

STAFF REPORT

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Lease 3979.1

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GENERAL LEASE – COMMERCIAL USE

APPLICANT:

South Bay Yacht Club

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Alviso Slough, adjacent to 1491 Hope Street, near Alviso, Santa Clara County.

AUTHORIZED USE:

Use, repair, and maintenance of existing docking and mooring facilities.

LEASE TERM:

10 years, beginning June 19, 2018.

CONSIDERATION:

\$1,152 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

Liability insurance in the amount of no less than \$1,000,000 per occurrence, and surety bond of \$20,000.

Public access to be provided to and through the Lease Premises for the general public, including non-paying visitors.

Lessee agrees to continue to remove derelict facilities and unusable improvements.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

Public Trust and State's Best Interests Analysis:

On December 2, 2013, the Commission authorized a 5-year General Lease – Commercial Use to South Bay Yacht Club ([Item C76, December](#)

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[2, 2013](#)). That lease expired on June 18, 2018. The Applicant is now applying for a General Lease – Commercial Use, for the use, repair and maintenance of existing docking and mooring facilities in Alviso Slough, Santa Clara County.

The South Bay Yacht Club (SBYC or club) was founded in 1888 as the South Bay Yachting Association by a group of businessmen from the Alviso area. The Club was incorporated as the South Bay Yacht Club in 1896 and the clubhouse on the upland was built in 1903. The original members conducted races, regattas, and other social sailing events through the club. Today, the SBYC continues to promote boating to its members and community residents. SBYC also provides access on the lease premises for the general public.

Most of the lease premises have been severely impacted by sedimentation, resulting in the Applicant's inability to utilize a large portion of the docking and mooring facilities. In 2015, community members suggested that the County of Santa Clara pursue replacing and operating the existing SBYC boat dock facilities as a public dock. As a result, the County of Santa Clara Department of Parks and Recreation conducted a feasibility study assessing the possibility of replacing the existing docks and the potential costs to operate the new public facility.

The feasibility study concluded that dock construction appeared feasible from an engineering standpoint; however, environmental and cost constraints were significant and potentially prohibitive. The study's conclusion was based on the assumption that there was a high potential that initial dredging and long-term maintenance dredging would be necessary to facilitate the project. In June 2018, a follow-up bathymetric survey confirmed that dock replacement, dredging near the potential dock, and slough dredging was the most appropriate scenario to allow less restricted public boating access from the docks to the San Francisco Bay. The feasibility study determined the estimated capital cost of the potential dock project to be \$21.4 million with a net annual cost for dredging between \$1.7 and \$5 million. To date, the County of Santa Clara has not pursued transitioning the club's facilities into a public facility.

As a condition of the 5-year commercial lease issued to the applicant in 2013, the SBYC submitted a work plan outlining the renovation, replacement, and potential removal of a portion of the existing facilities located on the lease premises. The club has already removed approximately 450 linear feet of dock and many dock fingers that were no longer usable due to sedimentation. The work already done has minimized

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SBYC's footprint in the newly formed marsh. The new lease requires the lessee to continue to remove derelict facilities and unusable improvements (including but not limited to silted-in docks, unusable pilings, and abandoned vessels not in the main channel) in accordance with all appropriate legal and regulatory requirements.

The remaining docking and mooring facilities have existed in Alviso Slough for many years and do not significantly alter the land. These facilities are used for recreational boating and fishing, which are water-dependent activities, generally consistent with the common law Public Trust Doctrine. The proposed lease includes provisions protecting the public use of the proposed lease area, including a limited lease term of 10 years and a non-exclusive use provision. The proposed lease also requires the lessee to indemnify the State for any liability incurred as a result of the lessee's activities thereon. The lease requires the payment of annual rent to compensate the people of the State for the occupation of the sovereign land involved. The lease does not alienate the State's fee simple interest or permanently impair public rights. Upon termination of the lease, the lessee may be required to remove any improvements and restore the lease premises to their original condition.

