

Staff Report 19

APPLICANT:

Hin Fan Tsang

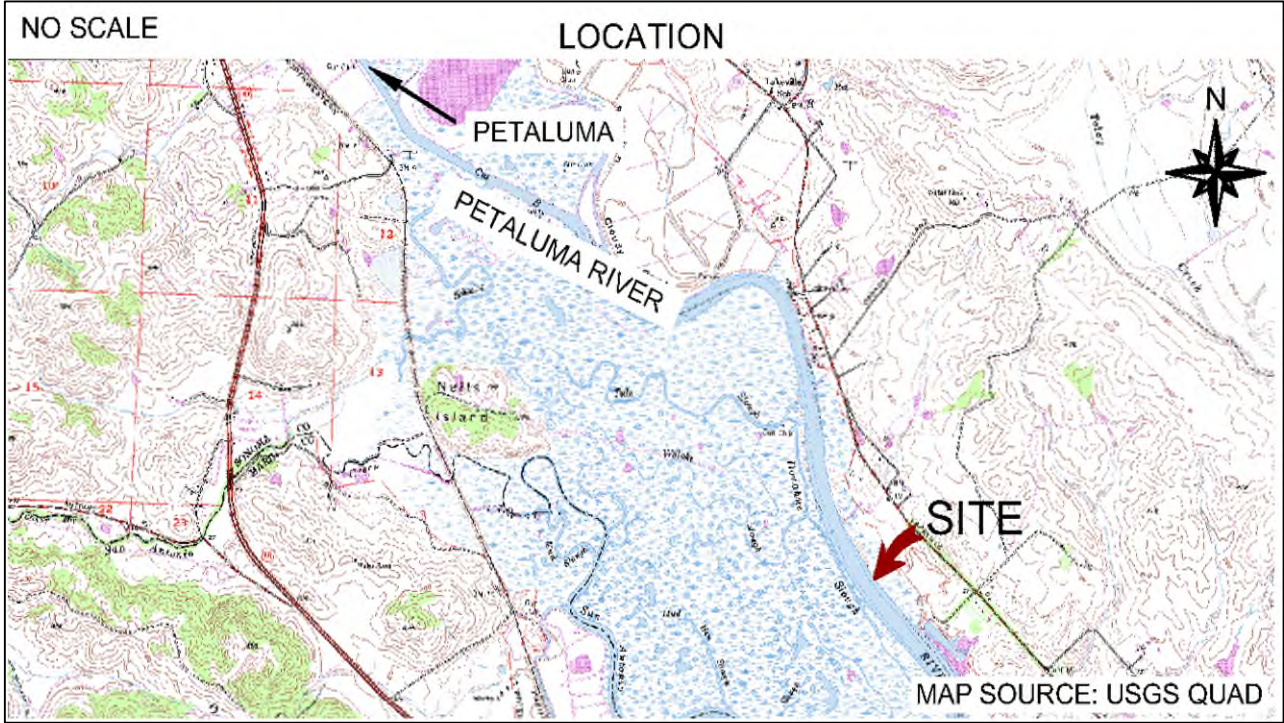
PROPOSED ACTION:

Issuance of a General Lease – Recreational Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Petaluma River, adjacent to 6300 Lakeville Highway, Petaluma, Sonoma County (as shown in Figure 1).

