

Staff Report 69

LESSEE:

Carl W. Tunnell and Betsy Tunnell

APPLICANT:

JADJ Land Holdings, LLC, a California limited liability company

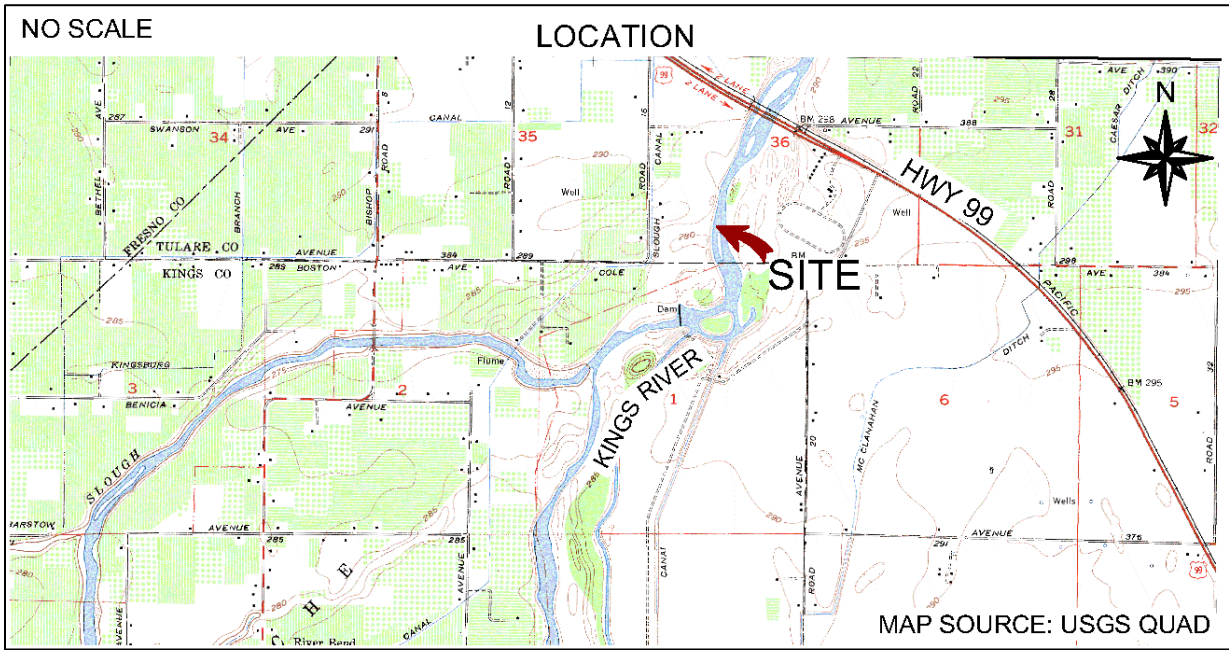
PROPOSED ACTION:

Acceptance of a Lease Quitclaim Deed and Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Kings River, adjacent to 38550 Road 16, near Kingsburg, Tulare County (as shown in Figure 1).

