

# Staff Report 29

## APPLICANT:

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City of San Leandro

## PROPOSED ACTION:

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Issuance of a General Lease – Public Agency Use

## AREA, LAND TYPE, AND LOCATION:

Sovereign land adjacent to San Francisco Bay, near San Leandro, Alameda County.

## AUTHORIZED USE:

Continued use and maintenance of restored marshlands habitat, water circulation and drainage plan/system, tide gates, and a pedestrian and emergency vehicle access bridge as a section of the San Francisco Bay Trail previously authorized by the Commission; and use and maintenance of a pedestrian bridge not previously authorized by the Commission.

## TERM:

25 years, beginning February 25, 2022.

## CONSIDERATION:

The 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.

## SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$2,000,000 per occurrence.
- Lessee agrees and acknowledges that the hazards associated with sea level rise may require additional maintenance or protection strategies regarding the improvements on the lease premises.

## STAFF ANALYSIS AND RECOMMENDATION:

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### 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:

On May 7, 1984, the Commission authorized a title settlement resulting in the State receiving land and an easement for open space and habitat ([Item 28, May 7, 1984](#)). Since the title settlement, Lease 7297 and Lease 7744 were authorized for restoration purposes. A marshland restoration project was completed and associated monitoring concluded several years ago. Dredging of the lease premises was also required for restoration purposes, but is no longer necessary.

On May 31, 1989, the Commission authorized Lease 7297, a 5-year General Lease – Public Agency Use to the Applicant for shoreline restoration, levee bench removal, and dredge disposal site ([Item C04, May 31, 1989](#)). That lease expired on May 31, 1994.

On March 8, 1994, the Commission authorized Lease 7744, a 25-year General Lease – Public Agency Use to the Applicant to construct, maintain, and operate a 144-acre water circulation and drainage plan/system, tide gates, a pedestrian and emergency vehicle access bridge as a section of the San Francisco Bay Trail, and dredging of approximately 7,290 cubic yards to widen Roberts Landing Slough and channels for purposes of wetland enhancement and restoration. The dredge material was used to create five islands for the endangered Salt Marsh Harvest Mouse on sovereign land ([Item C22, March 8, 1994](#)). That lease expired on March 7, 2019. The Applicant requests issuance of one lease for all activities and structures formerly authorized under both leases (Lease 7297 and Lease 7744).

The Applicant is now applying for a General Lease – Public Agency Use for the continued use and maintenance of restored marshlands habitat, water circulation and drainage plan/system, tide gates, a pedestrian and emergency vehicle access bridge as a section of the San Francisco Bay Trail, and a pedestrian bridge.

The Applicant has continued to manage the marshland habitat over the years. The San Leandro Shoreline Marshlands Marsh Management Manual was commissioned by the Applicant. The Applicant's invasive plant species management is consistent with this manual. The Applicant has conducted invasive weed management on an annual basis and would continue with these activities. The Applicant has also completed new native plantings along with harvesting and sharing of seedlings

with other jurisdictions. Tide gates are located throughout the marshland, including flap gates, sliding sluice gates, and bar screens. Operation and maintenance of the tide gates is consistent with the manual.

The pedestrian and emergency vehicle access bridge serves two purposes. The bridge provides a paved pathway for pedestrians and bicyclists to cross over Roberts Landing Slough maintaining continual access to the restored marshlands habitat and the San Francisco Bay Trail. The bridge is rated for fire trucks and provides emergency vehicles with an alternate route for access to the nearby subdivision. The subdivision is located adjacent to railroad tracks. Timely emergency vehicle access to the subdivision could be impacted if railcars are stopped on the tracks. **The bridge is also used by the Applicant's maintenance vehicles (light duty trucks) to empty trash cans located on the trail.**

An additional pedestrian bridge is located south of the pedestrian and emergency vehicle access bridge. This second bridge has existed for several years, since at least the 1960s and is located on sovereign land. The bridge is near an unpaved portion of the San Francisco Bay Trail and provides an alternate connection to the Trail. The bridge was not previously under lease.

The marshlands provide habitat for wildlife and are part of the migratory route for several bird species. The marshlands are bordered by the San Francisco Bay Trail and San Francisco Bay, providing bird watching and recreational activities such as bicycling and walking. The restored marshlands are available for the public's use throughout the year.

