

Staff Report 40

APPLICANT:

Gerald E. Shipman, as Trustee of the Survivor's Trust Established Under the Gerald and Patty Shipman Family Trust Dated July 17, 2002

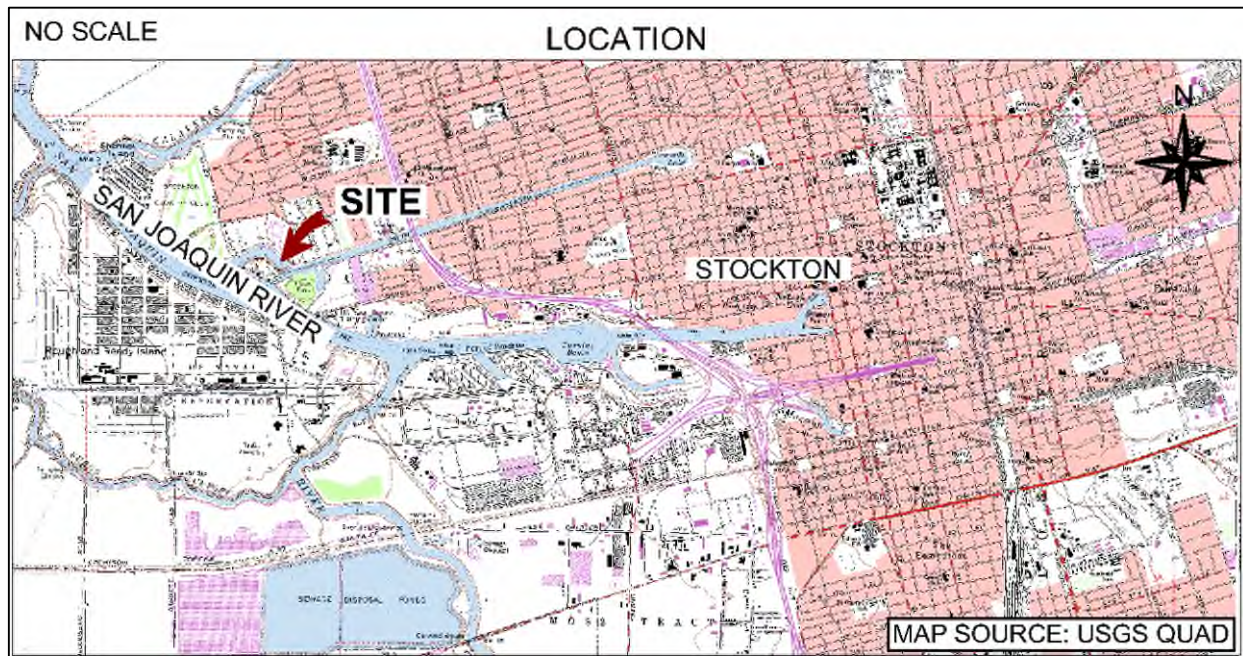
PROPOSED ACTION:

Issuance of a General Lease – Recreational and Protective Structure Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the historic bed of the San Joaquin River at Atherton Cove, adjacent to 3444 Country Club Boulevard, Stockton, San Joaquin County (as shown in Figure 1).