Consistent with the Commission's adopted Environmental Justice Policy, staff evaluated the proposed lease to determine whether nearby communities bear a disproportionate share of environmental burdens and, if so, to engage with environmental justice groups for comments and ideas about the proposed lease and any related impacts that can be lessened or avoided on those communities. Using the [CalEnviroScreen](#) program, managed by the California Office of Environmental Health Hazard Assessment, staff identified the census tract covering the lease area along with adjacent tracts bearing environmental burdens, in certain categories, larger than most other census tracts in the State. The population within the census tract where the lease is located is identified as a disadvantaged community under SB 535 and is also afflicted with higher rates of asthma than most other areas of the State.

Based on the identified environmental burdens, staff initiated outreach to environmental justice groups seeking input on the proposed lease. Staff initiated a comment period from January 9, 2020, to February 8, 2020. During that time staff contacted, via letter and email, 27 different individuals and representatives of more than 15 different environmental justice organizations providing notification of the lease application and soliciting comments. As of mid-February 2020, staff has received no comments regarding the proposed lease.

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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 within the Alviso Slough (Guadalupe River), a tidally influenced site consisting of shallow coastal areas already vulnerable to flooding at current sea levels. The structures within this lease area include a gangway providing upland access to a floating dock supported by pilings.

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 as listed in Table 1.

Table 1. Projected Sea-Level Rise for San Francisco¹

Year	Projection (feet)
2030	0.8
2040	1.3
2050	1.9
2060	2.6
2070	3.5
2100	6.9

Source: Table 13, State of California Sea-Level Rise Guidance: 2018 Update

Note: ¹ Projections are with respect to a 1991 to 2009 baseline.

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 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. Climate change and sea-level rise will further influence coastal and riverine areas by changing erosion and sedimentation rates. Near-coastal riverine areas will be exposed to increased wave force and run-up, potentially resulting in greater bank and/or levee erosion than previously experienced. Finally, in tidally influenced waterways, flooding and storm

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flow will likely increase scour, decreasing bank stability and structure. The combination of these projected conditions could increase the likelihood of damage to structures within the lease premises during the term of the lease. Staff understands that a portion of the floating dock was damaged during flood conditions in the winter of 2018. The subject lease application includes repair and maintenance work to the floating dock. Repairs would be within the footprint of the existing dock. Additional information with the application indicates that the pilings are adequately elevated to withstand future flood events and rising water levels.

Regular repair and maintenance, as required by the lease, will reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent levee are located in an area that may be subject to effects of climate change, including sea-level rise.

Conclusion:

For all the reasons above, Commission 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. 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 denies the application, the Applicant may be required to remove the docking and mooring facilities and restore the premises to their original condition. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.
2. 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.
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,

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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.

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

AUTHORIZATION:

Authorize a General Lease – Commerical Use to the Applicant beginning June 19, 2018, for a term of 10 years, for the use, repair, and maintenance of existing docking and mooring facilities, as described in Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof; annual rent in the amount of \$1,152 with an annual Consumer Price Index adjustment; and liability insurance in the amount of no less than \$1,000,000 per occurrence and surety bond in the amount of \$20,000.

EXHIBIT A

LEASE 3979.1

LAND DESCRIPTION

A parcel of tide and submerged land and of State-owned swamp and overflowed lands within portions of the bed of the Simonds Canal and the bed of the Guadalupe River, both being portions of the Alviso Slough, adjacent to the Town of Alviso, in the City of San Jose, County of Santa Clara, California, being more particularly described as follows:

COMMENCING at found 1" iron bar monument in a square City of San Jose monument box at the centerline intersection of Catherine Street and Hope Street, shown on the record of survey filed in Book 515 of Maps at Page 31 as a standard City of San Jose monument to have been set at the time of street construction after the date of the map, records of Santa Clara County; thence N 89°01'32" W along the centerline of Catherine Street, 26.00 feet to the northerly prolongation of the westerly right of way of Hope Street; thence S 00°56'33" W along the northerly prolongation of the westerly right of way of Hope Street, 30.00 feet to the northerly line of Block 150 of the "Plan of the Western Section of Alviso" filed in Book A of Maps at Page 45, records of Santa Clara County, being at the intersection of the southerly right of way of Catherine Street and the westerly right of way of Hope Street; thence continuing S 00°56'33" W along the westerly right of way of Hope Street, 172.51 feet to the northerly line of Lot 1 of Block 150 of the "Plan of the Western Section of Alviso"; thence N 89°03'09" W along the northerly line of said Lot 1 and the westerly prolongation thereof, 125 feet, more or less to a point on the right (easterly) bank of the Simonds Canal, being the POINT OF BEGINNING;

