

Staff Report 34

APPLICANT:

East Bay Regional Park District

PROPOSED ACTION:

Amendment and Sublease Endorsement of a General Lease – Public Agency Use

AREA, LAND TYPE, AND LOCATION:

Filled and submerged sovereign lands along the Carquinez Strait, Assessor's Parcel Number 368-090-004 and adjacent tide and submerged lands, near Port Costa, Contra Costa County.

AUTHORIZED USE:

Management of the Lease Area for the purposes of pedestrian access, recreation, passive open space, dock, and dolphins.

TERM:

20 years, beginning October 19, 2012.

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.

PROPOSED AMENDMENT:

- Authorize, by endorsement, a sublease with a 5-year term, beginning October 1, 2021, of a portion of Lease No. PRC 9029, in substantially the form of Exhibit D, from the East Bay Regional Park District to Chevron Environmental Management Company, for use, operation, and maintenance of four existing groundwater wells.
- Amend Section 1, Authorized Improvements and Land Use or Purpose to include the use, operation, and maintenance of four existing groundwater wells.
- Replace Exhibit B, Site and Location Map

- Add Exhibit C, Sublease Endorsement

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:

On October 19, 2012, the Commission authorized a General Lease – Public Agency Use to the East Bay Regional Park District (Lessee/Sublessor) beginning October 19, 2012, for a term of 20 years, for the management of the Lease Area, depicted on Exhibit A, for the purposes of pedestrian access, recreation, passive open space, and a dock with dolphins ([Item C95, October 19, 2012](#)). That lease will expire on October 18, 2032.

In June 2021, the Lessee contacted Commission staff regarding the need for Chevron Environmental Management Group (Sublessee) to access the Lease Area for data collection of groundwater samples from four existing groundwater-monitoring wells near the Carquinez Strait. In 2000, the United States Environmental Protection Agency issued a Unilateral Administrative Order for the site at Port Costa to mitigate oil and petroleum byproducts from being released to the Carquinez Strait. A previous upland operator, Tosco Refining Company, installed the groundwater monitoring wells as a component of a prepared Pollution Prevention Plan. The monitoring wells were installed before the Commission acquired the upland property.

The Lessee requested Commission authorization for access to conduct the proposed work. The scope of access is several technicians conducting weekly collection trips to obtain water samples from the four existing wells. Because the wells are located on filled land, no access from the Carquinez Strait is required and only vehicle access is necessary to the site. No additional equipment is necessary or required to access the well sites in the lease area.

Staff understood that the Lessee was working to submit an application for the sublease endorsement but needed urgent authorization for Chevron staff to access the wells. Therefore, on June 4, 2021, staff issued a Letter on Non-objection for the Sublessee to access and conduct groundwater sample collection on the Lease Area. The Letter of Non-objection expired on December 31, 2021. The Lessee has now applied requesting an amendment to the lease to include the four

groundwater wells into the lease and to endorse a sublease allowing continued monitoring.

On October 21, 2021, the Lessee entered into a License Agreement with the Sublessee to grant the Sublessee and the Sublessee's consultants access to enter or cross the Lease Area to collect groundwater samples from the Sublessee's existing wells on the Lease Area and on the Lessee's private property. For consistency with Commission terminology, "Sublease" will be used when referring to the License Agreement.

The Sublessee is required to collect groundwater samples to comply with its National Pollutant Discharge Elimination System (NPDES) permit No. CA0005134 and to assure that no potentially polluted groundwater seeps into the Lease Area or surrounding land and water. At the expiration of the lease or sublease, or any sooner termination of the Sublease, or when the Sublessee is no longer required to conduct work in the Lease Area, the Sublessee is required to properly abandon and cap any monitoring wells, and remove all fixtures, equipment, and material from the Lease Area. The authorization in this Staff Report, however, does not give Lessee or Sublessee permission to decommission the wells on the Lease Premises. Lessee will seek future authorization from the Commission for those activities, which may require additional CEQA analysis.

The existing lease requires the Lessor to conduct all work safely and indemnify the Commission in the event of any liability resulting from Lessor or Sublessee's activities within the Lease Area. The proposed sublease does not alienate the State's fee simple interest or permanently impair public rights. The sublease is limited to the 20-year term of the lease and does not grant the Lessor or Sublessee exclusive rights to the lease premises, 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 leased facilities are located on Castro Cove, in a tidally influenced site that is vulnerable to shallow coastal flooding at current sea levels and will be at 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 lease area 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 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 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 bay levels and flow for extended periods of time.

