

# Staff Report 32

## APPLICANT:

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James R. Hanley and Kathryn R. Hanley, Trustees of the J&K Hanley Family Trust, dated November 7, 2019

## PROPOSED ACTION:

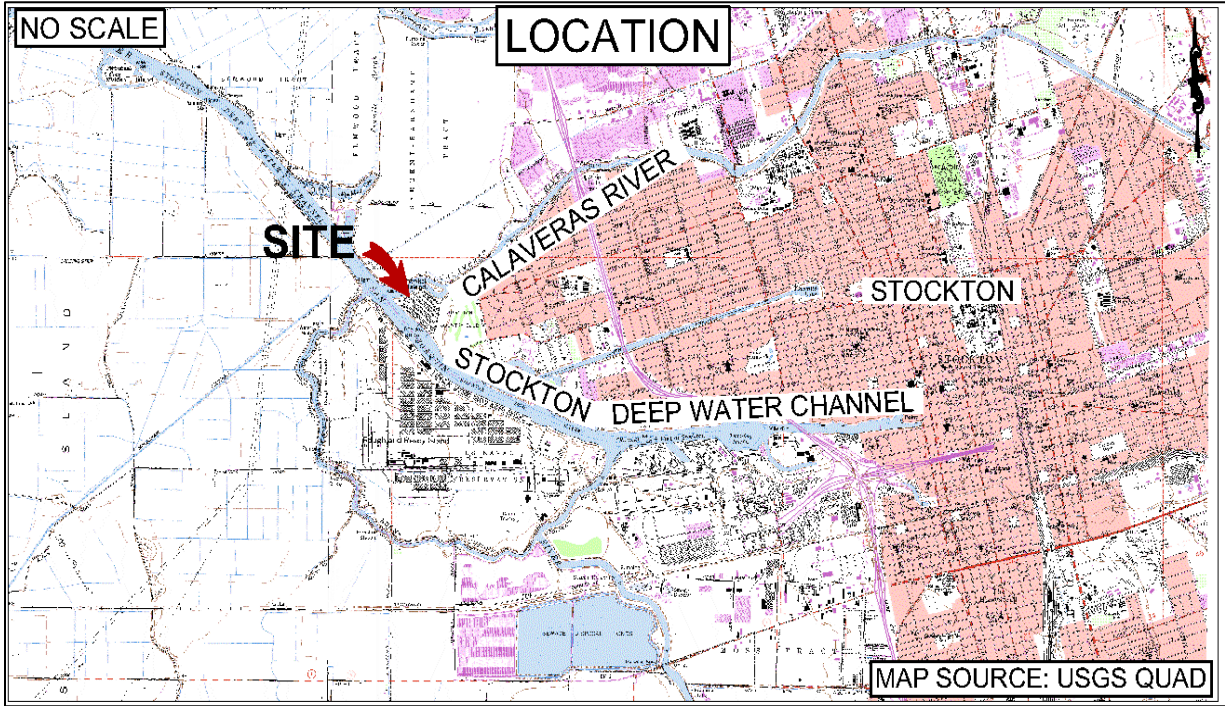
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Issuance of a General Lease – Recreational and Protective Structure Use

## AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Calaveras River, adjacent to 4357 Yacht Harbor Drive, near Stockton, San Joaquin County (as shown on Figure 1).

