

# Staff Report 25

## APPLICANT:

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Reclamation District No. 2037

## PROPOSED ACTION:

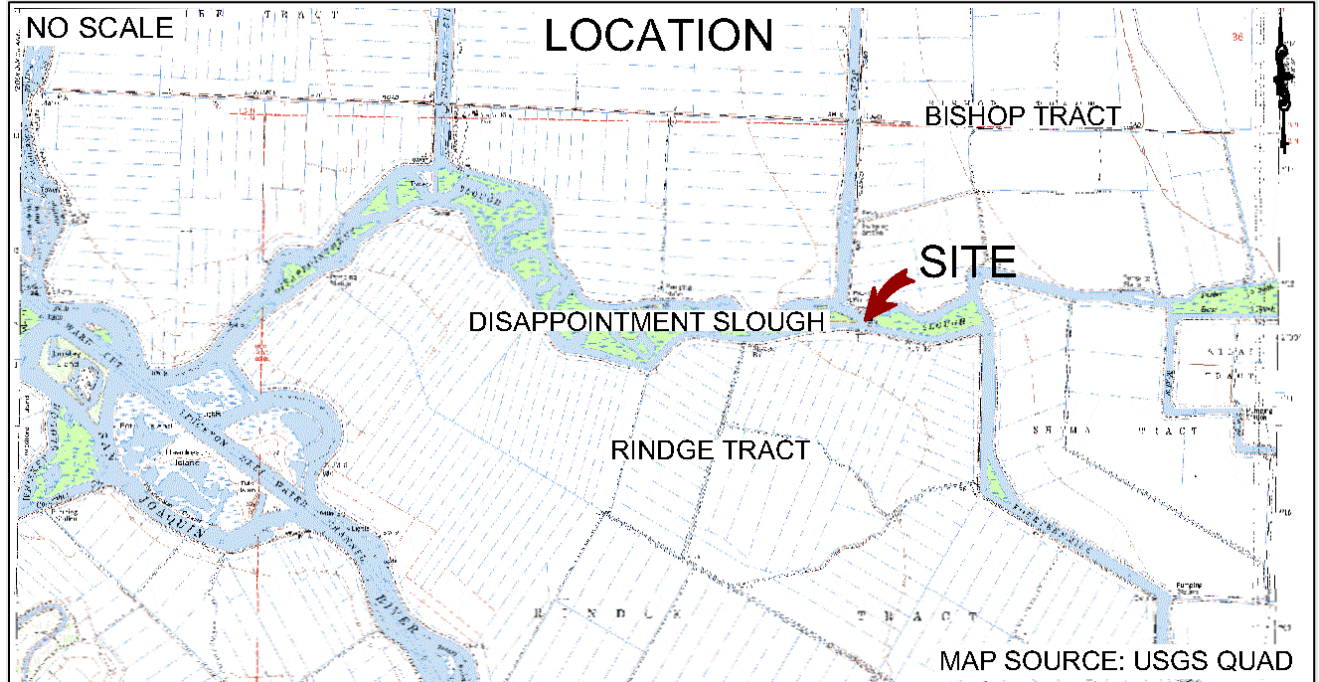
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Issuance of General Lease – Public Agency Use.

## AREA, LAND TYPE, AND LOCATION:

Sovereign land in Disappointment Slough, adjacent to Assessor's Parcel Numbers 071-120-11, 071-120-13, and 071-050-24, between Bishop Tract and Rindge Tract, near Stockton, San Joaquin County (as shown in Figure 1).

