

Staff Report 38

APPLICANT:

Roger Kelly

PROPOSED ACTION:

Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Calaveras River, adjacent to 2869 Calariva Drive, Stockton, San Joaquin County.

AUTHORIZED USE:

Use and maintenance of an existing boathouse, ramp, and four pilings.

TERM:

10 years, beginning December 9, 2022.

CONSIDERATION:

\$212 per year, with an annual Consumer Price Index adjustment; and \$15 for unauthorized occupation of State land for the period beginning September 1, 2022 through December 8, 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, 6501.1, 6503, 6503.5, and 6505.5; California Code of regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On August 14, 2012, the Commission authorized issuance of a General Lease – Recreational Use to Roger Kelly, for the use and maintenance of an existing boathouse, ramp, and four steel pilings located adjacent to 2869 Calariva Drive, near Stockton, San Joaquin County ([Item C52, August 14, 2012](#)). This lease expired on August 31, 2022.

The Applicant is now applying for a General Lease – Recreational Use, for the use and maintenance of the existing boathouse, ramp, and four pilings. Staff recommends issuance of a General Lease – Recreational Use to the Applicant, to take effect on December 9, 2022.

Because the Applicant paid rent at the holdover rate for the period of September 1, 2022 through October 31, 2022, the State has already received rent covering part of the Applicant's unauthorized occupation of State land and these payments offset the amount which would otherwise be owed by the Applicant. The Applicant will pay the remaining \$15 for unauthorized occupation of State land by the subject boathouse, ramp, and four pilings for the period beginning September 1, 2022 through December 8, 2022, the day before the beginning date of the proposed lease. Additionally, the proposed lease will require the Applicant to indemnify the State for the entire period of unauthorized occupation, ensuring the State is protected.

The subject facilities are privately owned and maintained by the Applicant. The boathouse and appurtenant facilities are used for 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.) The subject facilities are located directly waterward of the upland property and occupy a relatively small area of the river. 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 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 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 the 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 Calaveras 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.

Rising sea levels can lead to more frequent flood inundation in low lying areas and larger tidal events and could increase the Calaveras River's inundation levels within the lease area over the term of the lease. 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 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 combination of these projected conditions could increase the likelihood of damage and affect access to structures within the lease premises during the term of the lease. For example, the potential for more frequent and stronger storm events may expose the lease area structures to higher flood risks and cause facilities to be damaged or dislodged, presenting hazards to public safety as well as dangers for navigation within the channel. Conversely, prolonged drought conditions could lower water levels, damaging the boathouse, ramp, and four pilings. Lowered water levels could also reduce navigability of the channel, thereby increasing hazards and impacting the function and utility of the lease area structures.

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 (not within the lease area) are located in an area that may be subject to 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 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. If the Commission denies the application, the Applicant may be required to remove the boathouse, ramp, and four pilings and return 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 “Leading Climate Activism” and “Meeting Evolving Public Trust Needs” 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, 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 Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize the acceptance of compensation from the Applicant in the amount of \$15 for unauthorized occupation of State land for the time period of September 1, 2022 through December 8, 2022.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning December 9, 2022, for a term of 10 years, for the use and

maintenance of an existing boathouse, ramp, and four pilings, 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 \$212, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 8422

LAND DESCRIPTION

A parcel of tide and submerged land situate in the bed of the Calaveras River, lying adjacent to Swamp and Overflowed Land Survey 924 patented April 19, 1876, County of San Joaquin, State of California and more particularly described as follows:

All those lands underlying an existing uncovered floating boat house, ramp, and pilings lying adjacent to the left bank of said river and being adjacent to and northeasterly of "PARCEL ONE", as described in "Exhibit A" of that Grant Deed, recorded June 15, 1998 in Document Number 98069019 in Official Records of said County.

EXCEPTING THEREFROM any portion lying landward of the low water mark of the left bank of said river.