According to the Digital Coast Sea Level Rise Viewer (National Oceanic and Atmospheric Administration, Office of Coastal Management), the lease area would not suffer from flooding until sea level rise has exceeded approximately 4 feet that would occur after year 2050, which is beyond the term of the proposed sublease.

Regular monitoring and maintenance may reduce the likelihood of severe structural degradation of the groundwater wells.

CONCLUSION:

For all the reasons above, staff believes the issuance of this lease amendment and sublease endorsement are consistent with the common law Public Trust Doctrine; will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; are consistent with the common law Public Trust Doctrine; and are in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the lease amendment and sublease endorsement 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. The lessee has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Meeting Evolving Public Trust Needs" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
3. **Lease of existing wells:** 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, Existing Facilities; California Code of Regulations, title 14, section 15301.

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

4. **Data collection:** 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 6, Information Collection; California Code of Regulations, title 14, section 15306.

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

EXHIBITS:

- A. Land Description
- B. Site and Location Map
- C. Sublease Endorsement
- D. Form of Sublease between Lessee and Chevron Environmental Management Company

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Lease of existing wells: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15301 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 14, section 15301.

Data collection: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15306 as a categorically exempt project, Class 6, Information Collection; California Code of Regulations, title 14, section 15306.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease amendment and sublease endorsement will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; are consistent with the common law Public Trust Doctrine; and are in the best interests of the State.

AUTHORIZATION:

1. Authorize the amendment of Lease Number PRC 9029, a General Lease – Public Agency Use, effective December 9, 2022, to allow the use, operation, and maintenance of four groundwater wells, as described in Exhibit A and as shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; all other terms and conditions of the lease will remain in effect without amendment.
2. Authorize, by endorsement, a sublease with a 5-year term, beginning October 1, 2021, of a portion of Lease Number PRC 9029, in substantially the form of Exhibit D, from the East Bay Regional Park District to Chevron Environmental Management Company, for use, operation, and maintenance of four existing groundwater wells.
3. Replace Exhibit B, Site and Location Map, with the attached Exhibit B, Site and Location Map (for reference purposes only) attached and by this reference made a part hereof
4. Add Exhibit C, Sublease Endorsement, to Lease Number PRC 9029, attached and by this reference made a part hereof.

5. Add Exhibit D, Sublease between Lessee and Chevron Environmental Management Company, to Lease Number PRC 9029.

EXHIBIT A

PRC 9029

LAND DESCRIPTION

A portion of Rancho Canada Del Hambre Y Las Bolsas, Northern Part, along with eleven parcels of unfilled tide and submerged lands, County of Contra Costa, State of California, and more particularly described as follows:

Parcel 1 – Portion of Rancho Canada Del Hambre Y Las Bolsas

All those lands described as Parcel Two in that certain Grant Deed from Port Costa Materials, Inc. to Pacific Custom Materials, Inc. recorded January 25, 1996 as Document Number 96-14057.

Parcel 2 – Pier

All those lands underlying an existing pier lying adjacent to Parcel Two as described in that certain Grant Deed from Port Costa Materials, Inc. to Pacific Custom Materials, Inc. recorded January 25, 1996 as Document Number 96-14057.

Parcel 3 thru 12 – Dolphins

All those lands underlying ten (10) existing dolphins lying adjacent to Parcel Two as described in that certain Grant Deed from Port Costa Materials, Inc. to Pacific Custom Materials, Inc. recorded January 25, 1996 as Document Number 96-14057.