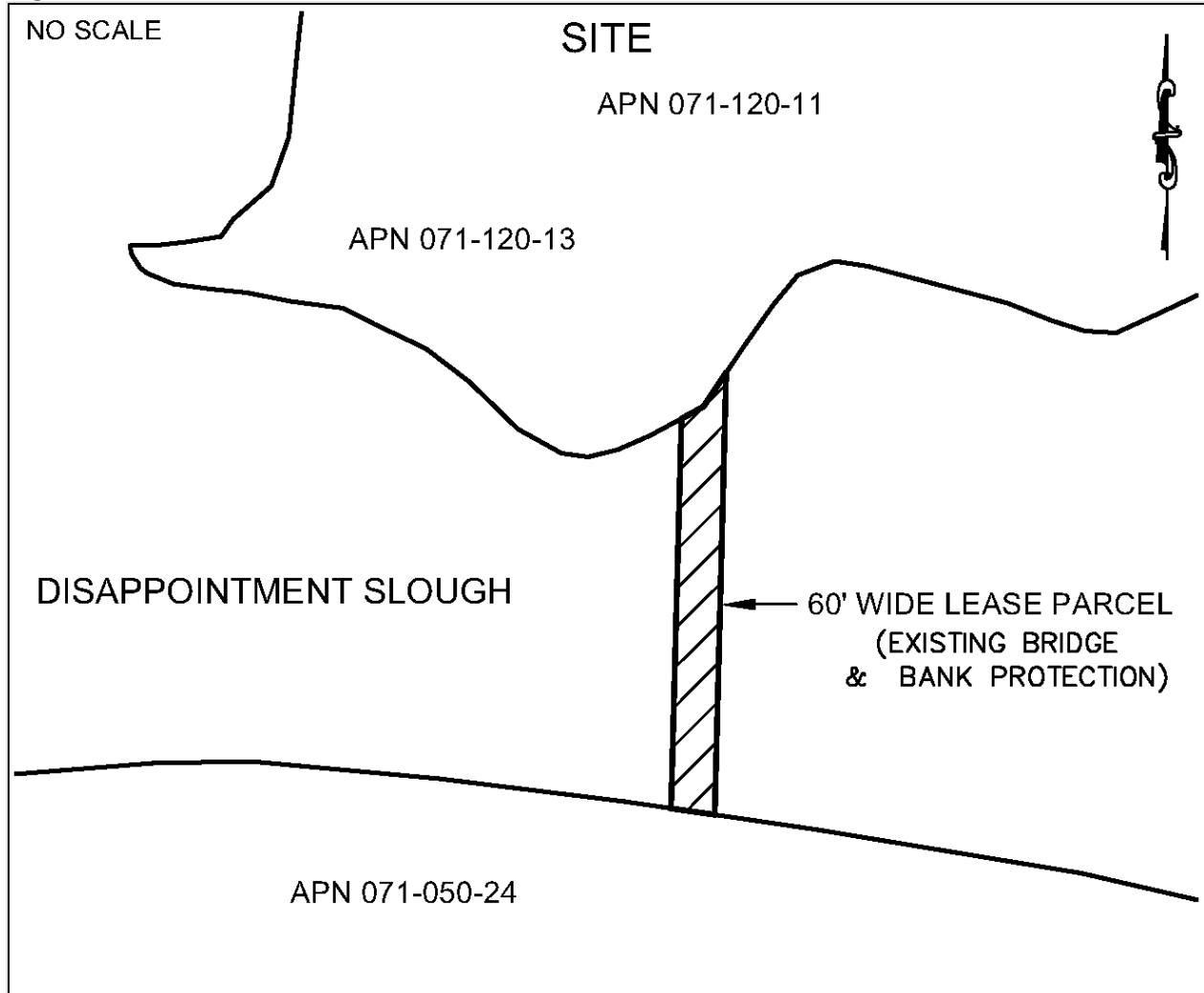
**Figure 1. Location**



**AUTHORIZED USE:**

Use of an existing vehicle bridge with boater safety lights previously authorized by the Commission and existing bank protection not previously authorized by the Commission.

**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 December 2, 2023.

**CONSIDERATION:**

\$140 per year, with an annual Consumer Price Index adjustment.

**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 improvements.
- Lessee shall not place, attach, or authorize placement or attachment of any utilities or other improvements on the 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 sea level rise and climate change may require additional maintenance or protection strategies regarding the improvements on the lease premises.
- Lessee, or its qualified contractor, shall conduct an external inspection and condition assessment of the Lease Improvements at least once every two years, performed by a licensed engineer.

