

Staff Report 20

APPLICANT:

Peach Tree Terrace, a California General Partnership

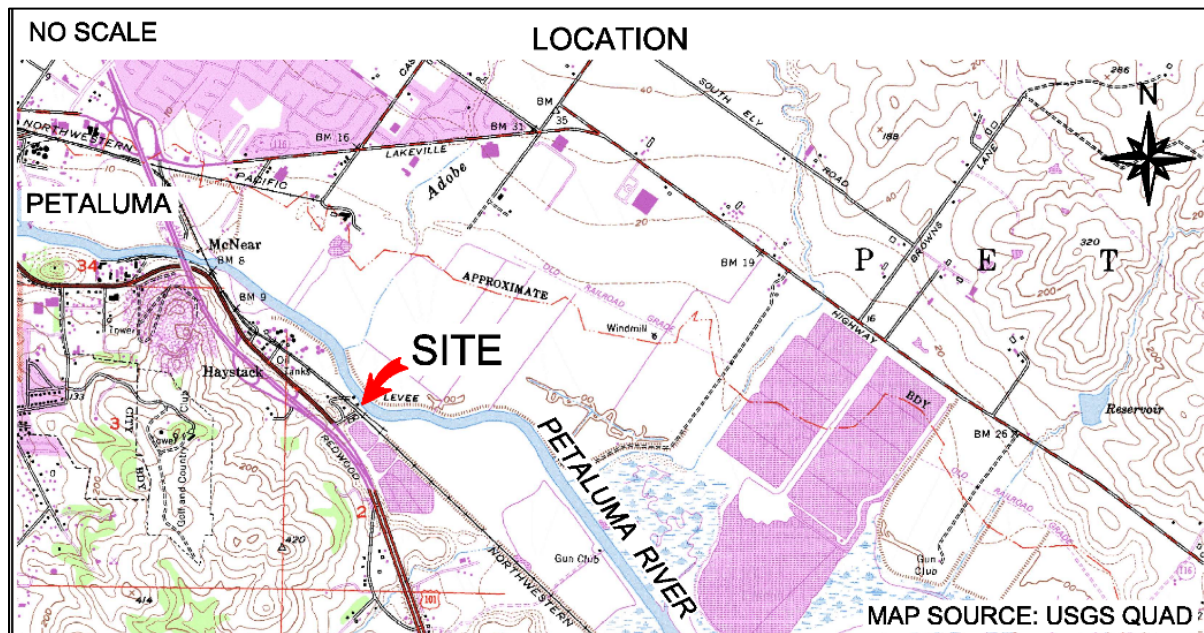
PROPOSED ACTION:

Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Petaluma River, adjacent to 3357 Petaluma Boulevard South, near Petaluma, Sonoma County (as shown in Figure 1).

Figure 1. Location



AUTHORIZED USE:

Use and maintenance of an existing pier with railing, concrete pad, and walkway; walkway with gangway and piling; 15 unattached pilings; removal of a derelict foundation with support piles (as shown in Figures 2-1, 2-2, and 2-3); and restoration of lease premises.