The proposed lease maintains a Public Trust resource of restored marshlands habitat, including water circulation and drainage plan/system. In addition, the **proposed lease does not alienate the State's fee simple interest or permanently** impair public rights. The lease is limited to a 25-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. Furthermore, the lease premises provide a public access benefit to the nearby disadvantaged communities with opportunities for walking, running, cycling, bird watching, and enjoyment of natural resources. All improvements are owned and maintained by the Applicant. Upon termination of the proposed lease, the lessee may be required to remove the pedestrian and emergency vehicle access bridge, tide gates, and pedestrian bridge and restore the lease premises to their original condition.

#### 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 subject facilities are located south of Estudillo Channel adjacent to San Francisco Bay, 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.

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 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.

This effect could increase the Estudillo Channel's inundation levels within the lease area. 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, 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 which could impact coastal areas. Climate change and sea level rise will further influence these 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 to the restored shoreline along the channel due to higher channel levels from severe storms. Other fixed features, such as the pedestrian bridge and tide gates, may require more frequent maintenance to ensure continued function during and after storm seasons.

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 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 that the issuance of the proposed lease will not substantially impair the public rights to navigation, fishing, and commerce; 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.

OTHER PERTINENT INFORMATION:

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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 not be able to continue to maintain lands under the Commission's jurisdiction; may be required to remove the existing pedestrian bridges and tide gates; 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 the "Leading Climate Activism," "Meeting Evolving Public Trust Needs," and "Prioritizing, Social, Economic, and Environmental Justice" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of 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 15300 and California Code of Regulations, title 2, section 2905.

## EXHIBITS:

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

## RECOMMENDED ACTION:

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It is recommended that the Commission:

### CEQA FINDING:

Find that issuance of the lease 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 issuance of the proposed lease will not substantially impair the public rights to navigation, fishing, and commerce 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.

### AUTHORIZATION:

Authorize issuance of a General Lease – Public Agency Use to the Applicant, beginning February 25, 2022, for a term of 25 years, for the continued use and maintenance of restored marshlands habitat, water circulation and drainage plan/system, tide gates, and a pedestrian and emergency vehicle access bridge as a section of the San Francisco Bay Trail previously authorized by the Commission; and use and maintenance of a pedestrian bridge not previously authorized by the Commission, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration: the 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 interest; and liability insurance in an amount no less than \$2,000,000 per occurrence.