**STAFF ANALYSIS AND RECOMMENDATION:**

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**AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

On February 27, 1962, the Commission authorized a 49-year Right-of-Way Easement to Allied Properties, for construction of a vehicle bridge ([Item 11, February 27, 1962](#)). On May 27, 1976, the Commission authorized a 49-year Public Agency Permit, acceptance of a quitclaim deed, and termination of lease which transferred the maintenance responsibility from Allied Properties to Reclamation District No. 2037 (District) ([Item 22, May 27, 1976](#)). On December 2, 2013, the Commission authorized issuance of a 10-year General Lease – Public Agency Use to the District, for use of the subject bridge with boater safety lights ([Item C73, December 2, 2013](#)). That lease expired on December 1, 2023. The District is applying for a General Lease – Public Agency Use, for an existing bridge previously authorized by the Commission and existing bank protection not previously authorized by the Commission, located in Disappointment Slough, adjacent to Assessor's Parcel Numbers 071-120-11, 071-120-13, and 071-050-24, between Bishop Tract and Rindge Tract, near Stockton, San Joaquin County. At some point, rip rap bank protection was added to the lease

area to enhance flood protection for the upland properties. The subject bridge and bank protection have existed at this location for many years, as shown in the Applicant's lease application and Commission records.

The bridge provides private access and transportation to Rindge Tract, where the District manages the levee system surrounding the Tract. The island of Rindge Tract is privately owned and dominated by agricultural use. The bridge contains an electronic access gate for use only by the District. The bridge is not open to the public for security reasons. The bridge has an average daily vehicle count of 30 to 40 vehicles per day. The bridge is inspected regularly by the District and cleaned with a water truck to remove sediment from the roadway. The most recent inspection in 2023 deemed the bridge to be in fair condition with some wear and tear. The District conducts routine preventative maintenance on a monthly basis. The existing rip rap offers flood protection to the upland properties. The proposed lease would require the District to maintain the bridge and bank protection during the term of the lease, reducing its potential liability to the State.

The bridge contains electric service for boater safety lights and operation of the bridge's access gate. The proposed lease will include a provision on the attachment of utilities which requires a separate authorized lease to the owner of said improvement. This provision ensures compliance with leasing requirements and mitigates the State's liability. The 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 improvement.

According to the District, public boating access is possible under the bridge for normal boating traffic and other water recreational activities. The height of the base of the bridge and normal water (given tidal fluctuations) is between 18 to 20 feet at the highest point and 4 to 5 feet adjacent to the levee abutments. The bridge does not limit access to adjacent marinas. There are alternative routes for oversized marine vessels and sailboats to access around this crossing, if necessary. From Bishop Tract to the north, via Eight Mile Road there is access to Paradise Point Marina directly west of the bridge where there is access to the Slough. Further, there is a bike trail along the Bishop Tract Levee to access the Marina. The slough at this location is narrow and has varying water levels. The public can use the slough for recreational Public Trust activities.

Visitors may legally utilize public access easements around the bridge to access the slough. The proposed lease includes certain provisions protecting the public use of the proposed lease area. Furthermore, the proposed lease will not substantially interfere with Public Trust uses in this area.

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 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 Disappointment Slough tributary to the San Joaquin River is 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 slough'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, creeks, 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.

The bridge deck is elevated sufficiently above the ordinary high-water mark and is therefore unlikely to be affected by flooding. However, the bridge support structure is not adaptable to variable water levels and may require more frequent maintenance and reinforcement in the future to withstand higher levels of flood exposure, more frequent or intensified scouring, and more frequent storm events and ensure continued function during and after storm seasons and to avoid dislodgement of appurtenant facilities. The bank protection is also fixed and therefore more vulnerable to sea level rise and more frequent flood events, and may need additional fortification or repair and maintenance to ensure it does not become dislodged or degraded, as it 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 are located 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 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 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 does not authorize the lease, the Applicant, as prior lessee, may be required to remove the improvements and restore the lease premises to their original condition. The Applicant 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.

## **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 term of the lease; and is in the best interests of the State.

### **AUTHORIZATION:**

Authorize issuance of a General Lease – Public Agency Use to the Applicant beginning December 2, 2023, for a term of 10 years, for the use of an existing vehicle bridge with boater safety lights previously authorized by the Commission and existing bank protection not previously authorized by the Commission; annual rent in the amount of \$140, with an annual Consumer Price Index adjustment; liability insurance in an amount no less than \$1,000,000 per occurrence.