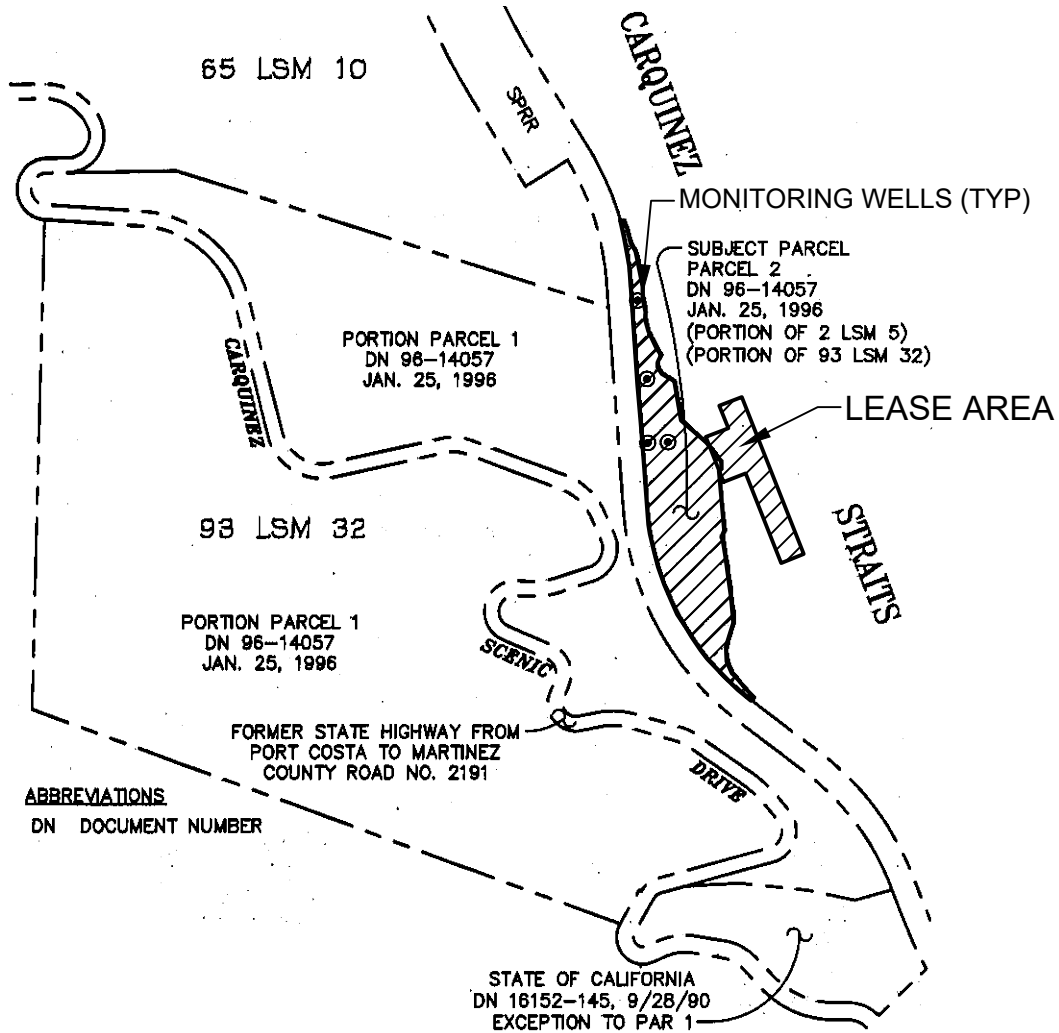
END OF DESCRIPTION

Prepared October 28, 2022 by the State Lands Commission Boundary Unit.