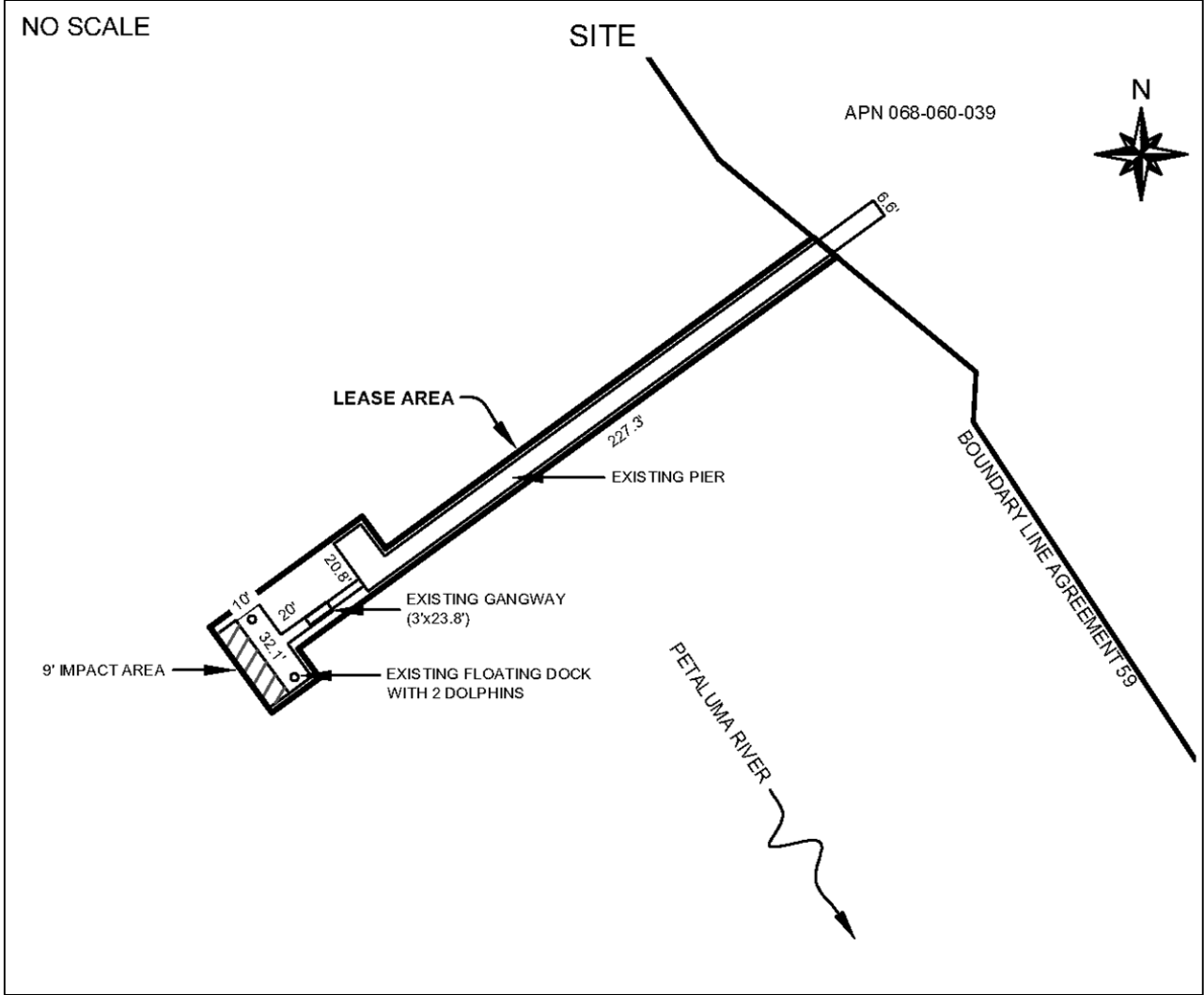
Figure 1. Location



AUTHORIZED USE:

Use of an existing pier, gangway, and boat 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 March 1, 2025.

CONSIDERATION:

\$444 per year, with an annual Consumer Price Index adjustment; and \$819 for the unauthorized occupation of State land for the period prior to March 1, 2035.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- The provisions of Section 3, Paragraph 11 shall also cover the period from February 3, 2021 through February 28, 2025 to coincide with the date of change in ownership of the upland property and duration of unauthorized occupation of the lease premises predating the start date of the proposed lease.

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 April 23, 2014, the Commission authorized issuance of a General Lease – Recreational Use to Frank Chio-Ng Tsang and Judy Ming-Ming Sze Tsang as Co-Trustees of The Frank Chiu-Ng Tsang and Judy Ming-Ming Sze Tsang 2003 Trust established May 5, 2003, for the use and maintenance of an existing pier, gangway, floating boat dock, and two pilings in the Petaluma River, adjacent to 6300 Lakeville Highway, Petaluma, Sonoma County ([Item 24, April 23, 2014](#)).

