

# Staff Report 32

## **APPLICANT:**

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County of San Joaquin and County of Sacramento

## **PROPOSED ACTION:**

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Issuance of a General Lease – Public Agency Use

## **AREA, LAND TYPE, AND LOCATION:**

Sovereign land in the Mokelumne River, adjacent to New Hope Road, near Thornton, San Joaquin and Sacramento Counties.

## **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 May 1, 2018 through October 24, 2022.
- Lessee shall not place, attach, or authorize placement or attachment of any utilities or other improvements on the New Hope Street 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:**

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### **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 June 26, 1969, the Commission authorized issuance of a 49-year Public Agency Permit (Right-of-Way) to the County of San Joaquin and County of Sacramento, for construction of a highway bridge ([Item 04, June 26, 1969](#)). That lease expired on April 30, 2018. The Applicant is now applying for a General Lease – Public Agency Use, for the use and maintenance of an existing vehicle and pedestrian bridge in the Mokelumne 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 San Joaquin and Sacramento Counties. 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 1,361, as measured in 2013. The bridge is inspected by Caltrans every 2 years. The proposed lease would require the lessee to maintain the subject bridge.

The bridge includes a fixed utility pipe for gas distribution, which is located on the east side of the bridge and owned by Pacific Gas and Electric Company. The utilities were authorized by the Commission under a separate lease, Lease Number 5438.1F ([Item 33, January 26, 2012](#)). The owner of the utilities understands that it must maintain a separate lease for the utilities.

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 over, under, and around 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 New Hope Road crossing over the 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**

<b>Year</b>	<b>Projection (feet)</b>
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 likelihood of riverine flooding 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 combined with higher sea levels).

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) with many tall trees 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 to be experienced during future events because of the vegetation's underground root system. The bridge structures in the water 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:**

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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:**

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- A. Land Description
- B. Site and Location Map

## **RECOMMENDED ACTION:**

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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, 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.

