

Staff Report 25

PARTY:

California State Lands Commission

PROPOSED ACTION:

Approve the 2022 Category 1 San Francisco Bay Area Benchmark rental rate.

LAND TYPE AND LOCATION:

Sovereign land in the San Francisco Bay region, covering Napa, Solano, Contra Costa, Santa Clara, San Mateo, San Francisco, Marin, and Sonoma Counties.

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.

The California Constitution specifically prohibits the Legislature from making or authorizing any gift of public money or thing of value to any individual, municipality, or corporation (Cal. Const., art. XVI, § 6). A “thing of value” includes the use of State-owned land for private benefit.

The Commission has broad discretion in all aspects of leasing state lands, including the method or amount of rent that is most appropriate, and how rent should be adjusted during the term. (Pub. Resources Code, §§ 6501.1, 6503, 6503.5; Cal. Code Regs., tit. 2, §§ 2000, 2003.) Rents must be in the best interests of the State, and may be based on one or more of the following methods, including, but not limited to:

- 9 percent of the appraised value of the leased land.
- A percentage of annual gross income, where the percentage is based on an analysis of the market for like uses and other relevant factors.
- A comparison to rents for other similar land or facilities.

- Benchmarks for regions with large concentrations of similar facilities, with benchmark rental rates to be based on analysis of similar or substitute facilities in the local area.
- Other such methods or information that are based on commonly accepted appraisal practices and principles; and for leases for recreational piers or buoys, rent shall be based on local conditions and local fair annual rental values. (Cal. Code Regs., tit. 2, § 2003; Pub. Resources Code, §§ 6503, 6503.5.)

The Commission may consider the amount of rent the State would receive under various rental methods, and whether relevant, reliable, and comparable data are available concerning the value of the leased land in determining which rent method should apply. (Cal. Code Regs., tit. 2, § 2003, subd. (d)(1), (2).)

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Benchmarks are used to establish uniform rental rates in specific geographic regions with large concentrations of similar facilities, mostly private recreational improvements within the Commission's jurisdiction. (Cal. Code Regs., tit. 2, § 2003, subd. (a)(5).) The use of benchmarks improves the consistency, transparency, and efficiency in how the Commission establishes rent for large numbers of similar leases, saving time, resources, and money for both the applicant and the State. Periodic benchmark adjustments assures that the people of the State are fairly compensated according to current market rates for the private use of State-owned land, consistent with the California Constitution. Generally, staff recommends updates to the benchmarks every 5 years.

The Commission has two types of benchmarks for rental rates:

- Category 1, which is generally applied to private docks, piers, and buoys.
- Category 2, which is generally applied to cantilevered decks, sundecks, or other non-water dependent uses.

This staff report addresses the Category 1 benchmark for the San Francisco Bay area. A map showing all the Commission's current benchmark 1 areas can be viewed on the Commission's website [here](#), and a list of all the Commission's current benchmark rental rates can be viewed on its website [here](#).

METHODOLOGY:

The Commission has been using the San Francisco Bay Area Benchmark since 1992. This benchmark was last updated in June 2016, when staff set the rate at \$0.198 per square foot. For purposes of this benchmark, the San Francisco Bay Area boundaries are generally defined as Petaluma in Sonoma County and Napa in Napa County to the north, Benicia in Solano County and Martinez in Contra Costa

County to the east, Sunnyvale and Milpitas in Santa Clara County to the south, and the Pacific Coast of Sonoma, Marin, San Francisco, and San Mateo Counties to the west.

Leases are issued by the Commission for private recreational facilities such as docks, piers, and buoys/mooring poles. These facilities offer many of the same amenities as a commercial marina, such as a place for the docking and mooring of boats and the loading and unloading of passengers and equipment. In this manner, these privately owned facilities represent a substitute for a commercial marina berth/buoy. Accordingly, the method of valuation used in estimating a fair return and a fair rental value is based on what an individual would pay for a similar substitute site in a commercial marina (principle of substitution). Since a Commission-leased site for a privately-owned pier or dock is a reasonable substitute for a marina berth, a lessee occupying state land should pay a similar rate for the leased site as the state would receive for leasing the land to a commercial marina. The current methodology for setting rent for berthing vessels at docks and piers occupying state-owned sovereign land is based on the principle of substitution described above.

