

**STAFF REPORT
C39**

A 15
S 9

11/29/17
W 27114
D. Tutov

ISSUANCE OF A GENERAL LEASE – PUBLIC AGENCY USE

APPLICANT:

California State Coastal Conservancy

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in San Pablo Bay, at Giant Marsh, near Point Pinole Regional Shoreline in Richmond, Contra Costa County.

AUTHORIZED USE:

Habitat restoration of oyster beds, eelgrass, and tidal marsh that enhances ecosystem resilience and placement of artificial structures to protect areas of the San Pablo Bay shoreline vulnerable to sea-level rise and erosion.

LEASE TERM:

20 years, beginning October 19, 2017.

CONSIDERATION:

Public use and benefit; with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

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

Public Trust and State's Best Interests Analysis:

The California State Coastal Conservancy (Conservancy) has applied for a General Lease – Public Agency Use for the habitat restoration of oyster beds, eelgrass, and tidal marsh that enhances ecosystem resilience and tests the use of artificial structures to protect areas of the San Pablo Bay shoreline vulnerable to sea-level rise and erosion, in San Pablo Bay, at Giant Marsh, near Point Pinole Regional Shoreline in Richmond, Contra Costa County.

STAFF REPORT NO. **C39** (CONT'D)

The proposed activities are part of the Living Shorelines Project (Project), the objectives of which are to create and enhance a variety of subtidal and tidal habitats and evaluate techniques to advance restoration practices for each of these habitat types; assist in the recovery of particular species, including endangered species such as California sea-blite, California Ridgway's rail, and salt marsh harvest mouse; evaluate the use of restored habitats for wildlife, including invertebrates, fish, and birds; and evaluate the efficacy of nearshore restoration treatments in reducing wave energy and shoreline erosion.

The portion of the Project located on State sovereign land would include a portion of three offshore oyster reefs that will be installed between 500 and 1,500 feet offshore of Point Pinole. The East Bay Regional Park District owns and manages the lands underlying the remaining project. The restoration elements will be installed over a total of approximately 0.21 acre, including the restoration elements outside the lease area. The oyster reefs will be composed of 180 reef ball elements made with a combination of a reef ball built with 80 to 90 percent bay materials (shells and sand) topped with Pacific oyster shell bags. The reef balls will have a footprint of 3.5 feet by 3.5 feet and will weigh approximately 25 pounds. There will be three reefs, each approximately 134 feet long, with approximately 150 feet of space between each reef. Eelgrass will be planted seaward and landward of the reef balls, and two standard navigation hazard buoys with anchors would be installed at the north and south ends of the oyster reefs to identify the submerged hazard for boaters using the area at higher tides. However, little to no navigation traffic is expected in the restoration project area because the location is relatively inaccessible to boaters. The area is 200 meters offshore in shallow subtidal mudflats that are difficult to access even by kayak. The reef balls will be visible at low tide. The oyster beds are not expected to attract would-be harvesters among the public because the Olympia oysters involved are quite small (60 millimeters or less), hard to dislodge, and provide very little oyster meat. Additionally, the reefs would be covered with a variety of species, including a wide diversity of plants and invertebrates, and will not be readily identified by laypeople as "oyster reefs."

Reef balls would be pre-assembled at an offsite land-based staging area and loaded onto a construction vessel which would navigate to the site in accordance with best practices to preserve existing eelgrass beds in the project area, and deliver materials to the oyster reef locations at high tide. Eelgrass installation will be phased to occur the year following oyster reef

STAFF REPORT NO. C39 (CONT'D)

installation, to minimize impacts due to reef construction and provide optimum growing season.

Overall, the project is considered beneficial because it will promote habitat restoration and scientific study, which are judicially recognized Public Trust purposes. Furthermore, the project will not substantially impede or impair any other Public Trust uses in the area. As described above, any impairment of navigation or recreation would be minimal because the area is located in relatively inaccessible shallow subtidal mudflats not frequently visited by boaters or kayakers.

The lease includes certain provisions protecting the public use of the proposed lease area by requiring the Applicant to obtain necessary permits. The lease does not alienate the State's fee simple interest or permanently impair public rights. The lease requires the Applicant to conduct all work safely and indemnify the Commission in the event of any liability resulting from the proposed action. The lease also has a limited term of 20 years, which allows the Commission flexibility to determine if the Public Trust needs of the area have changed over time.

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 lease area is located in San Pablo Bay, City of Richmond, which is a tidally influenced site vulnerable to flooding at current sea levels. This area will also be at higher risk of flood exposure given projected scenarios of sea-level rise: the region could see up to 1 foot of sea-level rise (from year 2000 levels) by 2030, 2 feet by 2050, and possibly more than 5 feet by 2100 (National Research Council 2012). Rising sea levels can lead to more frequent flood inundation in low lying areas and larger tidal events. In addition, as stated in *Safeguarding California* (California Natural Resources Agency 2014), climate change is projected to increase the frequency and severity of natural disasters related to flooding and storms (especially when coupled with sea-level rise). In tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris.

