

Meeting Date: 08/23/22
Lease Number: PRC 5492
Staff: K. Connor, V. Caldwell,
N. Tantraphol, B. Johnson

Staff Report 27

APPLICANT:

Judith A. Finch

PROPOSED ACTION:

Termination of a General Lease – Commercial Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the historic bed of the San Joaquin River, adjacent to 10705 N Lanes Road, Fresno, Fresno County.

AUTHORIZED USE:

Use and maintenance of an unimproved recreational park and unimproved boat launch.

TERM:

10 years, beginning April 23, 2014.

CONSIDERATION:

\$673 per year, with the State reserving the right to fix a different rent periodically during the lease term as provided in the lease.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee is authorized to place portable toilets on premises that must be serviced once a week from April through August and on an as-needed basis during the remaining part of the year.
- Lessee is authorized to place garbage receptacles on the premises that must be emptied daily from April through August and on an as-needed basis during the remaining part of the year.

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:

The Lease Premises have been used as a recreational area with appurtenant facilities, including the unimproved recreational park and boat launch, known as the Fort Washington Beach Campground, since the late 1970s. On May 31, 1978, the Commission authorized a General Lease – Commercial Use to Charles E. Finch, et al. ([Item C12, May 31, 1978](#)) for a recreational vehicle park. The lease was for a 25-year term, including two renewal options of two successive 10-year periods, beginning September 1, 1977. The lease expired on July 31, 2002.

On August 20, 1987, the Commission authorized an Amendment of the lease and deleted Co-Lessees, Ward J. Finch and Joy T. Finch, from the lease, reduced the surety deposit from the previously required \$2,000 to \$500, and approved the Continuation of Rent at \$225 per annum. In 1988, the Lessee failed to make the annual rental payment of \$225 and did not make any additional rental payments until the lease expired in 2002.

On April 30, 2013, Commission staff was informed that Charles E. Finch had passed away. Judith A. Finch, the widow of Charles E. Finch, subsequently applied for a new lease. On April 23, 2014, the Commission authorized a General Lease – Commercial Use to Judith A. Finch ([Item C45, April 23, 2014](#)) for an unimproved recreational vehicle park and unimproved boat launch (see Exhibit A). The lease expires on April 22, 2024. On September 13, 2017, the Lessee passed away. The Commission was not notified of her death.

In April 2022, Commission staff was informed by a neighboring property owner that the Lessee had passed away, and that someone, purporting to be the Lessee's grandson, was operating the premises. Staff was also contacted by the neighboring property owner and the City of Fresno regarding the conduct of the grandson and concerns regarding his use of state property. Staff met with City staff on August 9, 2022, and City staff conveyed allegations, and its opinion in light of these allegations, that some of the recent activities on the lease premises may be a public nuisance.

Based on the facts presented to staff and a review of the Lease file, staff identified numerous breaches of the lease. Under Section 3, Paragraphs 12(a) and 12(d)(2) of

the Lease, each of the conditions below is an immediate default with no opportunity to cure and grounds for termination of the lease:

- The annual rent that was due in April for the 2021-2022 year has not been paid. This failure to pay rent is a default under Section 3, Paragraph 12(a)(1).
- The Lessee's general liability insurance policy was terminated on May 17, 2017, and since that date there has been no active policy. This failure to maintain insurance is a default under Section 3, Paragraph 12(a)(2).
- Since the passing of Mrs. Finch, there has been no attempted assignment of the lease to or by her heirs, and her apparent next of kin does not live at the upland residence or operate the lease premises. The discontinued use of the Lease Premises for at least ninety (90) days constitutes an abandonment of the Lease Premises. The abandonment is both a breach of the covenant for continuous use and a default under Section 3, Paragraph 12(a)(3).
- The current operator of the Lease Premises is purported to be the Lessee's grandson. This surrender of daily management and control of the Lease Premises to a third party without the knowledge, expressed written consent, or authorization of the Commission is a default under Section 3, Paragraph 12(a)(7).