On April 19, 2018, the Commission authorized a revision of rent for an existing pier, gangway, floating boat dock, and two pilings from \$373 per year to \$445 per year, effective April 30, 2018 ([Item 34, April 19, 2018](#)). The lease expired April 29, 2023.

On February 3, 2021, ownership of the upland property transferred from Frank Chiu-Ng Tsang and Judy Ming-Ming Sze Tsang as co-trustees of The Frank Chiu-Ng Tsang and Judy Ming-Ming Sze Tsang 2003 Trust dated May 5, 2003, to Hin Fan Tsang. The Tsang family did not notify the Commission of the sale, nor apply for a new lease.

The Applicant is now applying for a General Lease – Recreational Use for the use of an existing pier, gangway, and boat dock in the Petaluma River, adjacent to 6300 Lakeville Highway, Petaluma, Sonoma County. As part of staff's recommendation to authorize the proposed lease to the Applicant, the lease provision regarding indemnity will be extended back to February 3, 2021, to coincide with the date the Applicant took ownership of the upland property.

Accounting records show that rent has been paid through April 29, 2023. The Applicant will pay \$819 in compensation for the unauthorized occupation of State land by the pier, boat dock, and appurtenant facilities for the period prior to March 1, 2025.

The subject facilities are located directly waterward of the upland property and occupy a relatively small area of the river. The proposed lease will not interfere with navigation or substantially interfere with any Public Trust needs at this time or for the foreseeable future.

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:

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 on the Petaluma River, 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. According to the [Our Coast Our Future](#) hazard map, the lease area will be completely inundated with approximately 2.5 feet 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 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.

Sea level rise could increase the Petaluma River's inundation levels within the lease area. In addition, 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, 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 combination of these projected conditions could increase the likelihood of damage and affect access to structures within the lease premises during the term of the lease. For example, the potential for more frequent and stronger storm events may expose the lease area structures to higher flood risks and cause facilities to be damaged or dislodged, presenting hazards to public safety as well as dangers for navigation within the channel. Conversely, prolonged drought conditions could lower water levels, exposing previously submerged structures to the elements and potentially leading to increased wear and tear on the foundations and supports/pilings of the pier and the pilings that protect and keep the dock in position on the riverbed. Lowered water levels could also reduce navigability of the channel, thereby increasing hazards and impacting the function and utility of the lease area structures.

The floating boat dock and gangway 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. However, the pier is fixed and therefore more vulnerable to sea level rise and more frequent flood events. The pier may need maintenance, due to increased flood exposure and more frequent storm events, to ensure it does not become dislodged or degraded and to reduce risks to public safety and navigation. The pier may also experience periodic or continuous inundation with rising water levels and more frequent flooding. Use of these facilities while they are inundated may create a safety hazard for the user(s).

The bank is covered in vegetation, largely by marsh grasses. The salt marsh habitat provides some bank protection, as it provides additional stability and will reduce the amount of erosion and scour pressure experienced during future events because of the underground root system. However, the bank remains at risk of accelerated deterioration and erosion from stronger currents and floods and could be vulnerable to future events. In the future, if the erosion requires modifications to the bank, Commission staff suggest the lessee consider nature-based solutions to stabilize the sediment. Any future construction or activities on State land would require a separate authorization from the Commission.

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 believe the issuance of this lease will not substantially interfere with Public Trust needs at this location, at this time, and for the term of the proposed 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. If the Commission denies the application, the Applicant may be required to remove the improvements 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. Staff recommend 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 15061 and California Code of Regulations, title 2, section 2905.

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 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; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Accept compensation from the Applicant in the amount of \$819 for the unauthorized occupation of State land for the period prior to March 1, 2024.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning March 1, 2025, for a term of 10 years, for the use of a pier, gangway, and boat dock; annual rent in the amount of \$444, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.