NO SCALE

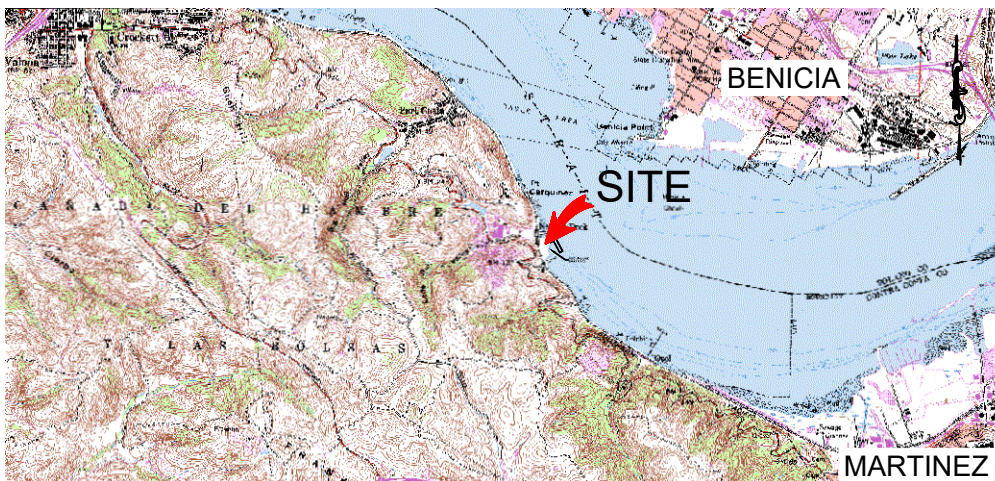
SITE



PORT COSTA, CARQUINEZ STRAITS

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

PRC 9029
EBRPD
GENERAL LEASE- PUBLIC
AGENCY USE
APN 368-090-004
CONTRA COSTA COUNTY



JAK 10/28/22

EXHIBIT C

Lease PRC 9029

SUBLEASE ENDORSEMENT

State of California
State Lands Commission

Pursuant to Commission Minute Item No. _____ dated December 9, 2022, the herein sublease between East Bay Regional Park District, and Chevron Environmental Management Organization, under a portion of State Lease PRC 9029, is hereby approved.

By: _____

Robert Brian Bugsch, Chief
Land Management Division

EXHIBIT D

PARK ACCESS AND GROUNDWATER MONITORING
LICENSE AGREEMENT
between
EAST BAY REGIONAL PARK DISTRICT
and
CHEVRON ENVIRONMENTAL MANAGEMENT COMPANY

CARQUINEZ STRAIT REGIONAL SHORELINE

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LICENSE AGREEMENT
CHEVRON ENVIRONMENTAL MANAGEMENT COMPANY
PARK ACCESS AND GROUNDWATER MONITORING

1. PARTIES

This License dated October _____, 2021 and effective as of the EFFECTIVE DATE, is entered into by and between the EAST BAY REGIONAL PARK DISTRICT, a California special DISTRICT, hereinafter called DISTRICT, and CHEVRON ENVIRONMENTAL MANAGEMENT COMPANY, hereinafter called LICENSEE.

2. LICENSE AREA

Subject to the terms and conditions set forth in this agreement, DISTRICT hereby licenses to LICENSEE and LICENSEE hereby licenses from DISTRICT a portion of that certain real property located at:

Carquinez Strait Regional Shoreline, 'Brickyard' site, located at Contra Costa County Assessor's Parcel Numbers 368-090-006 and 368-090-004

also known as the LICENSE AREA, as described herein and as shown on the map attached hereto as EXHIBIT A. EXHIBIT A illustrates the approximate locations of the access road, monitoring wells, storage tanks, and the offsite groundwater treatment system.

3. PURPOSE

The purpose of this License is to grant LICENSEE and LICENSEE's consultants access to enter and/or cross the LICENSE AREA to collect groundwater samples from LICENSEE's existing wells on the LICENSE AREA and neighboring properties, to perform operation and maintenance on LICENSEE's groundwater treatment system located on neighboring properties, and to temporarily stage two 8400-gallon storage tanks on the LICENSE AREA for the storage of treated groundwater, all of the above hereinafter referred to as the WORK. The WORK is necessary for LICENSEE to comply with its National Pollutant Discharge Elimination System permit, and to assure that no potentially polluted groundwater seeps onto DISTRICT property or surrounding lands and waters.

4. TITLE OF DISTRICT

LICENSEE hereby acknowledges the title of DISTRICT in and to the LICENSE AREA and agrees never to assail or to resist said title. LICENSEE agrees that it has not nor will it hereafter acquire any rights or interest in the LICENSE AREA, nor does LICENSEE have nor will it obtain any right or claim to the use of the LICENSE AREA beyond those specifically granted in this License.

5. TERM

The term of this License shall be FIVE (5) years, commencing September 1, 2021, and terminating August 31, 2026 ("Term"). In the event DISTRICT's primary use of the real property reasonably requires some permanent use of the real property which, by nature thereof, precludes

LICENSEE's use thereof, DISTRICT may, upon 90 days' notice, revoke this license as to the area reasonably required for such permanent primary use. In the event the DISTRICT revokes this License prior to the expiration of the TERM, LICENSEE is entitled to a pro rata reimbursement of fees paid in accordance with paragraph 7.

