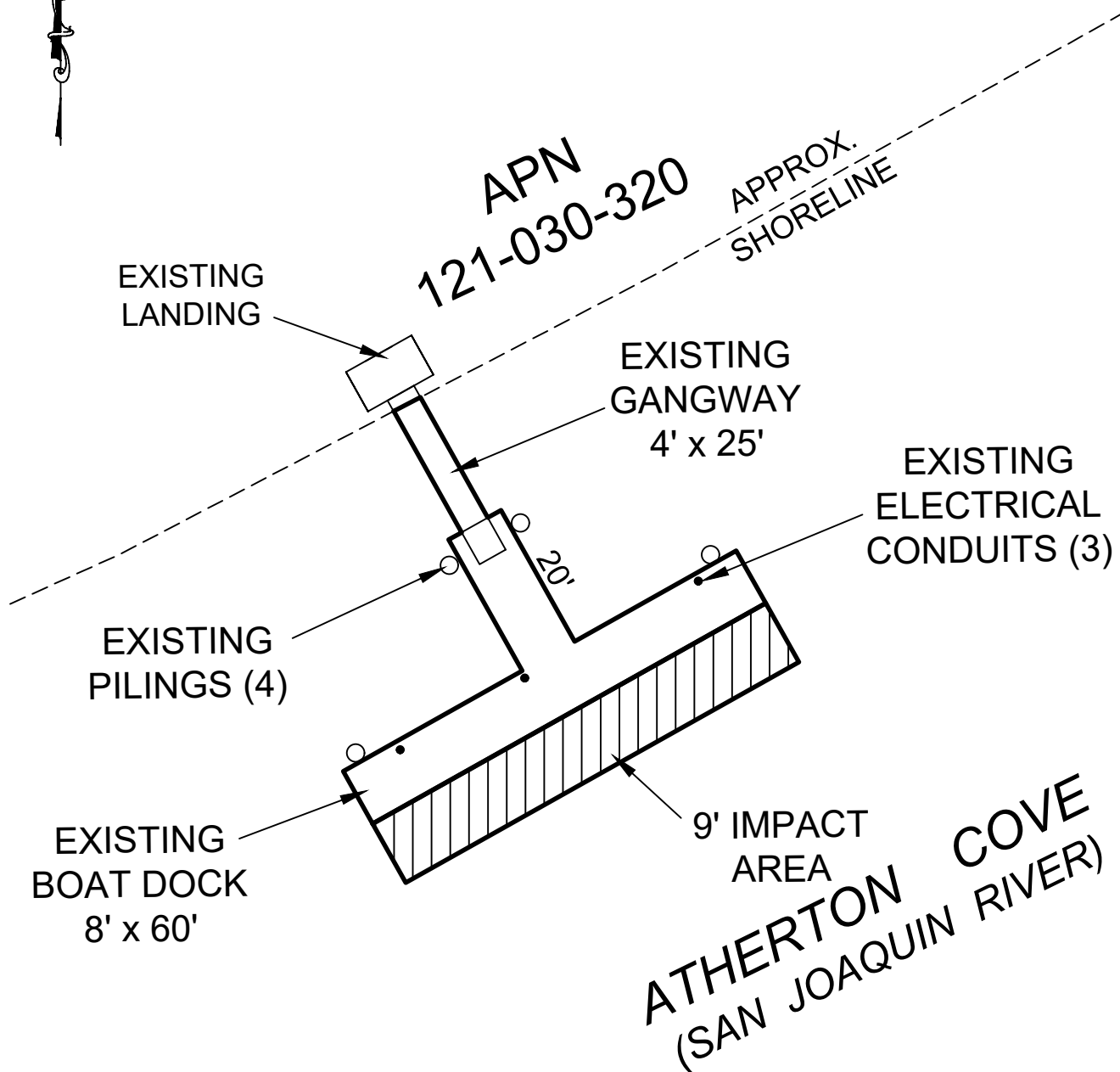


EXHIBIT A

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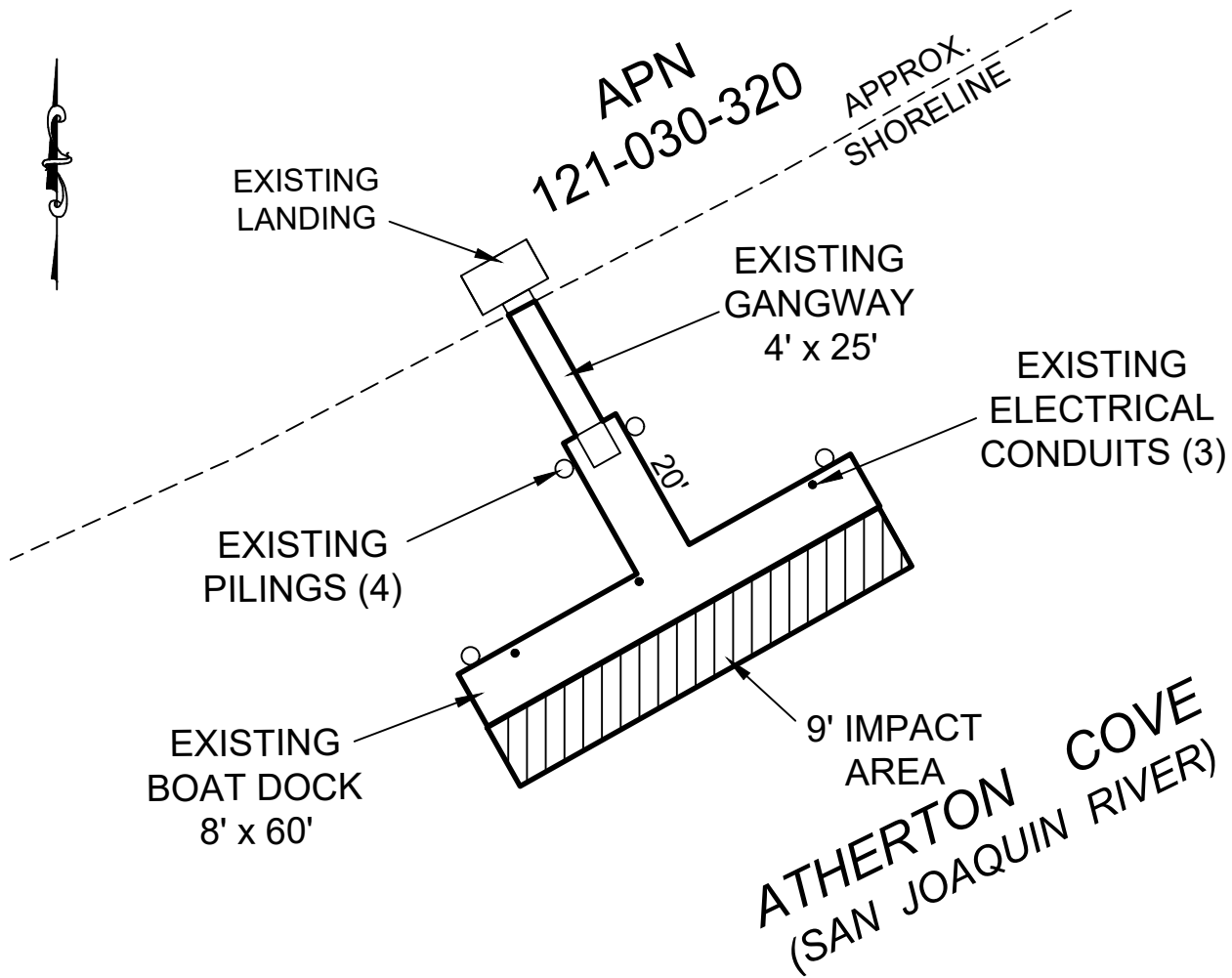
LAND DESCRIPTION PLAT
LEASE 6075, GUREV
SAN JOAQUIN COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