The combination of these projected conditions increases the likelihood of damage to structures within the lease premises during the term of the lease. Improvements to the lease area include installation of artificial reef habitat for oyster beds and planting of eelgrass beds. The artificial reef

STAFF REPORT NO. **C39** (CONT'D)

structures are also intended to help protect the adjacent shoreline from sea-level rise related erosion events, as explained above.

Although the habitat restoration elements are designed to become a component of the submerged benthic environment and therefore subject to rising seas and flooding events, the restored habitat and artificial structures might require more frequent maintenance and inspections to ensure continued function during and after future storm seasons. Regular inspection and as needed maintenance will reduce the likelihood of structural degradation or dislodgement of the structures. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises may be subject to effects of climate change, including sea-level rise.

Conclusion:

For all the reasons above, staff believes the issuance of this lease is consistent with the common law Public Trust Doctrine; will not substantially interfere with Public Trust needs 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:

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
2. On December 21, 2016, the Conservancy, acting as the lead agency under the provisions of the California Environmental Quality Act (CEQA), determined that the Living Shorelines Project, as described above, was categorically exempt from CEQA pursuant to California Code of Regulations, title 14, section 15333, under Class 33, Small Habitat Restoration Projects (State Clearinghouse No. 2016128296). Staff concurs with the Conservancy's determination.

Staff recommends that the Commission also find that this activity is exempt under Class 33, Small Habitat Restoration Projects; California Code of Regulations, title 14, section 15333.

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

3. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et

STAFF REPORT NO. **C39** (CONT'D)

seq., but such activity will not affect those significant lands. Based upon staff's consultation with the persons nominating such lands and through the CEQA review process, it is staff's opinion that the project, as proposed, is consistent with its use classification.

APPROVALS REQUIRED:

East Bay Regional Park District
San Francisco Bay Regional Water Quality Control Board
California Department of Fish and Wildlife
U.S. Army Corps of Engineers
U.S. Fish and Wildlife Service
National Marine Fisheries Service
San Francisco Bay Conservation and Development Commission

EXHIBITS:

- A. Land Description
- B. Site and Location Map

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 33, Small Habitat Restoration Projects; California Code of Regulations, title 14, section 15333.

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

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

Authorize issuance of a General Lease – Public Agency Use to the California State Coastal Conservancy beginning October 19, 2017, for a term of 20 years, for habitat restoration of oyster beds, eelgrass, and tidal

STAFF REPORT NO. **C39** (CONT'D)

marsh that enhances ecosystem resilience and tests the use of artificial structures to protect areas of the San Pablo Bay shoreline vulnerable to sea-level rise and erosion, as described in Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof; consideration being the public use and benefit, with the State reserving the right, at any time, to set a monetary rent as specified in the lease if the Commission finds such action to be in the State's best interests.

EXHIBIT A

W 27114

LAND DESCRIPTION

A parcel of submerged land situate in the bed of the San Pablo Bay, Contra Costa County, State of California, and lying adjacent to Parcel One as shown on that Record of Survey map filed in Book 50 of LSM at page 32, Official Records of said county, and being more particularly described as follows:

COMMENCING at an angle point in the Agreed Ordinary Low Water Mark (OLWM) as described within that certain Boundary Agreement recorded May 20, 1966 in Book 5125 of Official Records, Page 194, records of said county; said point being the southerly terminus of that certain course described as North 11°27'15" East, 4343.02 feet; thence along said Agreed OLWM, North 11°27'15" East, 1213.45 feet to the POINT OF BEGINNING; thence North 11°27'15" East, 1065.55 feet; thence leaving said Agreed OLWM, South 36°54'27" West, 1232.43 feet; thence South 51°21'19" East, 447.94 feet; thence North 38°58'05" East, 284.06 feet to the point of beginning.

END OF DESCRIPTION

Prepared September 7, 2017 by the Boundary Unit of the California State Lands Commission.