Thence continuing N 89°03'09" W along the westerly prolongation of the northerly line of said Lot 1, 3 feet, more or less to the northeasterly corner of Lot 8 of Block 149 of the "Plan of the Western Section of Alviso"; thence continuing N 89°03'09" W along the northerly line of said Lot 8 and the westerly prolongation thereof, 91 feet, more or less to the center of the main channel of the Alviso Slough; thence S 15°21' E along the centerline of the main channel of the Alviso Slough, 217 feet; thence leaving the centerline of the main channel of the Alviso Slough, S 29°07' E, 234 feet; thence S 09°26' E, 82 feet, more or less to the northeasterly line of the parcel described in the Grant Deed from Leslie Salt Co. to the Santa Clara Valley Flood Control and Water District, filed in Book 6891 at Page 363 of the Official Records of Santa Clara County; thence southeasterly along the northeasterly boundary of said Santa Clara Valley Flood Control and Water district parcel the following two (2) courses:

1. S 68°33'25" E, 5.30 feet, and
2. S 48°09'25" E, 112.63 feet

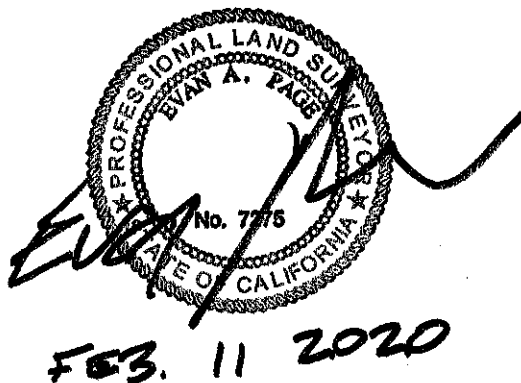
Thence leaving the northeasterly boundary of said Santa Clara Valley Flood and Water District parcel N 09°26' W, 248 feet; thence N 29°07' W, 123 feet, more or less to the right (northeasterly) bank of the

Alviso Slough, approximately where the right bank of the Simonds Canal meets the right bank of the historic channel of the Guadalupe River; thence in a generally northwesterly direction along the right (northeasterly and easterly) bank of the Alviso Slough and Simonds Canal, 235 feet, more or less to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portions lying landward of the ordinary high water mark of the Alviso Slough.