6. OPTION TO EXTEND

Upon prior written request from LICENSEE, DISTRICT may grant LICENSEE one five-year (5) extension of the Term if the following condition has been met:

LICENSEE has, to the satisfaction of DISTRICT, faithfully performed each and every condition of this License throughout the Term. DISTRICT's assessment of LICENSEE's performance shall be final and conclusive and shall be based on information received from DISTRICT's staff and others who may have knowledge of LICENSEE's performance. All terms and conditions of this License shall apply during each extended Term. The extension of the Term for an additional five (5) years will require LICENSEE's payment of DISTRICT's staff recovery fees, license extension fee, and other fees to be calculated at that time.

7. CONSIDERATION

As consideration for LICENSEE's use of the LICENSE AREA in accordance with the terms and conditions of this License, LICENSEE agrees to:

- a) Reimburse the DISTRICT \$3,000.00 for the California State Lands Commission sublease application fee which the DISTRICT must pay in order to grant LICENSEE access to four monitoring wells located on State lands;
- b) Pay a one-time staff recovery cost fee of \$3,800.00;
- c) Pay a one-time long-term license fee of \$1,750.00.

Additional consideration may be required as part of any License renewal beyond the five-year extension term provided for herein depending on groundwater conditions, regulatory agency requirements, environmental considerations, park planning progress, and public safety.

8. PARK ACCESS

LICENSEE may access LICENSE AREA to perform the WORK during park open hours. The use may not interfere with DISTRICT tenant's quiet use and enjoyment of the property. LICENSEE may only drive on access road along the southern boundary of the LICENSE AREA and then north to groundwater treatment system or east to wells on east side of railroad tracks.

9. MONITORING OF GROUNDWATER WELLS

LICENSEE may access and collect samples from their groundwater monitoring wells TP-05R on DISTRICT property, and groundwater monitoring wells TP-02, TP-04, TP-06, and TP-09, on California State Lands Commission property operated by DISTRICT under a lease agreement.

10. CONDITION OF LICENSE AREA

At the expiration of the Term, or any sooner termination of this License, or when LICENSEE is no longer required to conduct the Work in the LICENSE AREA, LICENSEE shall, at its sole expense, properly abandon and cap any monitoring wells, and remove all of its fixtures, equipment and material from the LICENSE AREA, and shall leave the LICENSE AREA in as good order and condition as it was delivered to LICENSEE as of the EFFECTIVE DATE. DISTRICT and LICENSEE must receive authorization from the California State Lands Commission before decommissioning any well or wells on the Lease Premises of Lease PRC 9029 (APN 368-090-004). If, after notice by DISTRICT, LICENSEE fails to restore LICENSE AREA to the condition prior to the EFFECTIVE DATE, LICENSEE agrees to promptly reimburse DISTRICT for any costs incurred in repairing any damage done to the LICENSE AREA caused by LICENSEE's occupation or use, excepting reasonable wear and tear, legal abandonment of subsurface equipment, and damage by the elements. LICENSEE shall not leave or allow to remain on the LICENSE AREA or surrounding DISTRICT lands any garbage, refuse, debris, or personal property. If LICENSEE fails to cure within ten (10) calendar days following notice by DISTRICT, LICENSEE will pay DISTRICT any removal costs incurred by DISTRICT; provided, however, if the cure would reasonably take longer than ten (10) days to complete, LICENSEE will be deemed to be in compliance if it commences the cure within such ten (10) day period and diligently prosecutes the same to completion.

11. NOTIFICATION FOR ACCESS

LICENSEE shall notify the Park Supervisor at (510) 544-3123 or at martinez@ebparks.org at least 24 hours in advance of each entry to perform groundwater monitoring work.

12. NOTICES

All notices pursuant to this License other than the above notification for access in Section 11 shall be addressed as set forth or as either party may subsequently designate by written notice and shall be sent through the United States mail, email or by personal delivery. Email notices must clearly state that it is a notice given under this License.