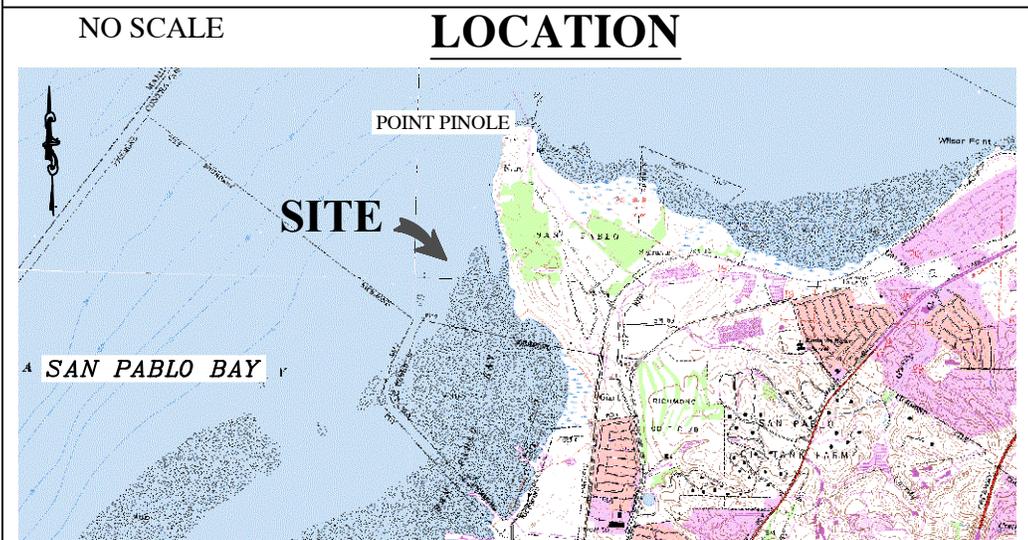
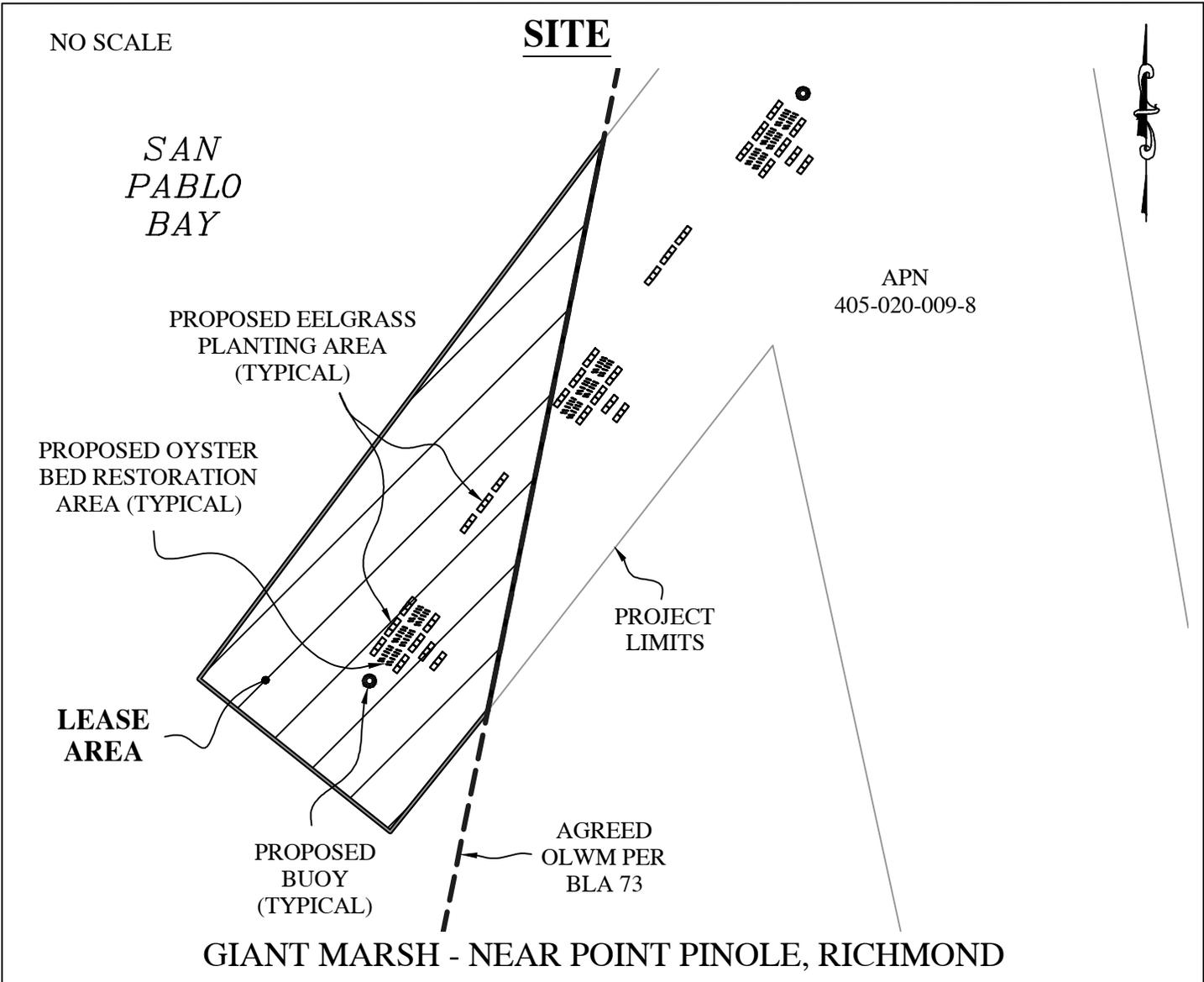


Exhibit B
 W 27114
 STATE COASTAL CONSERVANCY
 APN 405-020-009-8
 GENERAL LEASE - PUBLIC AGENCY USE
 CONTRA COSTA COUNTY



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.