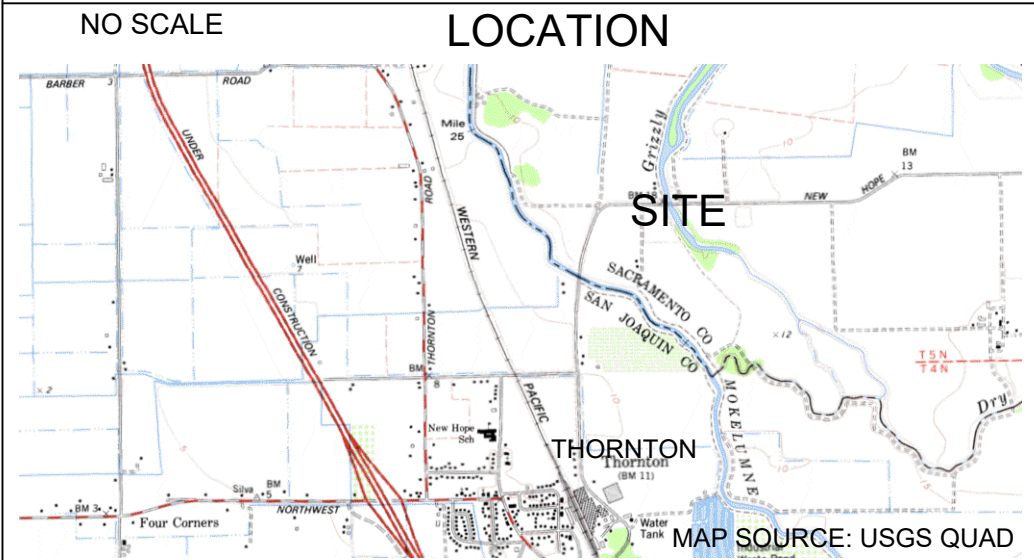
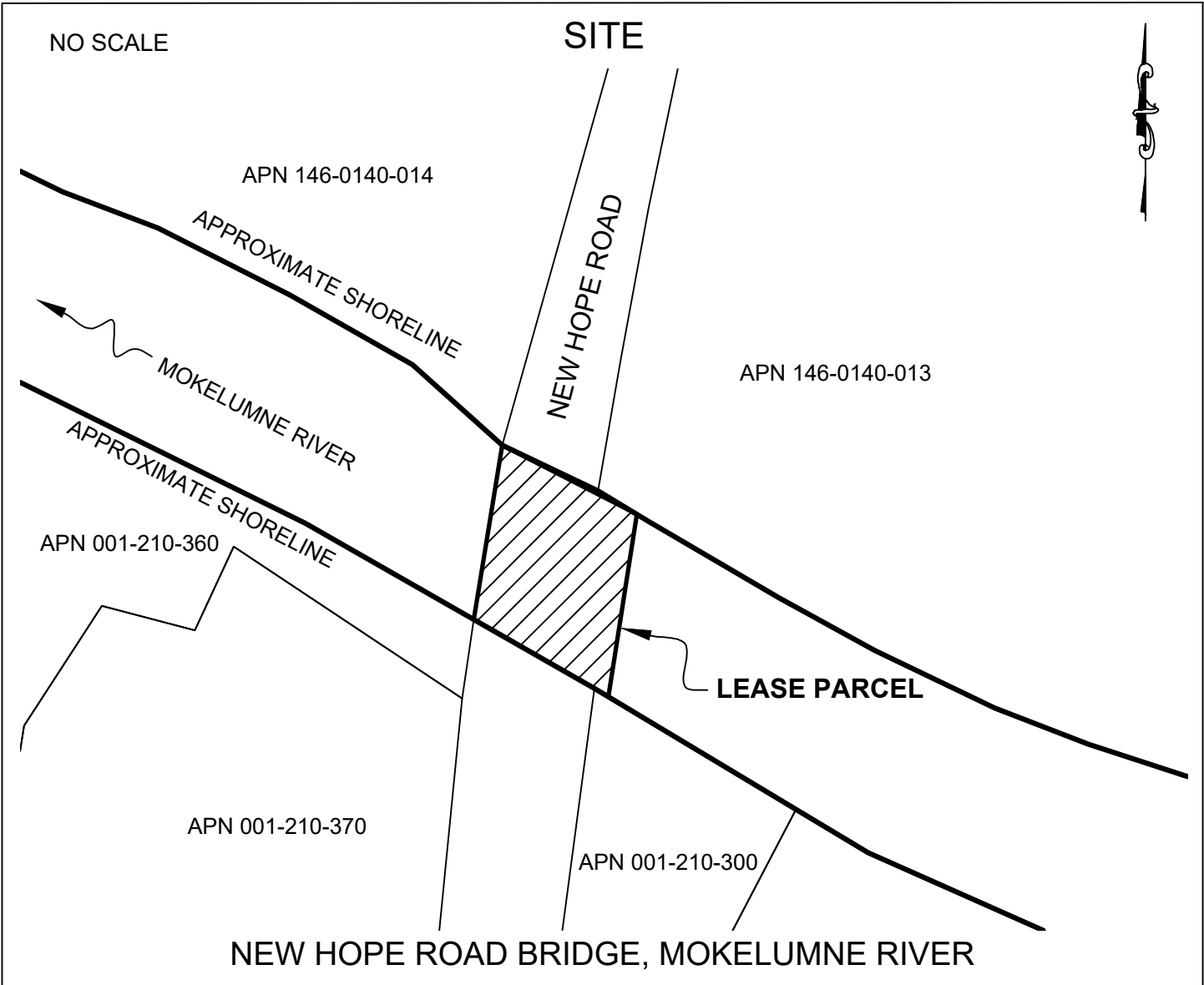
LEASE 4238

EXHIBIT "A"

A parcel of tide and submerged land lying across the bed of the Mokelumne River, San Joaquin and Sacramento Counties, California, a portion of the south half of Section 34, T. 5 N., R. 5 E., M.D.M., more particularly described as follows:

COMMENCING at the quarter section corner common to Section 3, T. 4 N., R. 5 E., and Section 34, T. 5 N., R. 5 E., M.D.M.; thence along the south line of said Section 34 N. 88° 44' E. 30.00 feet to the east right-of-way line of Galt Road (60 feet wide); thence along said east right-of-way, N. 00° 53' W. 1544.31 feet to the TRUE POINT OF BEGINNING, on the left, or southern bank of the Mokelumne River; thence upstream on said left bank, S. 70° 00' E. 76.07 feet; thence leaving said left bank, crossing the Mokelumne River, northerly on a 4866.07 foot radius curve to the right (the chord which bears N. 08° 45' 58" E. 160.06 feet), an arc distance of 160.07 feet to a point on the northern bank of the Mokelumne River; thence along the right, or northern bank of the Mokelumne River, N. 70° 00' W. 91.44 feet; thence leaving said northern bank, crossing the Mokelumne River southerly on a 4956.07 foot radius curve to the left (the chord of which bears S. 08° 58' 24" W. 159.95 feet), an arc distance of 159.95 feet to a point on the left or southern bank of the Mokelumne River; thence along said left, or southern bank, S. 70° 00' E. 15.96 feet to the true point of beginning.

EXCEPTING any portion lying above or landward of ordinary high water mark of the Mokelumne River as would exist under natural conditions.



**EXHIBIT B**

LEASE 4238  
 COUNTIES OF SAN JOAQUIN  
 & SACRAMENTO  
 PUBLIC AGENCY LEASE  
 SAN JOAQUIN &  
 SACRAMENTO COUNTIES



DJF 9/1/2022

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.