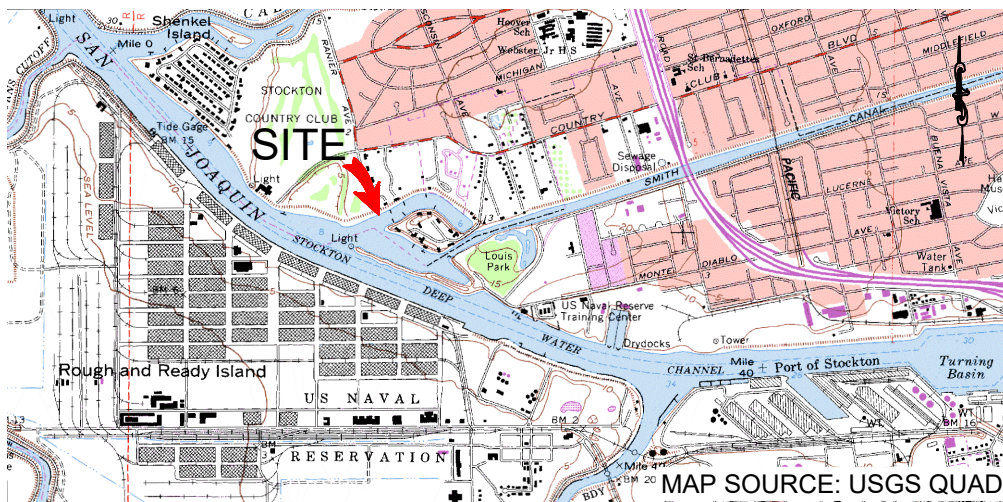
SITE



2300 VIRGINIA LANE, 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 6075

GUREV

APN 121-030-320

GENERAL LEASE -
RECREATIONAL USE
SAN JOAQUIN COUNTY



TS 02/08/2022