

# Staff Report 26

## **APPLICANT:**

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Bel Marin Keys Community Services District

## **PROPOSED ACTION:**

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Issuance of General Lease – Dredging

## **AREA, LAND TYPE, AND LOCATION:**

Sovereign land in Novato Creek at Bel Marin Keys, near Novato, Marin County.

## **AUTHORIZED USE:**

Maintenance dredge of a maximum of 8,000 cubic yards (cy) of sediment annually over 10 years from Novato Creek at Bel Marin Keys. Dredged material will be disposed of at a U.S. Army Corps of Engineers and Dredge Material Maintenance Office-approved upland disposal site.

## **TERM:**

10 years, beginning June 23, 2022.

## **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; dredged material may not be sold.

## **SPECIFIC LEASE PROVISIONS:**

- Liability insurance in an amount no less than \$1,000,000 per occurrence; Lessee may satisfy all or part of the insurance requirement through maintenance of a staff-approved self-insurance program as specified in the lease.
- Lessee acknowledges that material dredged from the Lease Premises is the property of the State of California and shall not be sold, and that Lessee is not authorized to dredge for purposes of commercial resale, environmental mitigation credits, or other private benefit without Lessor's prior written consent.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6303, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

### **PUBLIC TRUST AND STATE'S BEST INTERESTS:**

On April 7, 2003, the Commission authorized a 10-year General Lease – Dredging, to the Applicant for maintenance dredge of a maximum of 65,000 cy, over the duration of the lease, from Novato Creek to maintain a navigable depth to allow safe navigation between the community of Bel Marin Keys and San Pablo Bay ([Item C06, April 7, 2003](#)). That lease expired on April 7, 2013.

The Applicant has applied for a General Lease – Dredging to remove the buildup of sediment from two sites within Novato Creek. The first site is at the North Lock and the second site is at the culvert, both locations are adjacent to the North Lagoon. The dredging activity will also remove approximately 28,000 cy of sediment from the Bel Marin Keys North Lagoon that is outside of the jurisdiction of the Commission. The removal of the sediment from Novato Creek would allow for the continual navigation of vessels within the waterway. Motorized and non-motorized vessels use Novato Creek daily to access San Pablo Bay. Furthermore, the sediment removal would allow for the continued operation of the flood control structures during flooding events in Novato Creek.

The dredge material would be collected by hydraulic dredging with a suction dredge mounted on a barge. The material would be pumped with a flexible pipeline floated in Novato Creek to the upland disposal site. Dredging is proposed to take place in the Fall of 2022. The dredging must be done between the months of September through October.

The proposed dredging would facilitate recreational boating and improve navigation. Recreational boating is a water-dependent use that is generally consistent with the common law Public Trust Doctrine.

The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The proposed lease is limited to a 10-year term, does not grant the Applicant exclusive rights to the lease premises, and requires the Applicant to insure the lease premises and indemnify the State for any liability incurred as a result of the Applicant's activities thereon.

**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 at Novato Creek at Bel Marin Keys, near the city of Novato, Marin County, in a tidally influenced site vulnerable to flooding at current sea levels that will be at high risk of flood exposure based on the projected scenarios of sea level rise in this area.

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.

Sea level rise will raise the total water levels of the San Pablo Bay and likely cause frequent inundation of the lease area if no measures are taken to control the flooding and elevate the shoreline. 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 storms and rain events, causing more flooding in low-lying areas. In rivers, creeks, and tidally influenced waterways, higher water levels from sea level rise and flooding may cause damage such as bank erosion to the lease area. Storm debris and water-borne contaminants from more frequent and severe storms may constitute additional hazards to the lease area and surrounding structures. Higher rates of erosion and sedimentation from flooding, storm flow, and runoff will likely increase scour and further decrease bank stability in the surrounding area.

Motorized and non-motorized vessels use Novato Creek daily to access San Pablo Bay. Sediment accretion from sea level rise will require additional dredging to allow for continued access. Sediment removal will also be necessary for the continued operation of the flood control structures during flooding events in Novato Creek.

The lessee is responsible for protecting the lands, resources, and values of the Public Trust within the lease area and should be aware that impacts from climate change are very likely to occur in the lease area and in San Pablo Bay over the course of the lease.

Regular maintenance dredging, as referenced in the lease, may reduce the likelihood of accretion of sediment within Novato Creek and accidental boat groundings or failure of flood control structures. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent areas may be subject to the effects of climate change, including sea level rise.