**EXHIBIT A**

**LEASE 7744**

**LAND DESCRIPTION**

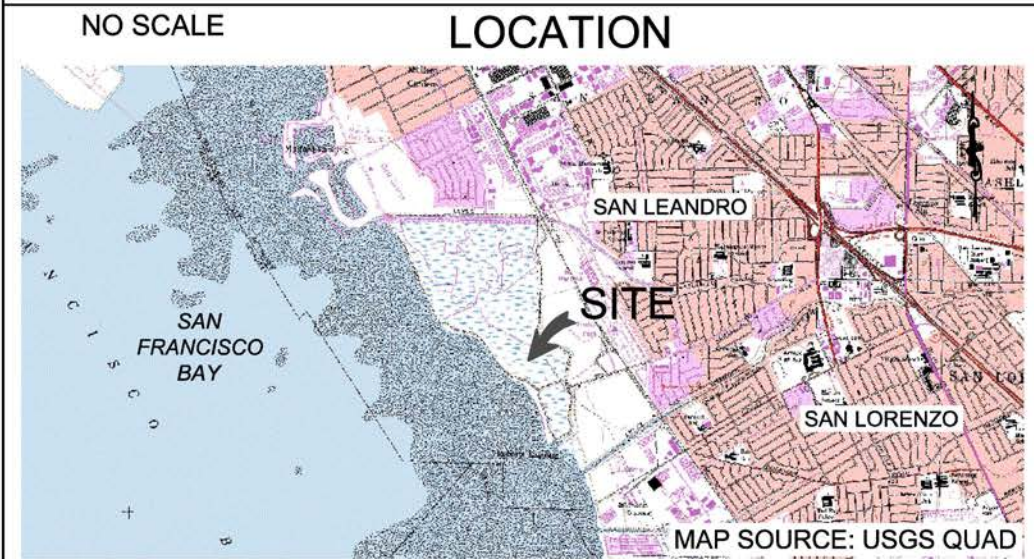
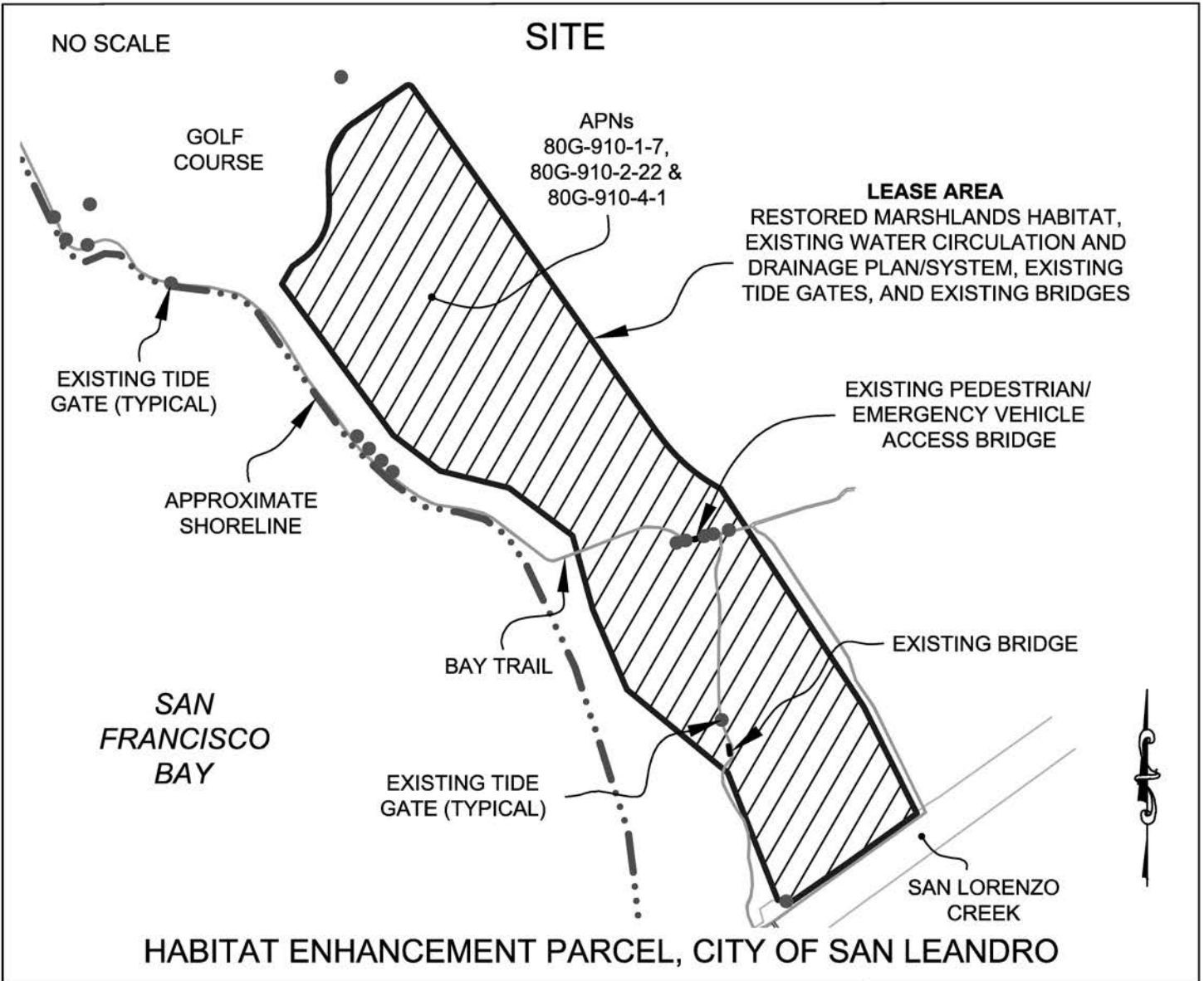
A parcel of land situate in the City of San Leandro, County of Alameda, State of California, and being more particularly described as follows:

That certain parcel of land described as the Habitat Enhancement Parcel in that certain Corporation Grant Deed, recorded in Series No. 90-084393, Official Records of said County.

**END OF DESCRIPTION**

Prepared 12/27/2021 by the California State Lands Commission Boundary Unit.





**EXHIBIT B**  
LEASE 7744  
CITY OF SAN LEANDRO  
APNs 80G-910-1-7,  
80G-910-2-22 & 80G-910-4-1  
GENERAL LEASE -  
PUBLIC AGENCY USE  
ALAMEDA 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.