

Staff Report 31

APPLICANT:

County of San Joaquin

PROPOSED ACTION:

Issuance of a General Lease – Public Agency Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Middle River, adjacent to Howard Road, near French Camp, San Joaquin County.

AUTHORIZED USE:

Use and maintenance of an existing vehicle and pedestrian bridge.

TERM:

20 years; beginning October 25, 2022.

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.

SPECIFIC LEASE PROVISIONS:

- Lessee shall indemnify, hold harmless, and, at the option of Lessor, defend Lessor from all damages, injuries, or claims arising from the installation, maintenance, or operation of Lessee's facilities attached, suspended, or otherwise fixed to the Lessee improvements. Lessee agrees that this provision and the provisions of Section 3, Paragraph 8 shall also extend to the period of Lessee's unauthorized occupation of State-owned lands, from July 1, 2017 through October 24, 2022.
- Lessee shall not place, attach, or authorize placement or attachment of any utilities or other improvements on the Howard Road Bridge or within the Lease Premises without the Commission's prior review and approval. Separate leases

or subleases are required and shall be obtained for all utilities not operated by Lessee.

- Lessee agrees and acknowledges that the hazards associated with climate change 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 July 17, 1968, the Commission authorized issuance of a 49-year Public Agency Permit (Right-of-Way) to the County of San Joaquin (County) for construction of a vehicle and pedestrian bridge, known as the Howard Road Bridge ([Item 10, July 17, 1968](#)). That lease expired on June 30, 2017. The Applicant is now applying for a General Lease – Public Agency Use for the continued use and maintenance of an existing vehicle and pedestrian bridge in the Middle River. The subject facility has existed at this location for many years, as shown in the Applicant's lease application and Commission records.

The bridge provides vital infrastructure and transportation for the Statewide public, operating as an east-west connector across the County. In addition, the bridge is used for vehicle transportation conducting commerce or personal travel along with pedestrians enjoying the scenic view of the river while crossing the waterway. The bridge has an average daily vehicle count of 4,634 as measured in 2020. The bridge is inspected by Caltrans every 2 years. The proposed lease would require the County to maintain the subject bridge.

The bridge includes a fixed utility pipe that contains a telecommunication cable, located on the north side of the bridge and owned by Pacific Telephone Company, dba AT&T. The utilities were authorized by the Commission under a separate lease, Lease Number 756 ([Item 28, August 21, 1952](#)). The owner of the telecommunication cable understands that it must maintain a separate lease for the utility improvements.

The river at this location is narrow and has low water levels. The public can use the river for recreational Public Trust activities as conditions safely allow. Promotion of public access and use of California's navigable waters is a mandate of the California Constitution (article X, section 4), a condition of Statehood in the Act of

Admission of the State of California into the Union (9 Stat. 452, Sept. 9, 1850), and a responsibility of all involved public agencies pursuant to the common law Public Trust Doctrine. In addition, visitors may legally utilize public access easements around the bridge to access the river. The proposed lease includes certain provisions protecting the public use of the proposed lease area. Furthermore, the proposed lease will not substantially impede or impair Public Trust uses in this area, because the bridge height allows recreational users to pass under the bridge.

The proposed lease will not interfere with navigation and does not substantially interfere with any Public Trust needs at this time or the foreseeable future. The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 20-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 consideration to compensate the people of the State for the occupation of the public land involved, referenced as the public use and benefit.

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 bridge is the Howard Road crossing over the river (Middle 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, storm flow, and runoff will likely increase scour and decrease bank stability at a faster rate. The heavily vegetated banks (not under lease) and the agricultural fields upland on both sides of the bridge (not under lease) provide bank stability and reduce the amount of erosion and scour pressure experienced during future events because of the vegetation's underground root system. The bridge structures may need reinforcement and possibly need to be replaced to withstand higher levels of flood exposure and more frequent storm events.

Regular maintenance and inspection 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 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 may be required to remove the bridge and restore the premises to their original condition. The lessee 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 the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Public Agency Use to the Applicant beginning October 25, 2022, for a term of 20 years, for the use and maintenance of an existing vehicle and pedestrian bridge, known as the Howard Road 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 interest.

