

# Staff Report 31

## **APPLICANT:**

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County of San Joaquin

## **PROPOSED ACTION:**

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Issuance of a General Lease – Public Agency Use

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

Sovereign land in the San Joaquin 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 January 1, 2023.

## **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 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 the 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 27, 1974, the Commission authorized issuance of a 49-year Public Agency Permit (Right-of-Way) to the County of San Joaquin, for construction and maintenance of a vehicle and pedestrian bridge, known as the Howard Road Bridge ([Item 4, June 27, 1974](#)). That lease will expire on December 31, 2022. 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 San Joaquin River (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 and personal travel, offering a scenic view of the River while crossing the waterway. The bridge has an average daily vehicle count of 4,015 as measured in 2016. The bridge was last inspected by Caltrans in September 2020. The inspection deemed the bridge to be in good working condition with normal wear and recommended no substantive work. Routine inspections are performed by Caltrans every 2 years. The proposed lease would require the County to maintain the bridge during the term of the lease.

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 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 Howard Road Bridge crosses over 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 lease area 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 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 Riverbanks on both sides of the bridge have riprap to help stabilize the banks and decrease scour pressure. Some vegetation on the banks (not under lease) and the agricultural fields upland on both sides of the bridge (not under lease) provide additional structural 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 may need reinforcement and possibly need to be replaced to withstand higher levels of flood exposure and more frequent storm events.

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 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. 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 January 1, 2023, 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

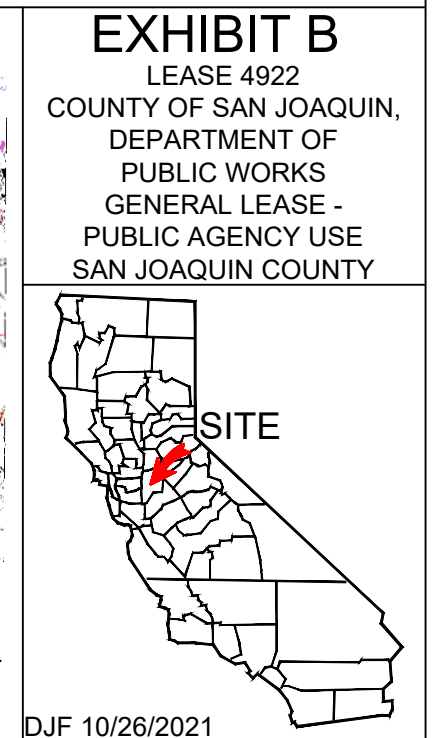
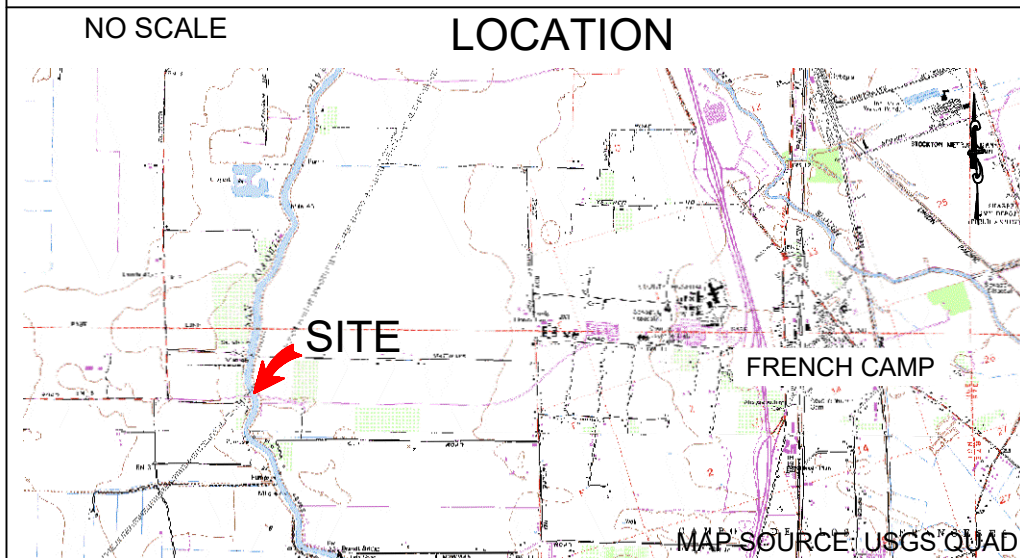
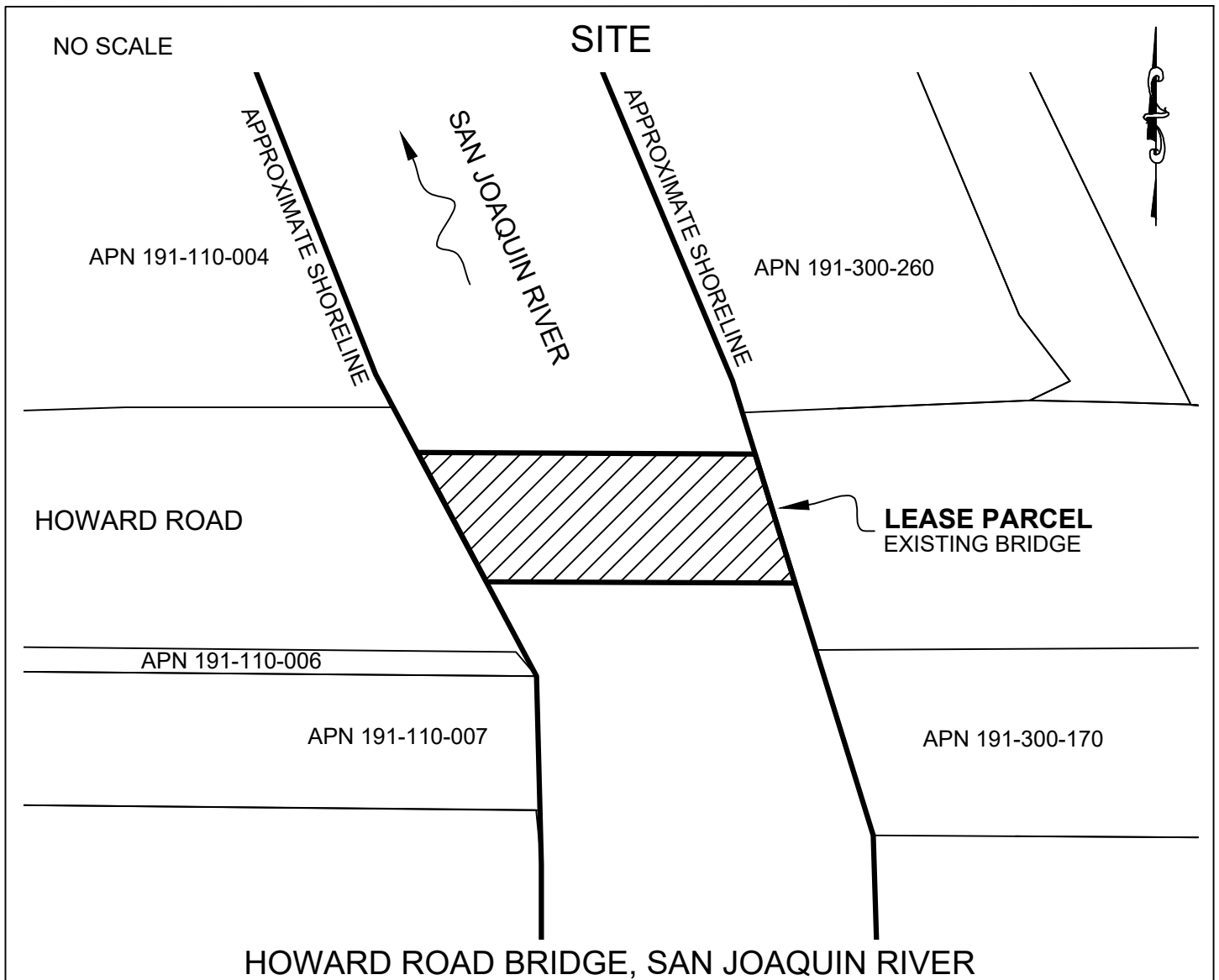
LEASE 4922