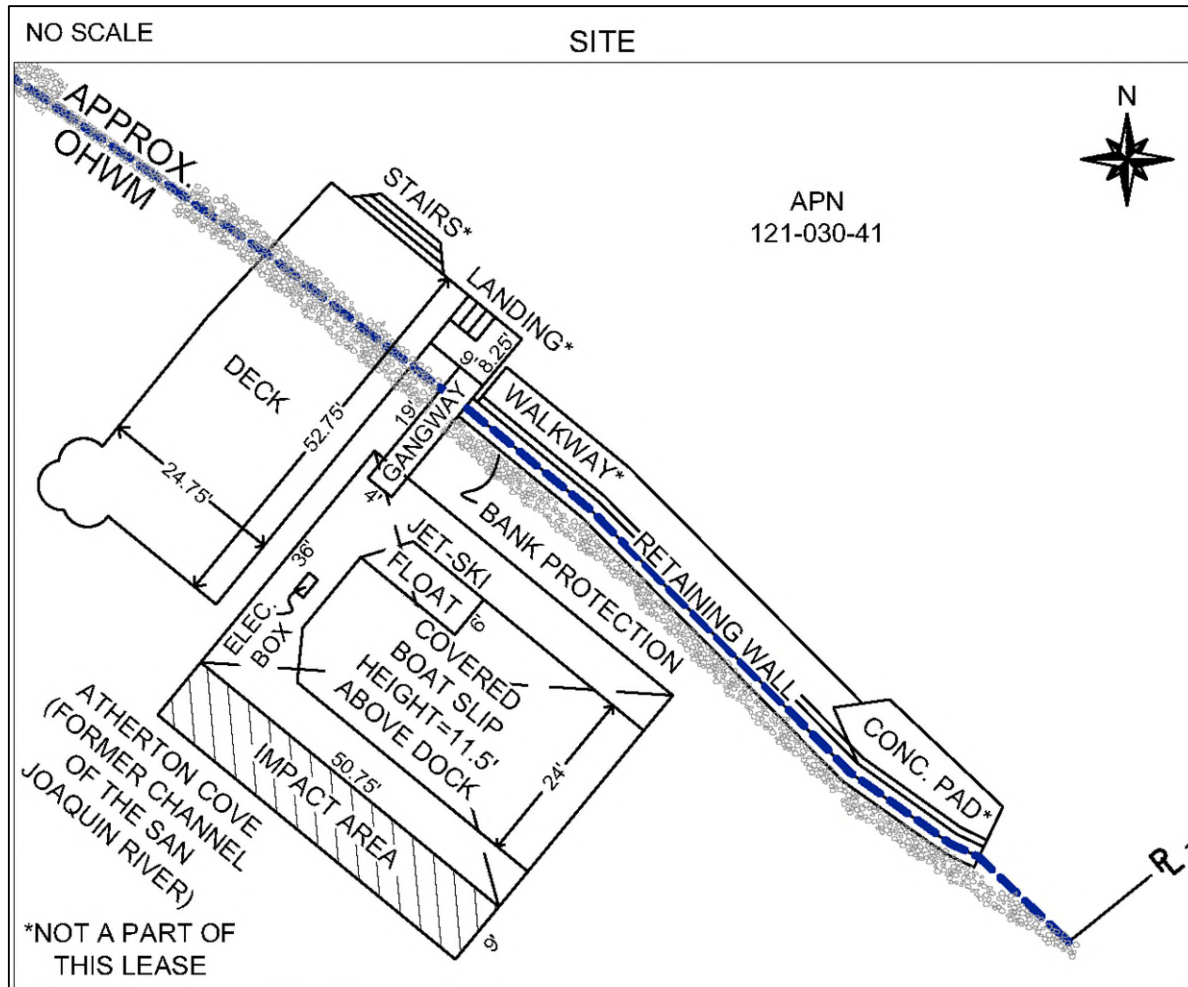
Figure 1. Location



AUTHORIZED USE:

Use of an existing boat dock, appurtenant facilities, deck, and bank protection (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 1, 2025.

CONSIDERATION:

\$1,789 per year, with an annual Consumer Price Index adjustment, and \$3,157 for the unauthorized occupation of State land for the period prior to June 1, 2025.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- The lease indemnity provisions of Section 3, Paragraph 11 shall also extend to the period of Lessee's unauthorized occupation of state-owned lands prior to June 1, 2025.
- The existing deck with railing cannot be expanded, and if repairs to any portion of the existing deck cost more than 50 percent of the base value of the deck with railing, the deck must be removed from the lease premises.
- No permanent enclosure is to be constructed or permitted on the open dock area.

STAFF ANALYSIS AND RECOMMENDATION:

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 June 21, 2013, the Commission authorized a General Lease – Recreational and Protective Structure Use to Gerald E. Shipman and Patty Shipman, Trustees of the Gerald and Patty Shipman Family Trust, dated July 17, 2002, for the use of an existing boat dock, appurtenant facilities, deck, and bank protection ([Item 53, June 21, 2013](#)). The lease expired June 20, 2023.

On February 17, 2021, ownership interest of the upland parcel was transferred to Gerald E. Shipman, as Trustee of the Survivor's Trust Established Under the Gerald and Patty Shipman Family Trust Dated July 17, 2002. Staff were not made aware of the transfer, but ownership is maintained by the same individual.

The Applicant is applying for the issuance of a General Lease – Recreational and Protective Structure Use for the use of an existing boat dock, appurtenant facilities, deck, and bank protection.

Rent for the expired lease was fully paid until its expiration on June 21, 2023. As part of staff's recommendation to authorize the proposed lease to the Applicant, the lease provisions regarding indemnity will be extended back to February 17, 2021, to coincide with the date the upland parcel was transferred. Staff further

recommends acceptance of compensation in the amount of \$3,157 for the unauthorized occupation of State lands.

The deck is a private use of public property, and not a Public Trust consistent use. Although new decks are not generally authorized, decks that have been in place for many years have been permitted, so long as they do not significantly interfere with Public Trust needs or activities. On May 11, 2006, the U.S. Army Corps of Engineers issued a letter of permission to the Applicant allowing them to retain the deck under the condition that they would mitigate the loss of 0.21 acres of waters of the United States by purchasing 0.21 acres of shallow water habitat credit at the Kimball Island Mitigation Bank. Staff has received evidence of this purchase and recommends bringing the placement of the existing facilities under lease. Additionally, the proposed lease contains terms that the sundeck may not be expanded or rebuilt if it is substantially damaged.