### **CONCLUSION:**

For all the reasons above, staff believes the issuance of the proposed lease will not 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 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.
2. This action is consistent with the "Meeting Evolving Public Trust Needs" Strategic Focus Area 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 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304, subdivision (g).

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

### **APPROVALS OBTAINED:**

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U.S. Army Corps of Engineers  
U.S. Fish and Wildlife Service  
California Department of Fish and Wildlife

## **APPROVALS REQUIRED:**

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San Francisco Regional Water Quality Control Board

## **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 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 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304, subdivision (g).

### **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; and is in the best interests of the State.

### **AUTHORIZATION:**

Authorize issuance of a General Lease – Dredging to the Applicant beginning June 23, 2022, for a term of 10 years, to maintenance dredge a maximum of 8,000 cy of sediment annually from Novato Creek at Bel Marin Keys, near Novato, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration is 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; liability insurance in an amount no less than \$1,000,000 per occurrence; Applicant may satisfy all or part of the insurance requirement through maintenance of a staff-approved self-insurance program as specified in the lease; and the dredged material may not be sold.

## EXHIBIT A

LEASE 6921

### LAND DESCRIPTION

Two parcels of tide and submerged land situate in the bed of the Novato Creek, County of Marin, State of California, lying adjacent to the agreed boundary line as described in that certain Boundary Agreement recorded in Book 1612 at Page 609, Marin County Records, and being more particularly described as follows:

#### **Parcel 1** (Culvert Dredge Location)

COMMENCING at the westerly terminus of said agreed boundary line; thence along said agreed boundary line, South 75°42'02" East 130.00 feet; thence North 82°07'43" East 244.22 feet; thence North 71°35'00" East 58.43 feet to the POINT OF BEGINNING; thence leaving said agreed boundary line, North 05°35'10" West 46.88 feet; thence North 72°48'43" East 93.18 feet; thence North 57°18'25" East 46.20 feet; thence South 19°34'51" East 31.58 feet to a point on said agreed boundary line; thence along said agreed boundary line, South 45°10'58" West 52.93 feet; thence South 71°35'00" West 101.57 feet to the point of beginning.

EXCEPTING THEREFROM any portions lying landward of the low water mark on the left bank of Novato Creek.