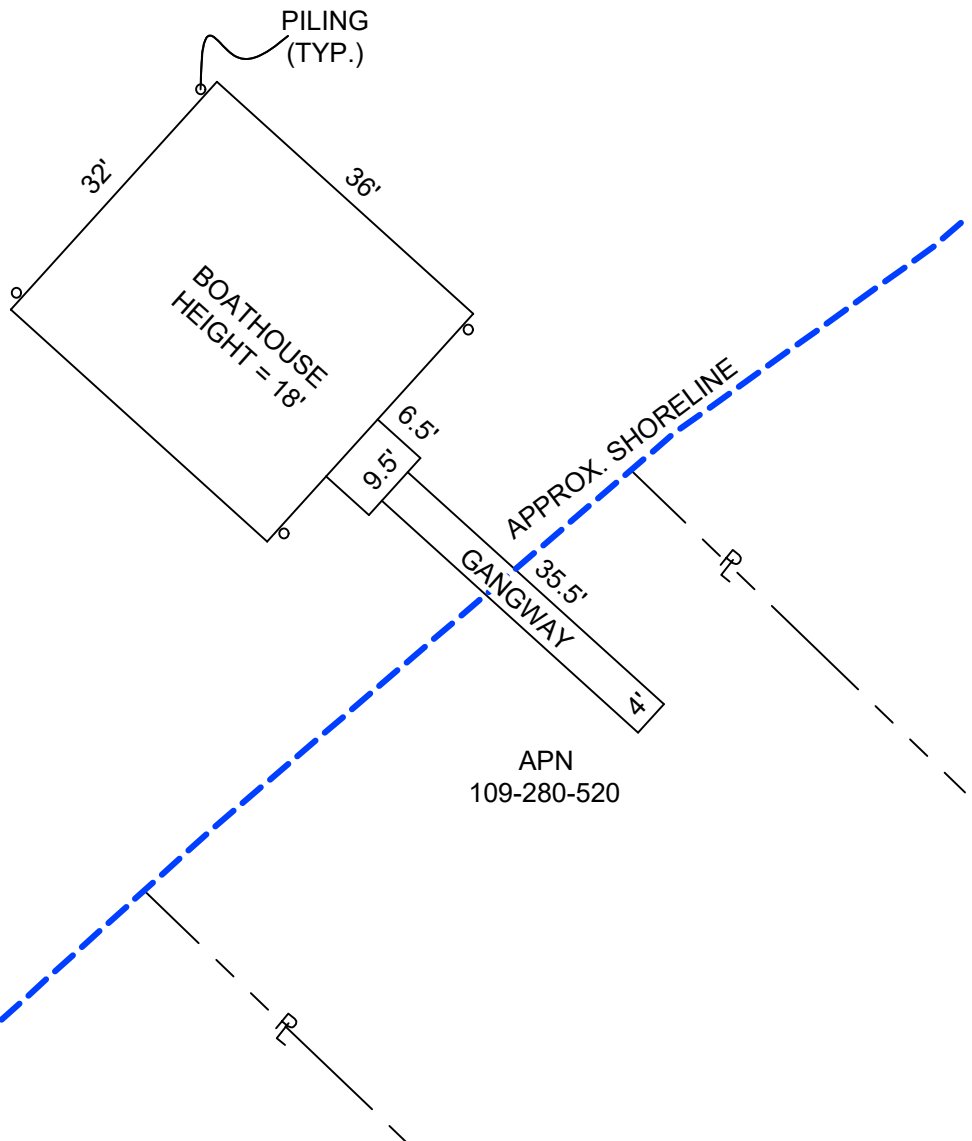
Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