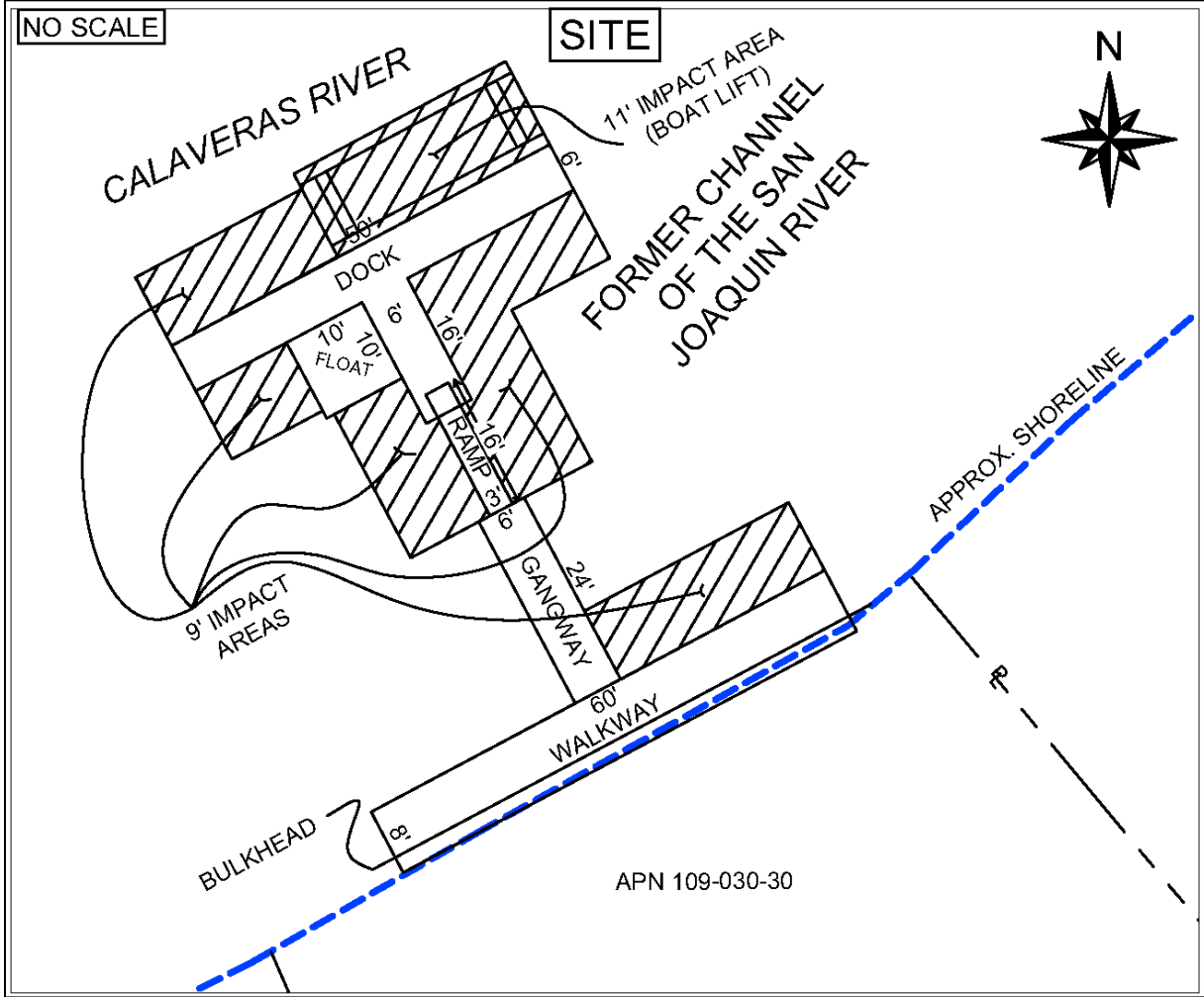
Figure 1. Location



**AUTHORIZED USE:**

Use of an existing boat dock, ramp, walkway, two pilings, electric and water conduit, and bulkhead previously authorized by the Commission; and an existing personal watercraft float and boat lift not previously authorized by the Commission (as shown on 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 August 17, 2023.

**CONSIDERATION:**

\$497 per year, with an annual Consumer Price Index adjustment, and \$441 to compensate for the unauthorized occupation of state sovereign land for the period from May 24, 2022 to August 17, 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.

**STAFF ANALYSIS AND RECOMMENDATION:**

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**AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 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 March 29, 2012, the Commission authorized a General Lease – Recreational and Protective Structure Use to William S. Chapman, as Trustee of the Bypass Trust C/U the Restated William S. Chapman and Diana R. Chapman Family Trust Dated March 21, 1995, and as Trustee of the Survivor's Trust C/U the Restated William S. Chapman and Diana R. Chapman Family Trust Dated March 21, 1995, for the use of an existing boat dock, ramp, walkway, two pilings, electric and water conduits, and bulkhead ([Item 67, March 29, 2012](#)).