A parcel of tide and submerged land lying in the bed of the San Joaquin River, San Joaquin County, State of California, being more particularly described as follows:

COMMENCING at an iron pin marking the intersection of the northerly production of 60 foot wide Roberts Road (south) with the easterly production of the centerline of 60 foot wide Howard Road (west), said iron pin also bearing N 89° 49' W, 443.5 feet from 2-inch by 2-inch hub shown on map of survey filed in Volume 5, page 200, Book of Surveys, San Joaquin County Records; thence S 89° 52' E, along the easterly production of said centerline of Howard Road, 1357.97 feet; thence easterly on a tangent curve to the left radius 2864.79 feet (the long chord of which bears N 83° 36' 39" E, 650.86 feet), an arc distance of 652.26 feet to point of reverse curve; thence easterly on a curve to the right, having a radius of 2864.79 feet, tangent to a line that bears N 77° 05' 17" E (the long chord of last said curve bears N 83° 30' 49" E, 641.20 feet), an arc distance of 642.54 feet; thence tangent to last said curve, N 89° 56' 20" E, 200.00 feet to the TRUE POINT OF BEGINNING, on the crown of the western levee of the San Joaquin River; thence S 25° 03' 40" E along said levee crown, 44.135 feet; thence leaving said western levee crown N 89° 56' 20" E, 300.00 feet to a point on the crown of the eastern levee of the San Joaquin River; thence N 25° 03' 40" W along said eastern levee crown 88.27 feet; thence leaving said eastern levee crown S 89° 56' 20" W, 300.00 feet to a point in the aforesaid crown of San Joaquin River western levee; thence S 25° 03' 40" E along said levee crown 44.135 feet to the true point of beginning and containing an area of 0.551 acre, more or less.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water line.

END OF DESCRIPTION



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.