Figure 2-1. Site Map

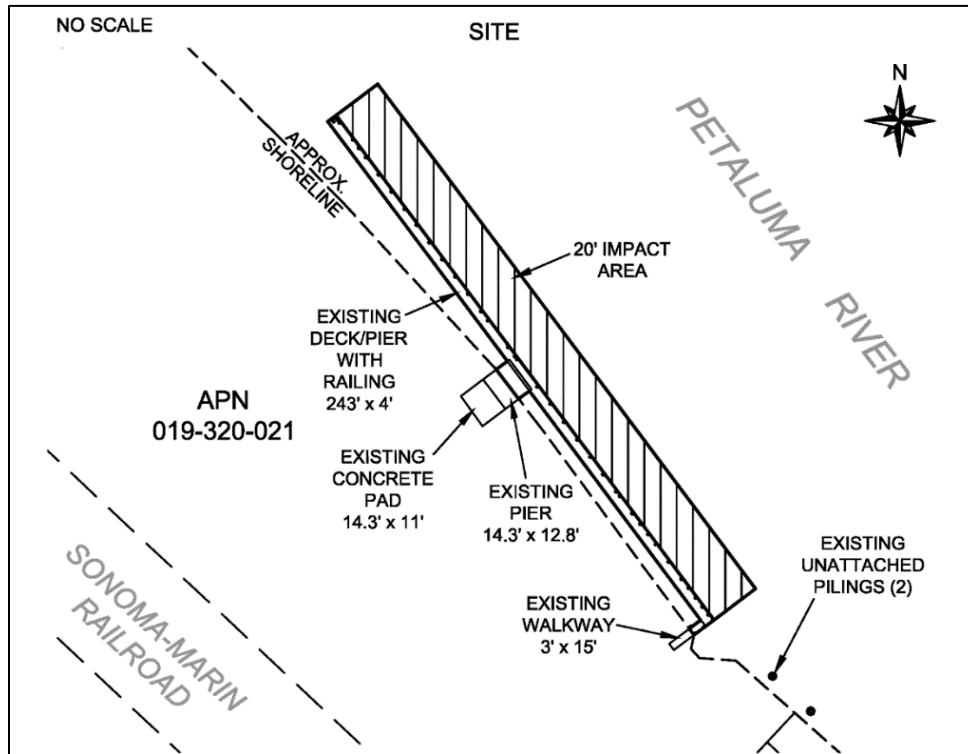


Figure 3-2. Site Map

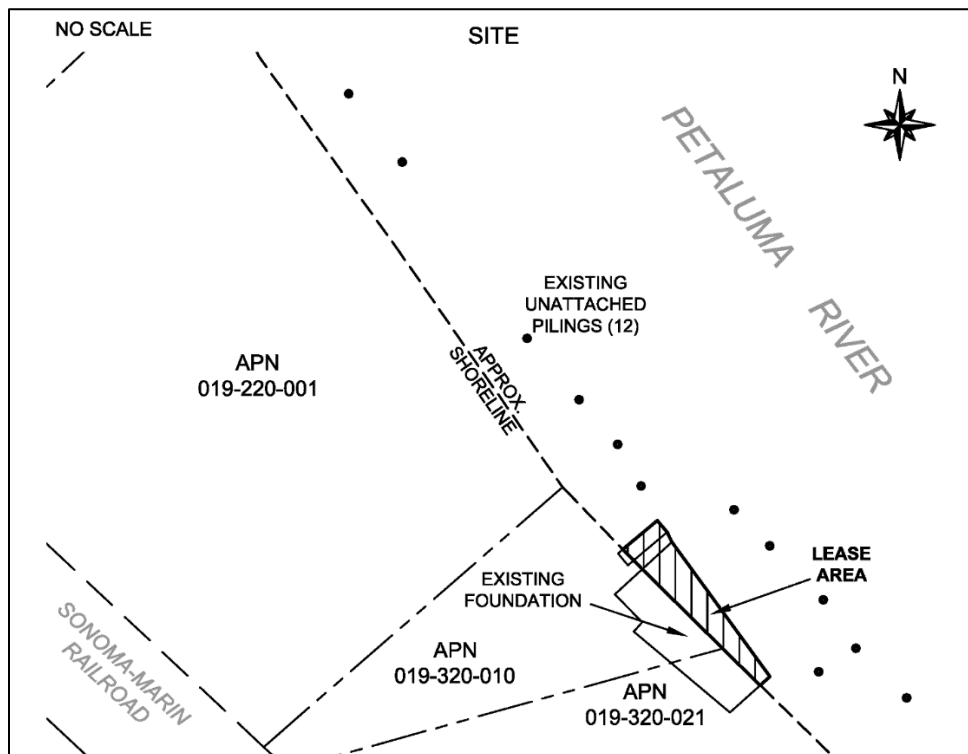
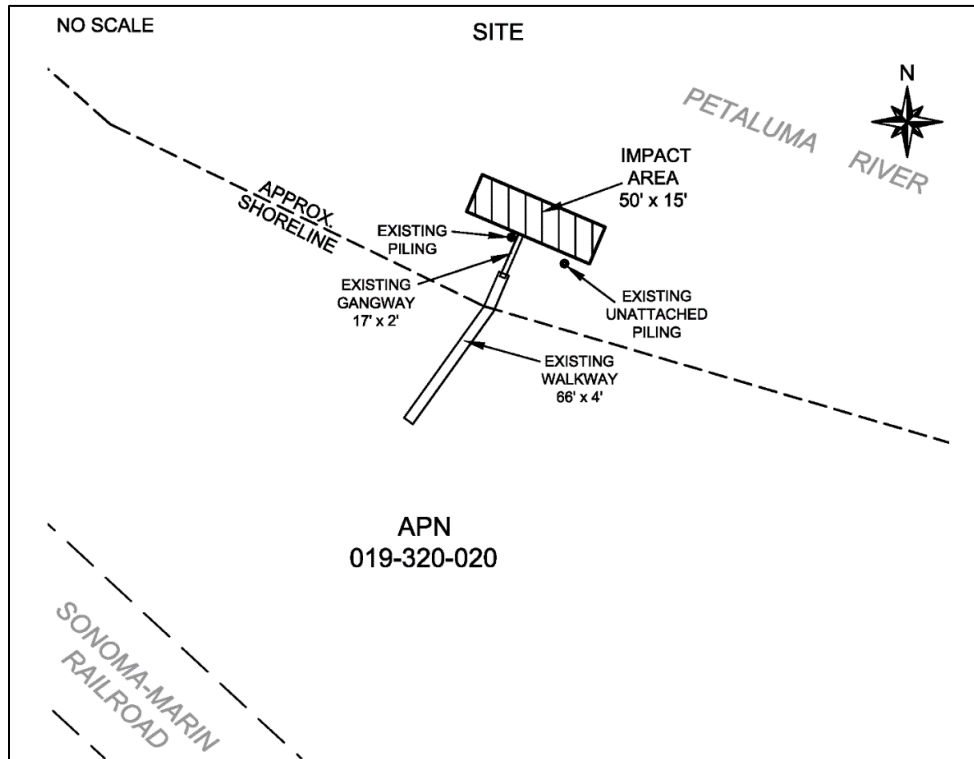