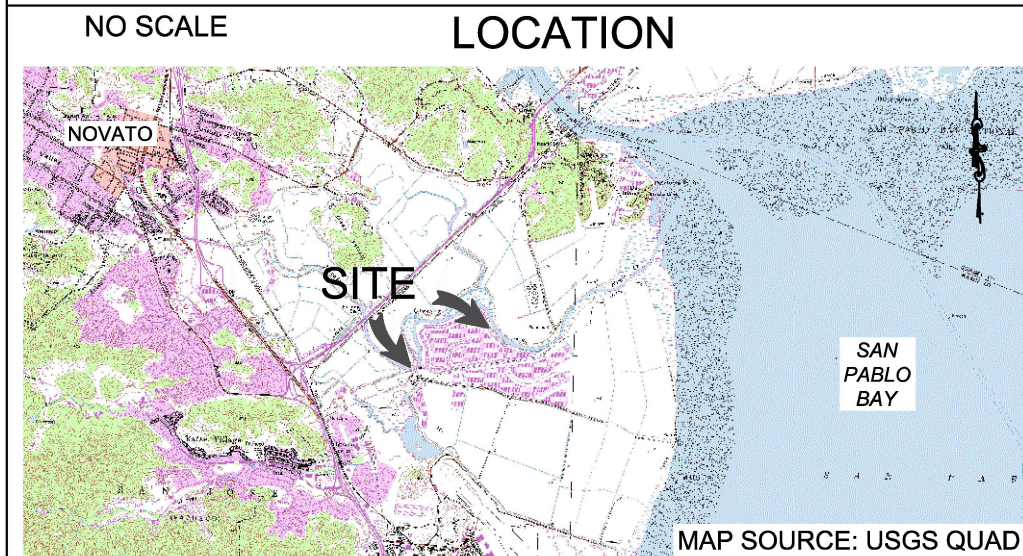
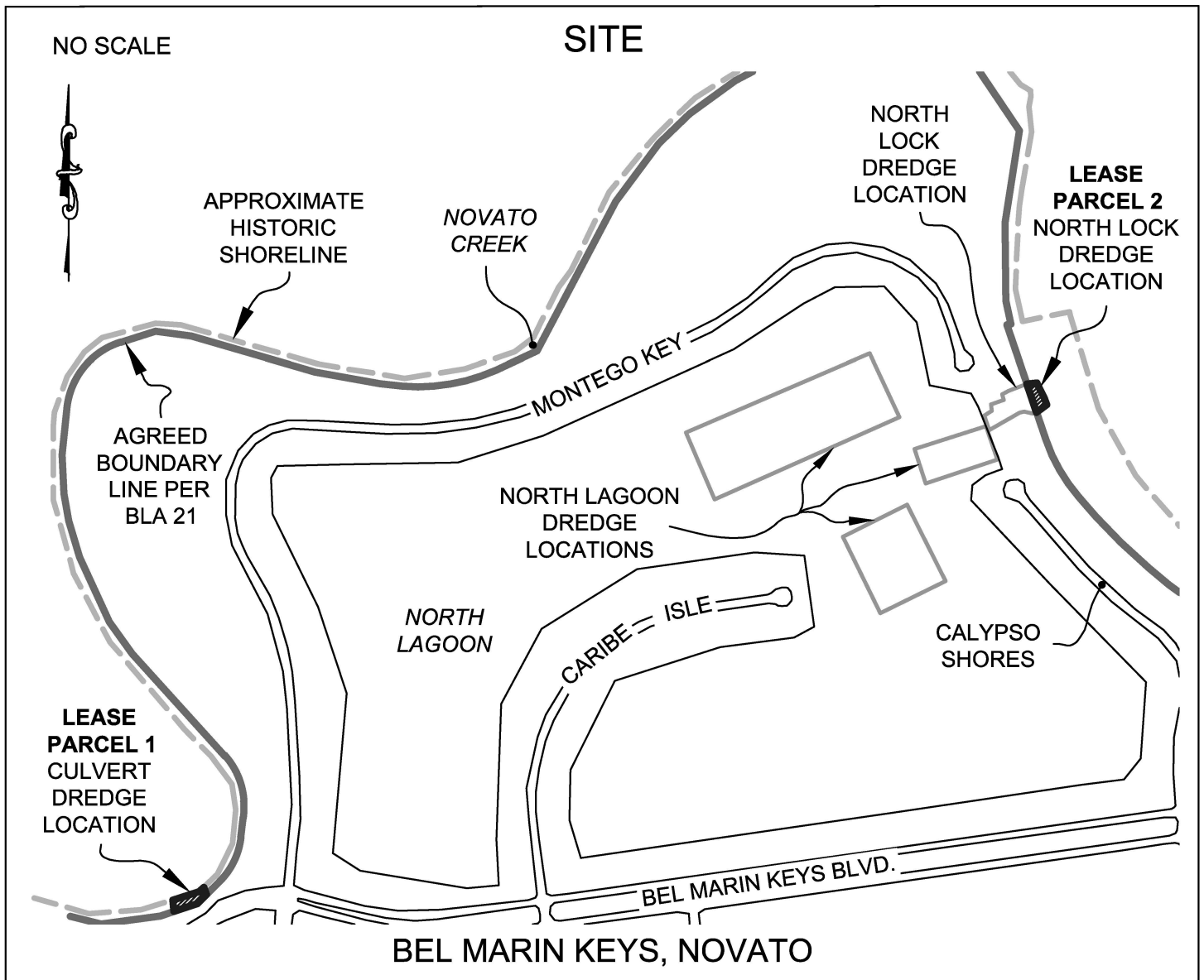
#### **Parcel 2** (North Lock Dredge Location)

COMMENCING at a point on said agreed boundary line, said point being the northerly terminus of that certain course, described as South 18°47'17" East 495.46 feet in said Boundary Agreement; thence along said agreed boundary line, South 18°47'17" East 253.76 feet to the POINT OF BEGINNING; thence leaving said agreed boundary line, North 83°33'55" East 40.26 feet; thence South 28°33'24" East 11.07 feet; thence South 25°24'17" East 55.43 feet; thence South 20°58'07" East 31.62 feet; thence South 52°49'31" West 51.42 feet to a point on said agreed boundary line; thence along said agreed boundary line, North 18°47'17" West 122.40 feet to the point of beginning.

### END OF DESCRIPTION

Prepared 03/01/2022 by the California State Lands Commission Boundary Unit.





**EXHIBIT B**

LEASE 6921  
BEL MARIN KEYS COMMUNITY  
SERVICES DISTRICT  
GENERAL LEASE -  
DREDGING  
MARIN 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.