The first step in setting a Category 1 benchmark is to survey local marinas to determine their rental rates. Marinas usually rent their berths on a per-linear-foot basis, based on the length of the berth or vessel. For benchmark purposes, the average surveyed rental rate is used. The rate is multiplied by the average or typical berth length as indicated in the survey data. Based on these inputs, the annual gross income is calculated. For Category 1 benchmarks the State's rent is based on a 5 percent rate of return of this annual gross income, which represents a comparable fair market compensation rate for the use of State-owned sovereign land. The State's rent is then converted to a per-square-foot basis using a table calculated by the California State Parks Division of Boating and Waterways 2005 publication titled "Layout and Design Guidelines for Marina Berthing Facilities" ([DBW berthing publication](#)). This publication provides formulas and tables for calculating the submerged land area needed to accommodate various sizes and layouts of berths in marinas. Among other variables, the formulas account for the berth length, berth layout (single or double), and the type of vessel (powerboat or sailboat). The publication can be requested from the Department of Boating and Waterways. More information on the Commission's benchmark methodology is available on its website [here](#).

The San Francisco Bay Area Benchmark survey consists of 42 marinas located in six separate parts of the San Francisco Bay. This includes San Francisco, South Bay, Oakland – Alameda, East Bay, Marin County, and San Pablo Bay. The survey found that the average berth/slip size in the San Francisco Bay area is approximately 38

linear feet. A 38-foot length was also used in the 2016 San Francisco Bay Area Benchmark. Staff believes that marina layouts have not changed significantly since the last benchmark.

Berthing rates are reported on a per linear foot basis. For all the above listed areas, the berthing rate, based on survey data collected, ranged from \$6.50 to \$21.29 per linear foot with an average of \$11.90 per linear foot. The benchmark rental rate for berths is calculated by multiplying the average berth length by the average rental rate. This product is then multiplied by 12 months to arrive at the gross annual income. The gross annual income is then multiplied by 5 percent to arrive at the income attributable to the submerged land. That amount is then converted to a per square foot basis for rent-setting purposes using the DBW berthing publication described above. The submerged land area used in this benchmark analysis is based on a double berth layout (on the premise that it represents the typical marina berth layout in the area and is the most economically efficient for the marina operator) and represents an average of the powerboat and sailboat areas.

From DBW berthing publication data, a submerged area of 1,197 square feet is indicated as necessary to accommodate the 38-foot average slip length identified by the survey for this area. Taking all the previously described inputs into account, the rental rate for the proposed San Francisco Bay Area Benchmark is calculated as follows:

$$\$5,426.40/\text{berth}/\text{year} \times 5 \text{ percent of gross income} = \$271.32$$

$$\$271.32 \div 1,197 \text{ square feet} = \$0.227/\text{square foot}$$

Proposed San Francisco Bay Area Benchmark Rental Rate = \$0.227 per square foot

Based on the surveys and calculations described above, the rental rate for the San Francisco Bay Area Benchmark is \$0.227 per square foot. In contrast, the 2016 Benchmark was \$0.198 per square foot. The proposed new benchmark therefore represents an overall increase of just under 3 cents (\$0.029) per square foot.

IMPACT AREA:

The impact area is an additional area, beyond the physical footprint of a structure, where a lessee seeks authorization to conduct activities. For recreational structures used for the docking and mooring of boats within the **benchmark's coverage area**, the impact area is generally a nine-foot-wide strip along the mooring areas or under a boat lift. Accordingly, these areas are included in a lease and rent is charged thereon. The Commission's leasing regulations explicitly allow for this. (Cal. Code Regs., tit. 2, § 2003, subd. (e)(2)).

CONCLUSION:

Staff's methodology for setting the proposed Category 1 San Francisco Bay Area Benchmark rental rate is consistent with the methodology used for the Commission's other similar benchmarks, as well as all the relevant statutes and regulations that govern the Commission's rent-setting authority. Staff's recommended benchmark rate represents a fair and equitable rate based on the most current and relevant data available.