The Applicant owns the uplands adjoining the lease premises. The subject boat dock and its appurtenant facilities which include a gangway, personal watercraft float, and water and electrical utility outlet are privately owned and maintained and facilitate recreational boating. 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 bank protection currently protects the integrity of the levee, the upland property, and maintains and improves the integrity of the river, which helps protect 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 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:

INTRODUCTION:

The climate crisis and rising sea levels are impacting California's coastal and inland waterways now. Likely impacts to the lease premises include, but are not limited to, sea level rise, saltwater intrusion, prolonged drought, extreme heat, and changes to the intensity and timing of precipitation events. These impacts can exacerbate natural hydrological processes such as erosion, scour, and sedimentation. These impacts may affect the existing covered single-berth floating boat dock, pilings, gangway, boat lift, personal watercraft float, water and electric utility outlet, deck and bank protection subject to the proposed lease, located on the San Joaquin River.

DATA & PROJECTIONS:

Water levels in tidally-influenced rivers will rise as sea levels rise. The California Ocean Protection Council updated the [State of California Sea Level Rise Guidance](#) in 2024 to provide a synthesis of the best available science on sea level rise projections and rates for multiple emissions scenarios. Commission staff evaluated the “intermediate-high” and “high” scenarios due to the vulnerability and exposure of the lease location and the continued global reliance on fossil fuels. 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	Intermediate-High (feet)	High (feet)
2040	0.7	0.8
2050	1.0	1.3
2070	2.2	2.9
2100	4.8	6.5

Source: Table 6, State of California Sea Level Rise Guidance: 2024 Update

Note: Projections are with respect to a 2000 baseline.

In addition to rising seas, warmer temperatures have led California and the Southwest region to experience a megadrought from 2000 to 2022, measured as the driest 22 years in the past 1200 years, and more megadroughts are projected through the end of the century (U.S. Global Change Research Program, Ch. 28. Southwest. In: [Fifth National Climate Assessment](#). 2023.). Hotter and drier conditions have led to declines in snowpack volumes, higher-elevation snow lines, earlier

snowmelt, and reduced overall runoff. Streamflow and river volumes are lower and will be drawn down farther as temperatures continue to rise and demand for water increases. Despite the region's increasing aridity, flooding from extreme precipitation events is projected to increase, attributed to earlier snowmelt, sea level rise, and more intense and frequent atmospheric rivers. Minor and moderate flooding (flooding events defined as disruptive to damaging), attributed to higher water levels, is expected to increase five to ten orders of magnitude by 2100, according to [NOAA's 2022 Sea Level Rise Technical Report](#).

ANALYSIS:

The lease premises are likely to experience more extreme conditions over the lease term than in the past, due to climate change. Changes to the timing and amount of runoff from the higher elevations of the watershed, stronger storm surge, and rising water levels will result in higher flood risks. Bank stability may be compromised due to increased channel erosion and undercutting from more intense precipitation and floods. Structures on the lease premises may be exposed to saltier water and corrode faster than before. Conversely, drought could lower water levels for longer portions of the year and expose structures that were historically designed to be submerged to more air, wind, and heat. They could cease to function as intended, as water-related, water-dependent infrastructure (e.g., fixed docks could become disconnected from the water). Floating structures may be more adaptable to changing water levels than those that are fixed, but all structures may be at increased risk for damage from exposure to extreme heat and floods.

RECOMMENDATIONS:

To reduce the likelihood of adverse impacts to the lease premises and improvements, the lessee should consider the following adaptation strategies to improve resiliency to climate change: 1) reduce erosion along the riverbank by enhancing the bank protection structure(s) by planting or restoring native vegetation (shrubs, trees); 2) inspect fixed structures frequently and monitor for degradation, replacing damaged parts when necessary and elevating or relocating structures when exposure to flooding compromises structural function and integrity; and 3) monitor floating structures for corrosion and degradation, especially joints, brackets, hinges, and piling hoops, and replace as necessary. Any future construction or activities on State land would require a separate

authorization from the Commission. For more information regarding nature-based strategies, please refer to the [2023 Shoreline Adaptation and the Public Trust](#) report.

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 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; 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 the 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 lease, the Applicant may be required to remove the existing improvements and restore the property to its 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 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:

1. Find that the existing and, for a limited period, continuing use of the existing boat dock and appurtenant facilities, do not substantially interfere with Public Trust needs and values at this location and is consistent with the common law Public Trust Doctrine.
2. Find that the existing and continuing use of the deck is not generally associated with Public Trust uses, but the current use does not substantially interfere with Public Trust needs and values at this location, at this time.
3. Find that the existing and, for a limited period, continuing use of the existing bank protection does not substantially interfere with Public Trust needs and values at this location, at this time.
4. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

1. Accept compensation from the Applicant in the amount of \$3,157 for the unauthorized occupation of State land for the period prior to June 1, 2025.
2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning June 1, 2025, for a term of 10 years, for use of an existing boat dock, appurtenant facilities, deck, and bank protection; annual rent in the amount of \$1,789 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.