EXHIBIT A

LEASE 3990

All that certain tide and submerged land in Middle River, San Joaquin County, California, within the following-described boundary:

COMMENCING at a bolt and washer marking the intersection of the centerlines of Howard Road and Crocker Road as described in that certain deed to San Joaquin County recorded in Vol. 3200, page 659, Official Records of San Joaquin County; thence along the centerline of Howard Road the following three courses:

- 1) S 86° 22' 51" W 2724.11 feet
- 2) S 86° 24' 15" W 1653.85 feet
- 3) S 84° 02' 07" W 156.93 feet to a nail and washer on

the centerline of Stark Road; thence along the centerline of Stark Road N 02° 18' 53" W 185.25 feet; thence leaving said centerline N 89° 20' 31" W 20.03 feet to a point on the westerly right of way line of Stark Road, said point being the TRUE POINT OF BEGINNING; thence along said right of way line N 2° 18' 53" W 40.06 feet; thence leaving said right of way and crossing Middle River N 89° 20' 31" W 236.56 feet to a point on the west levee of Middle River; thence along said levee S 00° 13' 01" E 40.01 feet to a point from which a 2" iron pipe bears N 89° 20' 31" W 4.72 feet, said iron pipe also bears N 89° 14' W 10 feet from that certain point designated as "LOLA" in the Decree of Final Distribution of the Estate of Annie H. Lucas as recorded in Book 2798 page 638 Official Records of San Joaquin County; thence continuing along said levee, S 00° 13' 01" E 40.00 feet; thence leaving said levee and crossing Middle River, S 89° 20' 31" E 239.49 feet to said right of way line; thence along said right of way line N 02° 18' 53" W 40.05 feet to the true point of beginning.

EXCEPTING any of the above described land lying above or landward of the ordinary high water mark of Middle River.