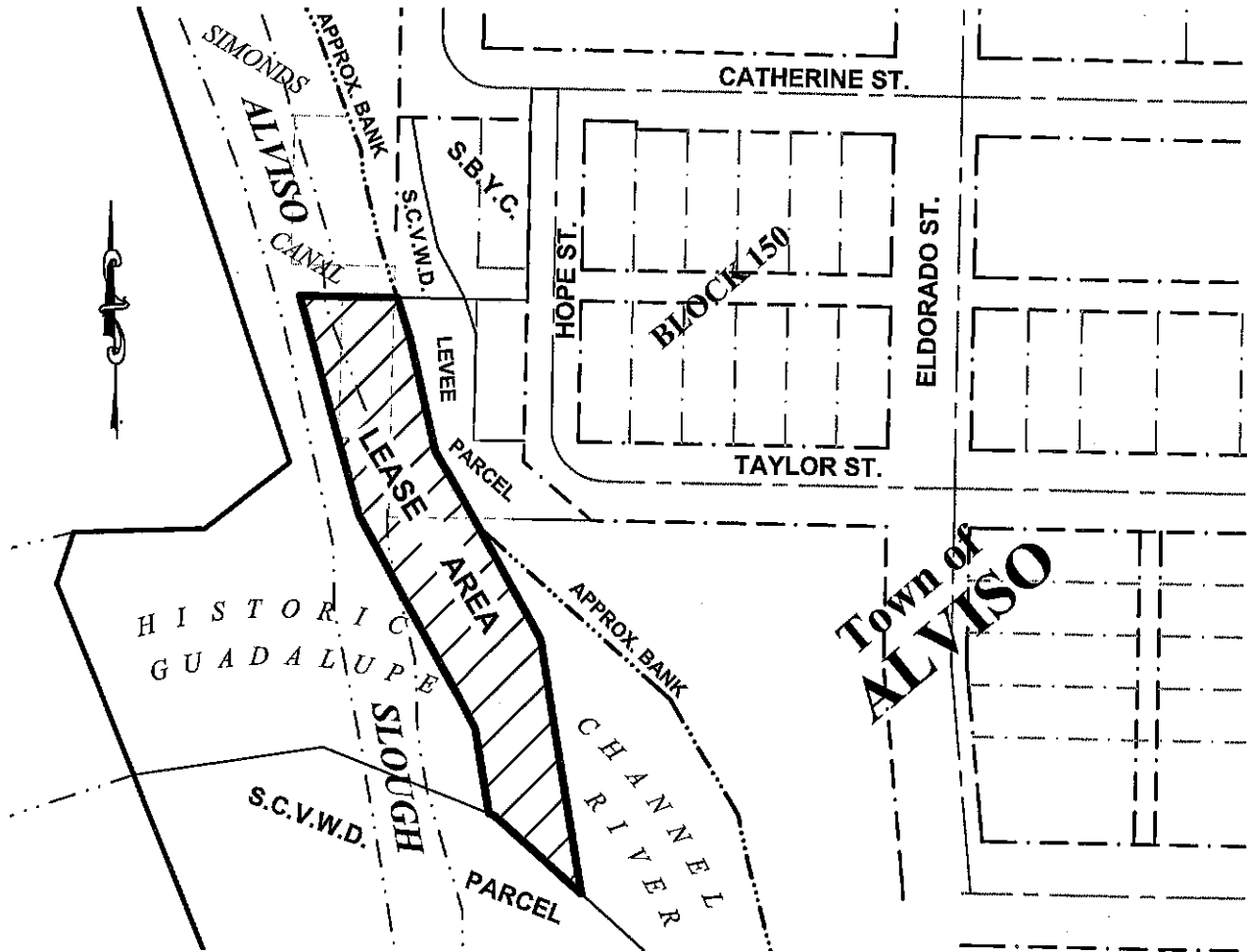
The bearings of this description are based on the California Coordinate System (83), Zone 3.

END DESCRIPTION



NO SCALE

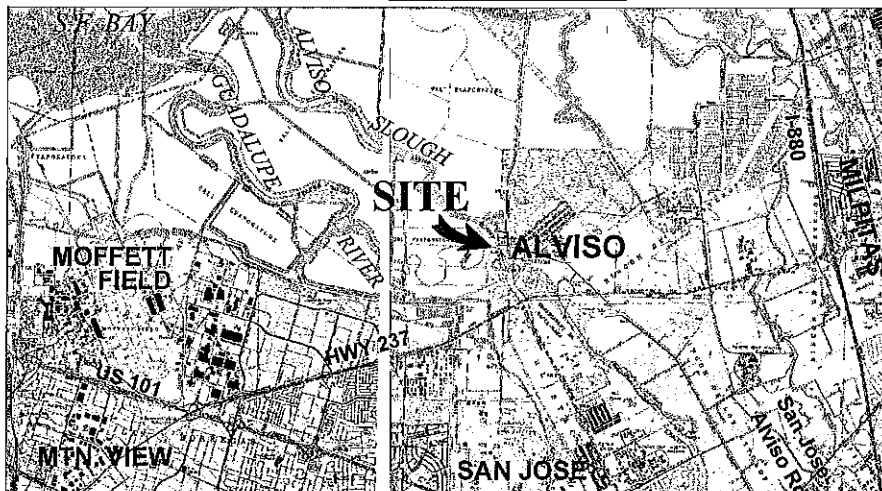
SITE



South Bay Yacht Club, Alviso Sough

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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.

Exhibit B

LEASE 3979.1
GENERAL LEASE -
COMMERCIAL USE
TOWN OF ALVISO
CITY OF SAN JOSE
SANTA CLARA COUNTY



SITE