In addition to the above defaults, City staff at the August 9, 2022 meeting noted the grandson's conduct, as described in complaints, appeared to constitute a nuisance and that the campground may be in violation of City ordinances. If such allegations are true, they would be a default under Section 3, Paragraph 12(a)(5) (maintenance of the Lease Premises in violation of, or failure to comply with, applicable regulatory provisions, or maintenance of the Lease Premises in a condition constituting a nuisance).

On August 10, 2022, staff mailed a Notice of Default and Recommendation of Termination to the upland property and the Lessee's daughter, who appears to be Lessee's next of kin. The Notice listed the defaults of the Lease described above and informed the recipient that staff would recommend termination of the lease at the Commission's next regularly scheduled public meeting on August 23, 2022.

Termination of the lease is consistent with the common law Public Trust Doctrine and in the State's best interests. First, termination of this Lease does not directly interfere with Public Trust resources, uses, and values. The Lease allowed the Lessee to place portable toilets and garbage receptacles in the Lease Premises. Under Section 3, Paragraph 16(l), the former lessee's restoration and indemnity obligations survive termination of the lease, so the Lessee would be obligated to remove all unauthorized property from the Lease Premises after termination. Termination will

further the Public Trust by allowing the lease premises to be let to another party who can more effectively allow the land to be utilized by the public.

Second, lease compliance is essential to ensure that Public Trust lands are being used responsibly, equitably, and in the best interest of the State. Here, operators of the lease premises have failed to pay rent and violated other lease terms. Failure to pay rent is a failure to compensate the people of the State for occupation of public land.

As shown in Exhibit A, the bulk of the property in question is owned by the State of California. If the proposed termination of this lease is approved, any continued unauthorized use of the state's property, by any party, would be the basis for the application of administrative penalties or civil trespass actions.

CONCLUSION:

For all the reasons above, staff believes the termination of this lease is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. The Commission's decision to terminate the 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.
2. This action is consistent with the "Meeting Evolving Public Trust Needs" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
3. Termination of the lease is not a project as defined by the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

EXHIBIT:

- A. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

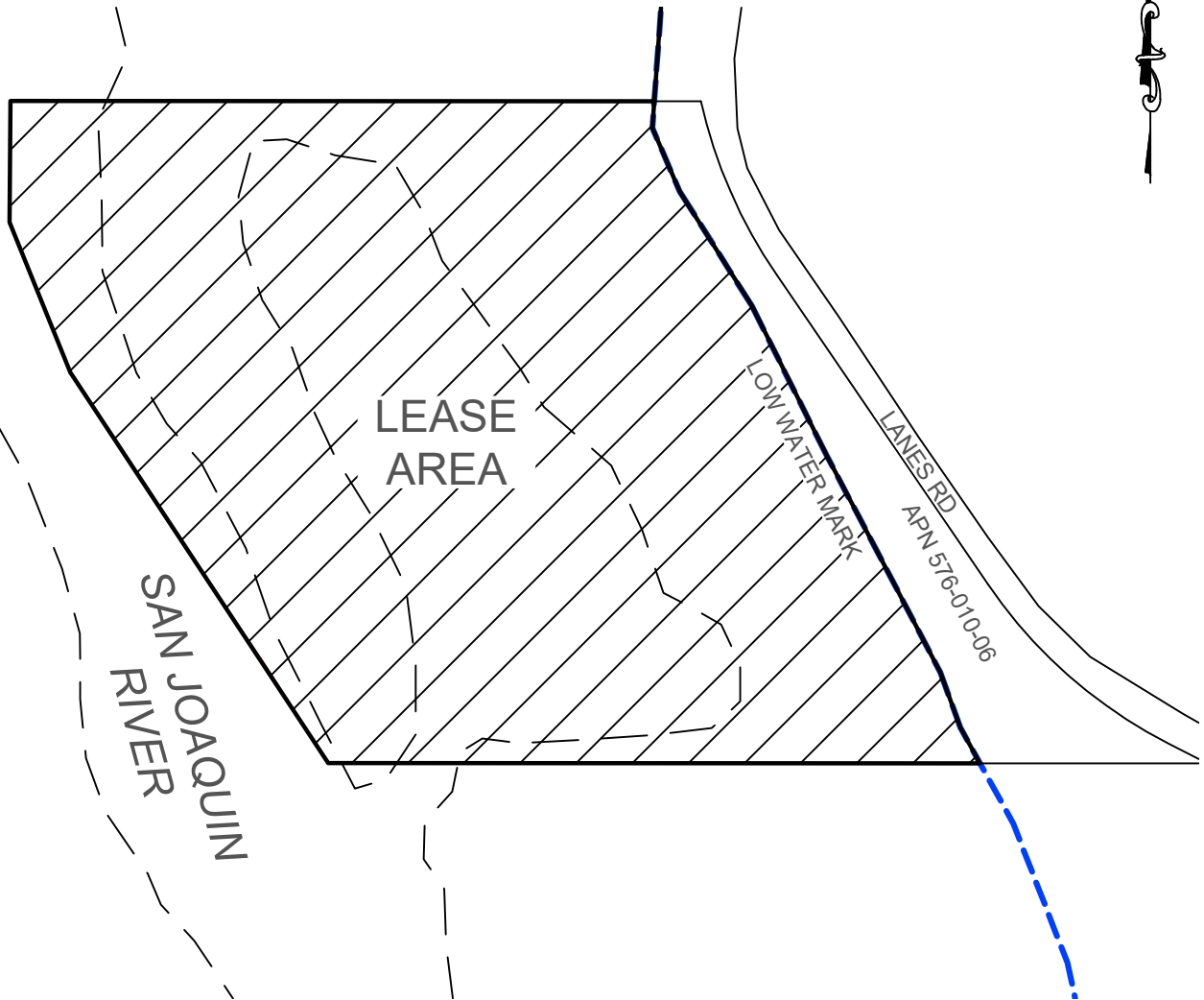
Find that termination of the lease is consistent with the common law Public Trust Doctrine and in the best interests of the State.