Approval of the new benchmark rental rate will not result in a change in the use of, or substantially interfere with or impact Public Trust resources. Staff believes that the benchmark provides a reasonable method for determining rents in the geographic coverage area and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. On January 21, 2022, staff mailed out notification letters advising of this action to all San Francisco Bay area lessees affected by the benchmark revision. Staff has received no comments to date.
2. In 2011, Chapter 585, Statutes of 2011 became law and repealed Public Resources Code section 6503.5 that had allowed rent-free use of state land by certain private parties for their recreational piers. It replaced the former section with a new section 6503.5 which provides that the Commission "shall charge rent for a private recreational pier constructed on state lands."
3. In 2014, the Commission adopted amendments to Sections 1900, 2002, and 2003 under articles 1 and 2 of title 2, division 3, chapter 1 of the California Code of Regulations that included regulations on rent-setting methods approving the use of benchmarks and the application of the Consumer Price Index ([Item 5, January 23, 2014](#)).
4. This action is consistent with Goal 4 of the Commission's Strategic Plan "Meeting Evolving Public Trust Needs," Section 3 – "Maintain fiscal integrity through transparency, accountability, and: a. Efficient and effective management of the revenue-generation portfolio."
5. Approval of the 2022 Category 1 San Francisco Bay Area Benchmark rental rate is not a project as defined by the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

EXHIBIT:

A. 2022 San Francisco Bay Area Benchmark Appraisal

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that approval of the benchmark will not result in a change in the use of, or impacts to, Public Trust resources; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

Approve the 2022 Category 1 San Francisco Bay Area Benchmark rental rate of \$0.227 per square foot, effective February 25, 2022.

Exhibit A

State of California

State Lands Commission

Memorandum

Date: January 18, 2022

To: Brian Bugsch, Chief
Land Management Division

Grace Kato, Assistant Chief
Land Management Division

From: Chaun Wong, Associate Property Appraiser
Land Management Division

Subject: San Francisco Bay Area Category 1 Benchmark 2022

As requested, I have updated the benchmark for General Leases – Recreational Use for the San Francisco Bay Area. The benchmark was last updated in June 2016. The current update follows essentially the same methodology as used in the prior benchmark report.

The recommended benchmark is summarized in the following table with the 2016 benchmark.

SAN FRANCISCO BAY AREA BENCHMARKS SUMMARY		
Benchmark Date	2016	2022
Land Value (Per Acre)	\$95,833	\$109,711
Rental Rate (Per Sq. Ft.)	\$0.198	\$0.227

An appraisal is the act or process of developing an opinion of value that must be numerically expressed as a specific amount, as a range of numbers, or as a relationship to a previous value opinion or numerical benchmark. This report constitutes an appraisal as defined by the Uniform Standards of Professional Appraisal Practice (USPAP). Accordingly, this appraisal has been performed and the report has been prepared in substantial compliance with USPAP. The compiled research, analyses, and conclusions presented in this appraisal represent a correlation of market rents into a benchmark rental rate for private recreational facilities (e.g. docks and piers) located in the San Francisco Bay Area. The benchmark is intended to be used by Commission staff for rent setting purposes.

Benchmarks establish uniform rental rates in specific geographic regions with concentrations of similar facilities within the Commission's jurisdiction. (Cal. Code Regs., tit. 2, § 2003, subd. (a)(5).) For proposed leases involving certain types of improvements or uses in regions where benchmarks have been approved, staff will recommend an annual rent based on the applicable benchmark and the lease area.

San Francisco Bay Area Category 1 Benchmark

Benchmark rental rates are based on an analysis of similar uses or substitute facilities in the local area. Generally, staff recommends updates to the benchmarks every 5 years. The use of benchmarks improves consistency and transparency throughout a geographic region, improves staff efficiency in setting and adjusting rent for large numbers of leases, and saves time and money for both the applicant and the State.

Introduction

Leases are issued by the California State Lands Commission for private recreational facilities located on sovereign lands. These facilities offer many of the same amenities as a commercial marina, such as a place for the docking and mooring of boats and the loading and unloading of passengers and equipment. In this manner, these privately-owned facilities represent a substitute for a commercial marina slip. Accordingly, the method of valuation used in estimating a fair rental value in this analysis is based on what an individual would pay for a similar substitute site in a commercial marina.

Since a Commission-leased site for a privately-owned pier or dock is a fairly good substitute for a marina slip, a lessee of the state land should pay a similar amount for the leased site as the state would receive for leasing the land to a commercial marina.

Scope

The scope of the research included the following:

- Identifying marinas in the San Francisco Bay Area.
- Surveying the marinas as to the number and type of berths / slips, occupancy rate, mooring sizes and rates.
- Compiling the survey results into averages for slip size and rate.
- Using the “Layout and Design Guidelines for Marina Berthing Facilities” publication (last updated July 2005) from the State Department of Boating and Waterways to determine the amount of submerged land area necessary to accommodate a given berthing size.
- Calculating the annual rental rate using the above information and State valuation guidelines.

