

Staff Report 38

APPLICANT:

Fairfield-Suisun Sewer District

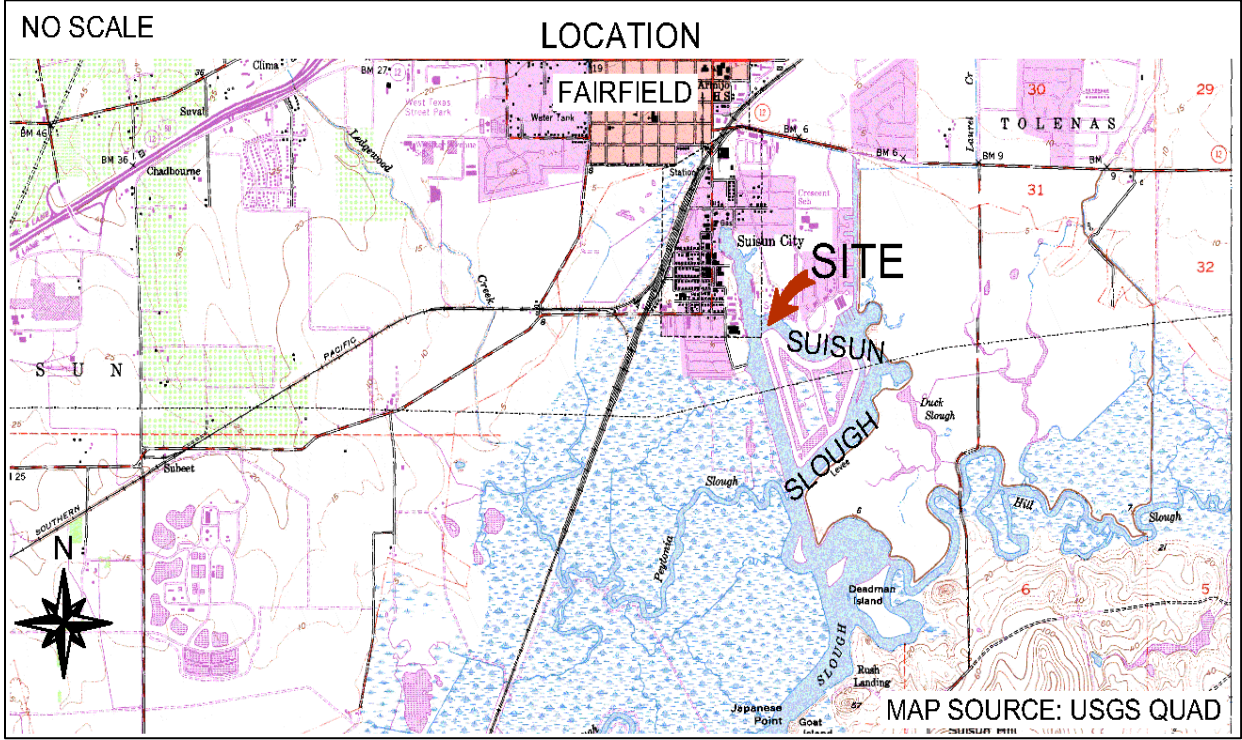
PROPOSED ACTION:

Issuance of a General Lease – Public Agency Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Suisun Slough, adjacent to Assessor's Parcel Numbers 0032-180-410 and 0032-210-010 in Solano County (as shown in Figure 1).