Figure 4-3. Site Map



NOTE: The depictions of the lease premises is based on unverified information provided by the Applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

TERM:

10 years, beginning March 1, 2023.

CONSIDERATION:

\$2,220 per year, with an annual Consumer Price Index adjustment; and \$5,492 for unauthorized occupation of State land for the period prior to March 1, 2023.

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.
- Lessee shall submit a workplan by March 1, 2025, to remove the derelict foundation with support piles from the Lease Premises and restore the lease premises with such work having to be completed by Lessee by March 1, 2028.

- Lessee shall submit to Lessor a plan by March 1, 2025 for the reuse or removal of the 15 unattached pilings.
- All construction activities shall be carried out in accordance with all applicable safety regulations, permits, and conditions or all other agencies.
- Within 60 days of completion of removal activities, Lessee must provide Lessor with photographs of the lease premises, including restoration of said land. Lessor shall then replace the Exhibits in the lease as necessary to accurately reflect the authorized restoration. Once approved by the Lessor's Executive Officer or designee, the revised Exhibits shall replace the Exhibits incorporated in the Lease at the time of Lease execution. The replaced Exhibits shall be incorporated in the Lease as though fully set forth therein.

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:

The Applicant has applied for a General Lease – Recreational Use, for the use and maintenance of an existing pier with railing, concrete pad, and walkway; walkway with gangway and piling; 15 unattached pilings; and removal of a derelict foundation with support piles in the Petaluma River. The foundation is all that remains from a former single-family residence. The residence was removed as it was in disrepair. The facilities have been used for mooring recreational use boats. The facilities have existed for many years at this location but have not been previously under lease by the Commission. On July 10, 2020, ownership interest in the upland property was transferred to the Applicant.