On February 9, 2016, the Commission authorized an assignment of Lease PRC 4669 from William S. Chapman, as Trustee of the Bypass Trust C/U the Restated William S. Chapman and Diana R. Chapman Family Trust Dated March 21, 1995, and as Trustee of the Survivor's Trust C/U the Restated William S. Chapman and Diana R. Chapman Family Trust Dated March 21, 1995, to James Hanley and Kathryn Hanley ([Item 22, February 9, 2016](#)).

On April 19, 2018, staff conducted the rent review called for in the lease and revised the rent from \$245 to \$310 per year, based on changes to the lease (impact) area. The lease was amended to incorporate revised exhibits that reflected the new lease area and aligning with historical usage patterns of the boat dock. All other terms and conditions of the lease remained in effect without amendment ([Item 59, April 19, 2018](#)). The lease expired on May 23, 2022.

On November 7, 2019, ownership interest in the upland parcel transferred from James Hanley and Kathryn Hanley to James R. Hanley and Kathryn R. Hanley, Trustees of the J&K Hanley Family Trust, dated November 7, 2019.

The Applicant is applying for a General Lease – Recreational and Protective Structure Use, for use and maintenance of the improvements previously authorized by the Commission, and for an existing personal watercraft float and boat lift not previously authorized by the Commission.

Staff recommends that the proposed lease start on August 17, 2023, the day of the Commission meeting. Staff also recommends that the Commission accept \$441 in compensation from the Applicant for the unauthorized occupation of State lands for the period from May 24, 2022 to August 17, 2023 (the day the new lease becomes effective). The lease provisions regarding indemnity include the period of the Applicant's unauthorized occupation of State-owned lands prior to August 17, 2023.

The subject improvements are privately owned and maintained and facilitate recreational boating. Based on information provided in the application and the Commission's records, the subject facilities have existed at this location for many years. 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 bulkhead protects the upland property and maintain the integrity of the Calaveras River, which will help protect the Public Trust resources for recreational and navigational use by the public. The facilities are located directly adjacent to the upland property and occupy a relatively small area of the river.

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 proposed lease, the lessee may be required to remove the boat dock, appurtenant facilities, and bulkhead 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 facilities are located in the Calaveras River, on the waterward side of the nearby levee (Climate Central Risk Zone Map, <https://ss2.climatecentral.org>, accessed 6/28/2023) and 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.

This effect could increase the Calaveras 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 and storm flow, as well as runoff, will likely increase scour and decrease bank stability at a faster rate.

The existing boat dock, ramp, walkway, watercraft float, and boat lift are adaptable to higher water levels allowing them to rise and fall with storms and droughts and increasing their resiliency to some climate change impacts, but they may require more frequent maintenance or replacement to ensure continued function during and after storm seasons and to avoid dislodgement of the facilities. The electric and water conduits, two pilings, and bulkhead are fixed and therefore more vulnerable to sea level rise and more frequent flood events. These structures may need additional fortification or repair and maintenance to ensure they do not become dislodged or degraded, as they could pose risks to public safety and navigation.

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 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 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 proposed lease; 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 boat dock, ramp, walkway, two pilings, electric and water conduits, and bulkhead, 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 "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 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

## **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:**

1. Find that the existing and continuing use and maintenance of the boat dock, ramp, walkway, and electric and water conduits will not substantially impair the public rights to navigation, fishing, and commerce; or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and is consistent with the Public Trust Doctrine.
2. Find that the existing and continuing use and maintenance of the two pilings and bulkhead does not substantially interfere with the trust.
3. Find that issuing the proposed lease is in the best interests of the State.

### **AUTHORIZATION:**

1. Authorize acceptance of compensation from the Applicant in the amount of \$441 for the unauthorized occupation of state sovereign land prior to August 17, 2023.
2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning August 17, 2023, for a term of 10 years, for the use of an existing boat dock, ramp, walkway, two pilings, electric and water conduits, and bulkhead previously authorized by the Commission, and an existing personal watercraft float and boat lift not previously authorized by the Commission; annual rent in the amount of \$497, with an annual Consumer Price

Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.