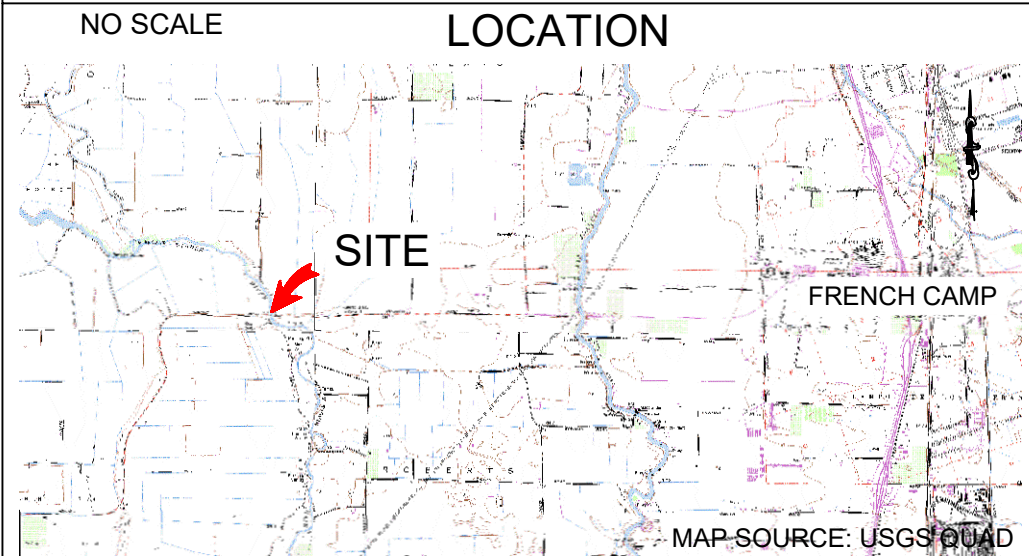
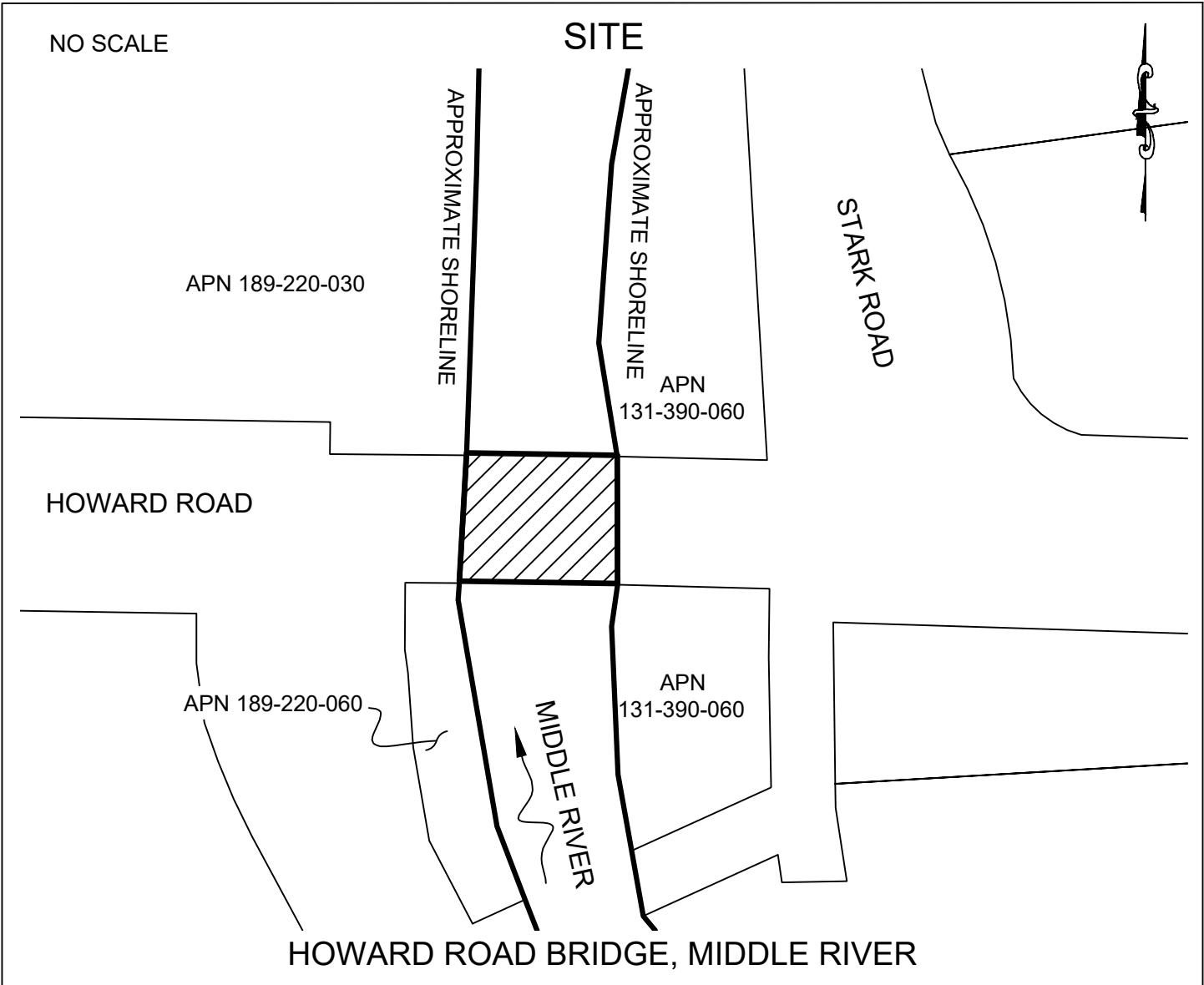


EXHIBIT B
 LEASE 3990
 COUNTY OF SAN JOAQUIN,
 DEPARTMENT OF
 PUBLIC WORKS
 GENERAL LEASE -
 PUBLIC AGENCY USE
 SAN JOAQUIN COUNTY



DJF 12/27/2021

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.