Staff recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$5,492 for the period from July 10, 2020 through February 28, 2023, the day before the proposed new lease would become effective. The proposed lease will also require the Applicant to indemnify the State for any liabilities that occurred during the unauthorized occupation period.

The Applicant plans to repair the existing pier structure by replacing 13 broken pilings attached to the pier and repairing the handrail and decking as needed. The replacement and repair work is for restoration of the facilities to good repair and order. The Applicant also proposes to remove the derelict foundation along with

support piles. The proposed term of the lease requires the Applicant to complete the repair work to the facilities on State-owned sovereign land by March 1, 2028. The repair work would be done from a barge. In addition, the term of the lease will allow for the proposed removal activities to occur.

The pier, walkway and appurtenant facilities, once repaired, will accommodate recreational access, for the Applicant, to the State's waterways. 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 repair and use of the pier, walkway, and appurtenant facilities will not substantially interfere with the Public Trust needs at this location because the proposed lease is only 10 years, the underlying fee remains with the State, and the Commission is receiving fair rental value for the use of the property during the repair process.

The facilities do not permanently alienate the State's fee simple interest in the underlying land and do not permanently impair public rights. The proposed lease is limited to a 10-year term and does not grant the Applicant exclusive rights to the lease premises. Upon termination of the lease, the lessee may be required to remove all improvements and restore the lease premises to their original condition.

Furthermore, the lease requires the lessee 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 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 lease facilities are located in a tidally influenced site on the Petaluma River that is vulnerable to shallow coastal flooding at current sea levels and will be at 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.

Rising sea levels can lead to more frequent flood inundation in low-lying areas and larger tidal events. 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. Climate change and sea level rise will further influence coastal and riverine areas by changing erosion and sedimentation rates. Near-coastal riverine areas will be exposed to increased wave force and run up, potentially resulting in greater bank erosion than previously experienced. In addition, flooding and storm flow will likely increase scour, decreasing bank stability and structure.

The combination of these projected conditions could increase the likelihood of additional damage to the facilities within the lease premises during the term of the lease. If the derelict foundation and support piles are not removed, they would be at an increased risk for dislodgement, posing risks to public safety and navigation. The adjacent upland may also experience periodic or continuous inundation with rising water levels and more frequent flooding and may be at risk of accelerated deterioration from higher and stronger currents and floods.

The project includes partial replacement of pilings. 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 located in an area that may be subject to the effects of climate change, including sea level rise.

CONCLUSION:

For all the reasons stated above, staff believes that issuance of 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 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. The lessee also 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 the "Leading Climate Activism" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. **Reconstruction of Existing Pier and Dock:** 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 2, Replacement or Reconstruction; California Code of Regulations, title 2, section 2905, subdivision (b).
4. **Removal of the Derelict Foundation and Piles:** Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 4, Minor Alterations to Land; California Code of Regulations, title 2, section 2905, subdivision (d)(3).

Authority: Public Resources Code section 21084, California Code of Regulations, title 14, section 15300, and California Code of Regulations, title 2, section 2905.

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Reconstruction of Existing Pier and Dock: 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 2, Replacement or Reconstruction; California Code of Regulations, title 2, section 2905, subdivision (b).

Removal of the Derelict Foundation and Piles: 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 4, Minor Alterations to Land; California Code of Regulations, title 2, section 2905, subdivision (d)(3).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that issuance of the proposed lease will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the term of the lease; is consistent with the common law Public Trust; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of compensation from the Applicant in the amount of \$5,492 for unauthorized occupation of State lands for the period beginning July 10, 2020 through February 28, 2023.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning March 1, 2023, for a term of 10 years, for the use and maintenance of an existing pier with railing, concrete pad, and walkway; walkway with gangway and piling; and 15 unattached pilings; removal of derelict foundation with support piles; and restoration of lease premises; annual rent in the amount of \$2,220, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.
3. Authorize the Executive Officer or designee to replace Exhibits in the lease and review and approve post-completion reports detailing the final restoration activities, following removal activities of the derelict foundation.
4. Authorize the Executive Officer or designee to revise the annual rent removing the derelict foundation from the rent calculation upon staff confirmation of the full removal of the derelict foundation.