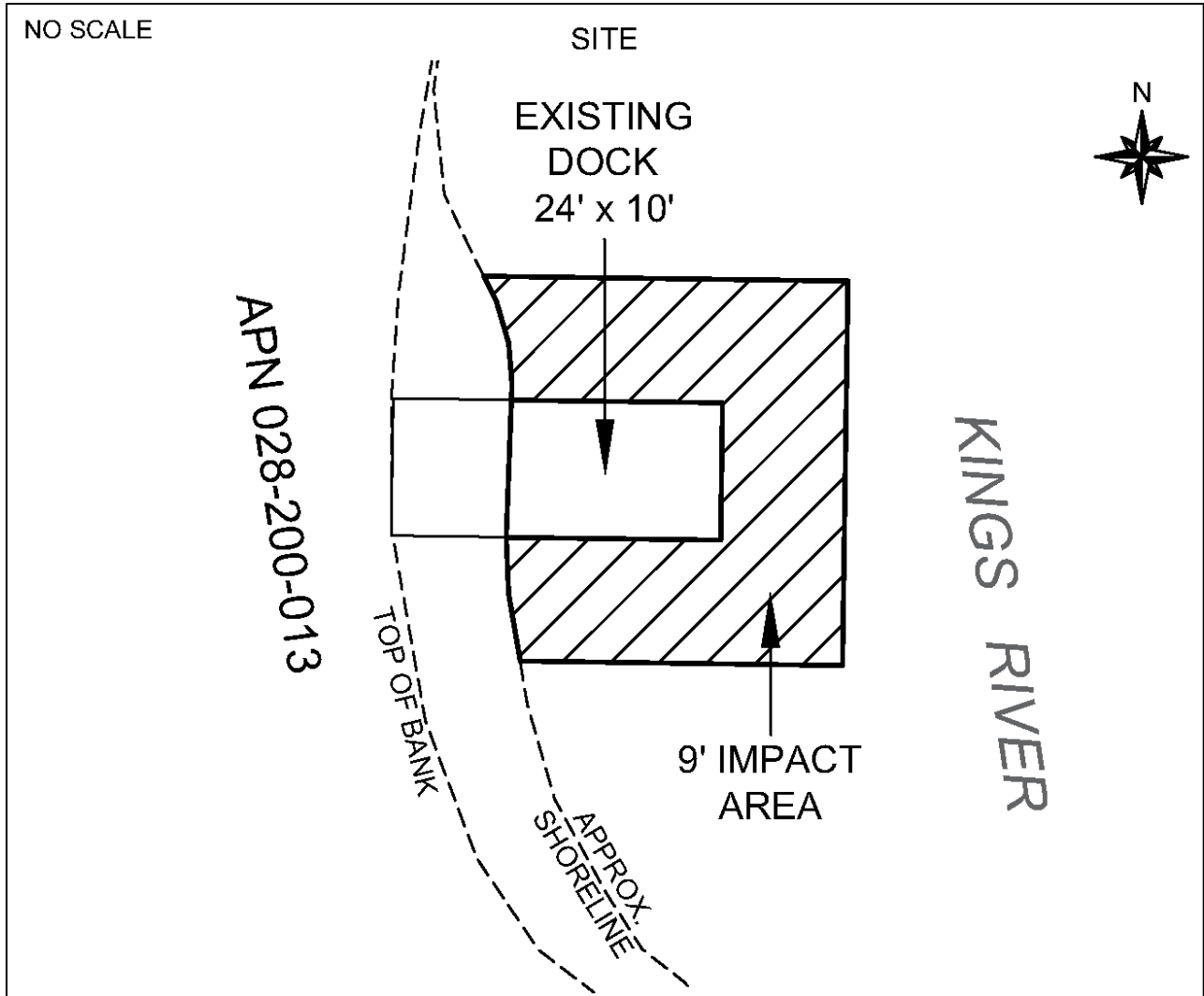
Figure 1. Location



AUTHORIZED USE:

Use of an existing fixed recreational dock (as shown in Figure 2).

Figure 2. Site Map



NOTE: This depiction 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 June 5, 2023.

CONSIDERATION:

\$140 per year, with an annual Consumer Price Index adjustment; and \$38 for the unauthorized occupation of State land for the period prior to June 5, 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 climate change may require additional maintenance or protection strategies regarding the improvements on the lease premises.
- Lessee agrees the provisions of Section 3, Paragraph 8 shall also extend to the period of Lessee's unauthorized occupation of state-owned land, from December 6, 2022 through June 4, 2023.

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 June 21, 2018, the Commission authorized a General Lease - Recreational Use to Carl W. Tunnell and Betsy Tunnell for the use of an existing fixed recreational dock in the Kings River, adjacent to 38550 Road 16, near Kingsburg, Tulare County ([Item C70, June 21, 2018](#)). This lease expires on February 24, 2028.

On June 17, 2021, ownership interest in the upland parcel was transferred to Gerrit Anker. Commission staff was not notified of this transfer of ownership, nor was an assignment of lease sought.

On December 6, 2022, ownership interest in the upland parcel was transferred again, this time to JADJ Land Holdings LLC, a California limited liability company. On January 3, 2023, following this change in ownership, an application to transfer Lease 8773 to the new owner was submitted to Commission staff.

Now the Lessee seeks to quitclaim its existing leasehold interest and the Applicant is applying for a General Lease – Recreational Use for the use of the existing fixed recreational dock in the Kings River, adjacent to 38550 Road 16, near Kingsburg, Tulare County. Staff recommends acceptance of a Quitclaim Deed for the current lease, effective June 4, 2023, and issuance of a General Lease – Recreational Use to the Applicant, to take effect on June 5, 2023.

The Applicant has occupied State land without authorization since acquiring ownership of the adjacent upland property on December 6, 2022. However, when this acquisition occurred, the Lessee had already paid annual rent for the lease

through February 24, 2023. Therefore, the State has already been compensated for a portion of the unauthorized occupation of State land. As such, the Applicant will only pay compensation for the period of unauthorized occupation that the State has not yet been compensated for. Thus, the Applicant will pay \$38 in compensation for the unauthorized occupation of State land for the period prior to June 5, 2023. Additionally, the proposed lease will require the Applicant to indemnify the State for the entire period of unauthorized occupation, from December 6, 2022 through June 4, 2023, ensuring the State is protected.

The subject facilities are privately owned and maintained, are located directly waterward of the upland property, occupy a relatively small area of the river, and have existed at this location for many years. The fixed dock is used for the docking and mooring of recreational boats and shall be authorized for such usage. Recreational boating is water-dependent and 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 lands. (Pub. Resources Code, § 6503.5).

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:

The project area is not tidally influenced and therefore, would not be subject to sea level rise. However, as stated in the [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, drought, and storms. In rivers, more frequent and powerful storms can result in increased flooding conditions and damage from storm created debris. Conversely, prolonged droughts could dramatically reduce river flow and water levels, leading to loss of public access and navigability. Climate change will further influence riverine areas by changing erosion and sedimentation rates, and flooding and storm flow, as well as runoff, will likely increase scour, decreasing bank stability at a faster rate.

The existing pier could need reinforcement in the future 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 during use. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises are located in an area that may be subject to effects of climate change.

CONCLUSION:

For all the reasons above, staff believe approval of this lease will not substantially interfere with Public Trust needs at this location, at this time, nor for the remaining term of the 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 as authorized by law. If the Commission denies the application, the Applicant may be required to remove the dock 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. Acceptance of the lease quitclaim deed is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

4. Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of 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.

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that issuance of the lease 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 remaining 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 acceptance of a lease quitclaim deed of Lease 8773, a General Lease – Recreational Use issued to the Lessee, effective June 4, 2023.
2. Authorize acceptance of compensation from the Applicant in the amount of \$38 for the unauthorized occupation of State lands for the period prior to June 5, 2023.
3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning June 5, 2023, for a term of 10 years, for the use of an existing fixed recreational dock; annual rent in the amount of \$140, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.