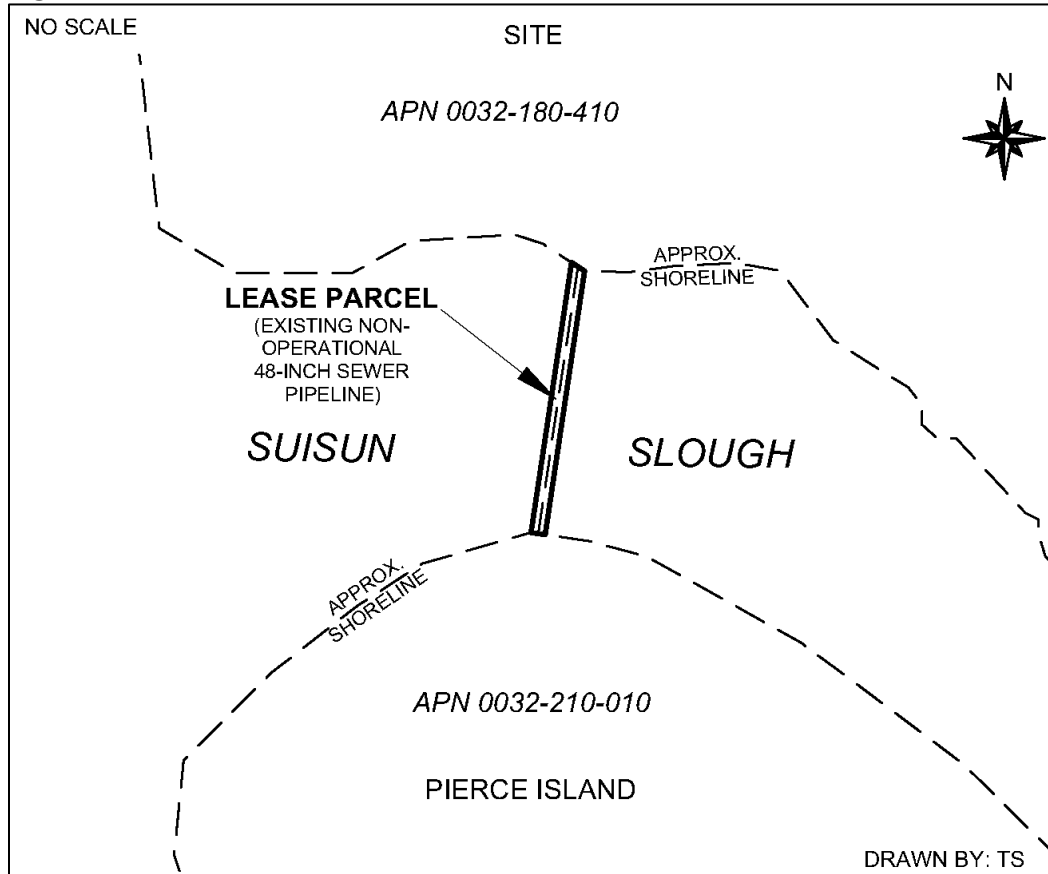
Figure 1. Location



AUTHORIZED USE:

Caretaker status, including maintenance of a nonoperational 48-inch-diameter sewer pipeline (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:

7 years, beginning June 7, 2024.

CONSIDERATION:

\$456 per year, with an annual Consumer Price Index adjustment; and \$2,281 to compensate for the unauthorized occupation of state-sovereign land for the facilities for the period prior to June 7, 2024.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6303, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On January 26, 1966, the Commission authorized a 49-year Right-of-Way Easement to the Fairfield-Suisun Sewer District (District) for the installation and maintenance of an 48-inch-diameter buried sewer pipeline in the Suisun Slough ([Item 04, January 26, 1966](#)). The pipeline was to be installed approximately 5-feet below the bed of Suisun Slough (Slough), adjacent to Assessor's Parcel Numbers 0032-180-410 and 0032-210-010 in Solano County. At some point, the aged sewer pipeline and associated wastewater treatment plant was taken out of service in the 1970s. The flow was redirected to another conveyance system outside of the Commission's jurisdiction. The District is applying for a new General Lease – Public Agency Use for the continued maintenance of a nonoperational 48-inch-diameter sewer pipeline in Suisun Slough.

Given the estimated age of the pipeline and a dearth of historical records at the District, it is unknown where the pipeline currently resides or whether it was removed along with the associated wastewater treatment plant in the 1970s. The District and Commission staff will work to develop good faith efforts to investigate the location and character of the pipeline, which will identify the appropriate decommissioning measures. Once the pipeline is located, the Lessee will provide all locator and survey results, assessment findings, a depth of burial survey, and a proposed plan for removal or decommissioning for Commission staff's review. Additionally, the proposed plan will include restoration of the Leased Lands, as applicable. Once the submitted plan is reviewed, Commission staff will notify the Lessee of the acceptable disposition measures. At that point, the Lessee will submit a new online Application for Lease to State Lands Commission, for a proposed project which includes the decommissioning of the portion of the pipeline which resides on state land (pursuant to Section 3 – General Provisions, Paragraph 14.3). This proposed caretaker lease is for a limited duration of 5 years to provide the lessee time to locate the pipeline and develop a plan for the removal or decommissioning of the nonoperational pipeline.

The sewer pipeline is in an area with low recreational usage. Commission staff believes that the proposed caretaker lease for the pipeline in the Slough will not substantially interfere with the Public Trust needs and values at this location because the pipeline might be buried approximately 5-feet below the bed of Slough. Public access to the Slough is located upstream and downstream of the sewer pipeline at various points along the Slough.

The proposed lease for the sewer pipeline does not alienate the State's fee simple interest or permanently impair public rights. In addition, the lease has a limited 7-year term and does not grant the lessee exclusive rights to the lease premises. Furthermore, the proposed lease for the sewer pipeline will allow the District to develop a plan to remove this sewer pipeline.

Staff recommends that the Commission accept compensation from the District for the unauthorized occupation of State land in the amount of \$2,281 for the period prior to June 7, 2024, the starting date of the new lease term. The proposed lease will require the District to indemnify the State for the entire period of occupation prior to June 7, 2024, ensuring the State is protected. The proposed lease requires the lessee to indemnify the State for any liability incurred as a result of the lessee's activities thereon. The Lessee shall indemnify, hold harmless, and, at the option of Lessor, defend Lessor from all damages, injuries, or claims arising from the presence of the pipeline within the Lease Premises. 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 pipeline is located in the Suisun Slough 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," "low 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	0.5
2040	0.8
2050	1.1
2100	3.4

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 could lead to more frequent flood inundation levels 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 as well as decreased bank stability and structure. 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.

While the sewer pipeline might be buried under the Slough bed, more frequent and stronger storm events may cause the sewer pipeline to be dislodged and damaged. The lease terms will require a burial depth survey to confirm the sewer pipeline depth. 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 effects of climate change, including sea level rise.

CONCLUSION:

For all the reasons above, staff believes that issuance of the proposed lease will not substantially interfere with 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.

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 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 14, section 15301.

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

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 14, section 15301.

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:

1. Authorize acceptance of compensation from the Applicant in the amount of \$2,281 for the unauthorized occupation of State land prior to June 7, 2024.

2. Authorize issuance of a General Lease – Public Agency Use to the Applicant beginning June 7, 2024, for a term of 7 years, for caretaker status including maintenance of a nonoperational 48-inch-diameter sewer pipeline, compensation in the amount of \$456 per year, with an annual Consumer Price Index adjustment.