Random marinas throughout the regions were contacted during the course of the survey. Marinas were contacted via phone, email, and / or site visits. Some marina operators did not want to participate in the survey. Some marina operators did not provide a clear breakdown of their slip rental rates or slip sizes. While other marinas contacted during the course of the survey do not rent their berths on a long-term basis. As of November 17, 2021, a total of 42 marinas fully responded to the survey. Each of these marinas cooperated to varying degrees and provided relevant information for study purposes. A deliberate effort was made to make the samples representative of the target population. While not comprehensive, this survey is believed to be representative of the total marinas within the study area.

Methodology

In order to determine the benchmark rent for a leased area (pier, dock, or other similar private recreational facilities), it is necessary to determine the income that can typically be generated by a commercial marina; the area occupied by the average or typical marina slip in a well-designed marina; and the rent for that average or typical sized boat. An annual rate of return is then applied to the product of the above.

The Commission typically charges 5 percent of gross income for boat berthing for sites leased to commercial marina operators.

The Commission has a set rate of return of 9% of the appraised value of the leased land.¹

Berth / Slip Rent

The San Francisco Bay Area Benchmark survey consists of 42 marinas located in six separate parts of the San Francisco Bay. This includes San Francisco, South Bay, Oakland – Alameda, East Bay, Marin County, and San Pablo Bay (see the attached Marina Survey spreadsheet). For purposes of this benchmark, the boundaries of the San Francisco Bay Area are generally defined as Petaluma / Napa to the north, Martinez / Benicia to the east, Sunnyvale / Milpitas to the south, and the Pacific Coast of Sonoma County / Marin County / San Francisco County / San Mateo County to the west.

The survey found that the average berth / slip² size in the San Francisco Bay area is approximately 38 linear feet. A 38-foot length was also used in the 2016 San Francisco Benchmark. It is believed that the layout of the marinas has not significantly changed since the last benchmark.

Berthing rates are reported on a per linear foot basis. For all of the above listed areas, the berthing rate, based on data collected, ranged from \$6.50 to \$21.29 per linear foot with an average of \$11.90 per linear foot.

The benchmark rental rate for berths is calculated by multiplying the average berth length by the average rental rate. This product is then multiplied by 12 months to arrive at the gross annual income. The gross annual income is then multiplied by 5 percent to arrive at the income attributable to the submerged land. That amount is then converted to a per square foot basis for rent-setting purposes. This is accomplished through use of a publication entitled "[Layout and Design Guidelines for Small Craft and Berthing Facilities](#)" by the State Department of Boating and Waterways last updated in 2005. This publication provides formulas and tables for calculating the submerged land area needed to accommodate various sizes and layouts of berths in marinas. Among other variables, the formulas take into account the berth length, berth layout (single vs.

¹ Per the California Code of Regulations, Title 2, Division 3, Chapter 1, Article 2, Section 2003 Rental.

² Note: Slip and berth are used interchangeably in the text hereafter.

San Francisco Bay Area Category 1 Benchmark

double), and the type of vessel (powerboat vs. sailboat). The submerged land area used in this benchmark analysis is based on a double berth layout (on the premise that it represents the typical marina berth layout in the area and is the most economically efficient for the marina operator) and represents an average of the powerboat and sailboat areas.

From the tables in the publication, a submerged area of 1,197 square feet is shown as being necessary to accommodate the 38-foot average slip length indicated by the survey for San Francisco Bay Area. Taking all the aforementioned into account, the current benchmark rental rate and land value for San Francisco Bay Area is calculated as follows:

San Francisco Bay Area:

- Average berth rate: \$11.90/linear foot
- Average boat length: 38 linear feet
- Submerged land area necessary to accommodate a typical boat slip: 1,197 SF
- California State Lands Commission set rate of return: 9 percent

$38' \times \$11.90/\text{linear foot} \times 12 \text{ months} = \$5,426.40$

$\$5,426.40 \times .09 = \493.38

$\$493.38 \div 1,197 \text{ square feet} = \0.412 per square foot rental rate

Benchmark Rental Rate = \$0.227 per square foot

The indicated benchmark rental rate for the San Francisco Bay area is \$0.227 per square foot. In contrast, the 2016 benchmark was \$0.198 per square foot. The new benchmark therefore represents an overall increase of just under 3 cents (\$0.029) per square foot between the two benchmarks.