PREPARED 8/15/2022 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



CALAVERAS RIVER



APN
109-280-520

*ALL STRUCTURES
SHOWN ARE
EXISTINGS

EXHIBIT A

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LAND DESCRIPTION PLAT
LEASE 8422 - KELLY
SAN JOAQUIN COUNTY

CALIFORNIA STATE
LANDS COMMISSION

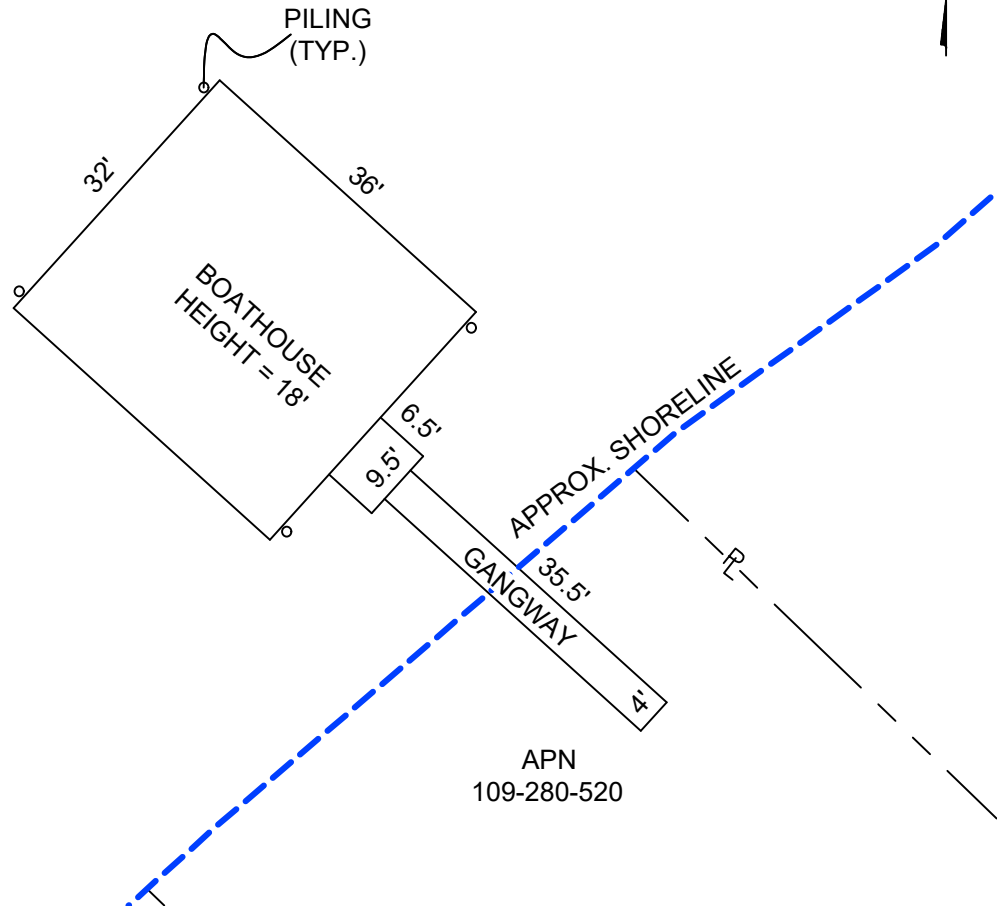


NO SCALE

SITE



CALAVERAS RIVER



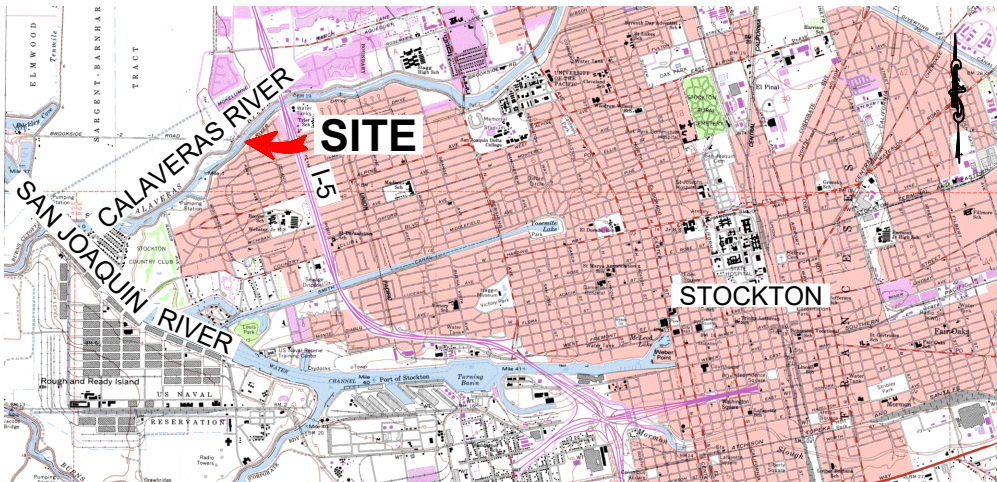
*ALL STRUCTURES SHOWN ARE EXISTINGS

APN 109-280-520

2869 Calariva Drive, Stockton

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 B

LEASE 8422

KELLY

APN 109-280-520

GENERAL LEASE -
RECREATIONAL USE
SAN JOAQUIN COUNTY



MJF 8/15/2022