AUTHORIZATION:

Authorize termination, effective August 23, 2022, of Lease PRC 5492, a General Lease – Commercial Use issued to Judith A. Finch.

NO SCALE

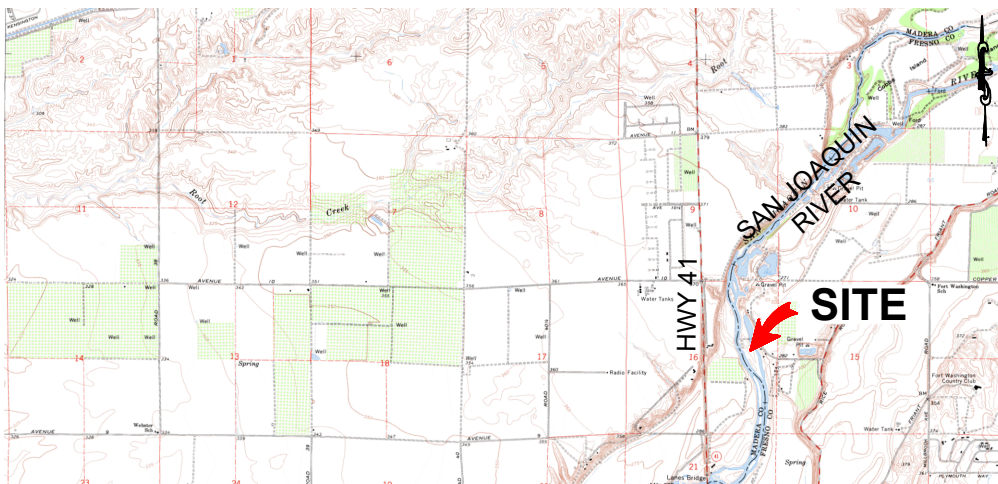
SITE



Fort Washington Beach, Fresno - San Joaquin 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 A

PRC 5492

FINCH

APN 576-010-06

TERMINATION OF
GENERAL LEASE -
COMMERCIAL USE
FRESNO COUNTY



MJF 8/09/2022