TO: DISTRICT
Land Acquisition Department
East Bay Regional Park DISTRICT
2950 Peralta Oaks Court
Oakland, CA 94605-5369
ATTN: Land Acquisition Department
(510)544-2604
landacquisition@ebparks.org

TO: LICENSEE
Chevron Environmental Management and
Real Estate Company
1500 Louisiana Street
Houston, TX 77002
ATTN: Karen Gonzalez
(832)854-5823
karengonzalez@chevron.com

13. PROTECTION OF PARK AND GENERAL PUBLIC USE

LICENSEE acknowledges that the LICENSE AREA is located within a Regional Park that is

managed by the DISTRICT to protect natural resources and provide public recreational access. LICENSEE agrees to cooperate with the DISTRICT to protect the LICENSE AREA and surrounding lands of the DISTRICT from damage by erosion, fire or improper use, to protect the flora and fauna within the Park, and to protect the public at all times from hazards.

14. DAMAGE AND DESTRUCTION

If DISTRICT determines in its sole discretion that any of the WORK permitted under this License presents a danger to the public or to DISTRICT's employees, volunteers or contractors, or is substantially damaged or destroyed during the term hereof for any cause, LICENSEE shall forthwith repair the same, provided such repairs can be made immediately by working in the usual and ordinary manner under the laws and regulations of the State, County or municipal authorities, but such damage or destruction shall in no way annul or void this License.

If such repairs are not made in said manner, either party upon written notice to the other party may terminate permission for the park. Said notice shall be sent through the United States mail or by personal delivery, not email. All equipment and appurtenances shall be removed within 30 (thirty) business days by LICENSEE at LICENSEE's sole cost. If the site is not restored substantially to its original state during that time period, LICENSEE forfeits all rights to the equipment and the DISTRICT may keep all equipment, or may hire a contractor or have DISTRICT crews complete the work at the sole cost of LICENSEE. All other terms shall remain in effect.

15. GATE LOCK

DISTRICT shall furnish a key to LICENSEE to open the gate lock to access the LICENSE AREA and a driveway lock to access the groundwater treatment system.

LICENSEE acknowledges the necessity of keeping the gate locked, and agrees to keep the lock secure when LICENSEE or any of LICENSEE's permitted contractors is on site but not within view of the gate.

16. INDEMNIFICATION

LICENSEE shall indemnify, save, protect, defend and hold harmless DISTRICT, its boards, officers, employees, agents and contractors from and against any and all loss, liability, expense, claims, costs, suits and damages, including attorney's fees, arising out of or connected with the LICENSEE'S performance of the WORK, except to the extent that such damages or claims are due to the gross negligence or intentional acts or intentional omissions of DISTRICT or any of its officers, employees, agents, contractors, successors, assigns, and invitees.

As to claims arising from this License or the performance of the WORK by LICENSEE, no party is liable to any other party for any of the following: (A) indirect or consequential loss; (B) loss of profits, loss of prospective economic advantage or benefit, or loss of business opportunity, whether direct or indirect; or (C) punitive or exemplary damages.

LICENSEE agrees that the construction, installation, maintenance, and use of the structures, appurtenances, equipment, and tools herein described on the lands on which they are used or installed shall be affected with all reasonable diligence and precaution to avoid damage to the land, property, or personnel of DISTRICT.

17. INSURANCE

a) LICENSEE shall procure and keep in force during the term of the License, at LICENSEE's own cost and expense, the following policies of insurance with companies licensed to do business in the State of California and which are acceptable to DISTRICT in DISTRICT'S sole opinion. LICENSEE shall, within fifteen (15) days from the date of the License, supply DISTRICT with a copy of any policy certified to be a true and complete copy of the original showing that such insurance is in force prior to commencement of the term. Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit will apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit will be twice the required occurrence limit.
2. Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if LICENSEE has no owned autos, covering hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. Contractors Pollution Liability and/or Asbestos Pollution Liability and/or Errors & Omissions applicable to the work performed, with a limit no less than \$2,000,000 per claim or occurrence and \$4,000,000 aggregate per policy period of one year.

Each of the above policies must contain a provision that policy shall not be cancelled or materially changed without thirty (30) days' prior written notice to DISTRICT. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of LICENSEE to furnish the required insurance during the term of the License.

B. The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured Status.** DISTRICT, its officers, directors, officials, agents, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of LICENSEE including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to LICENSEE's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).
2. **Primary Coverage.** For any claims related to this contract, LICENSEE's insurance coverage will be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the DISTRICT, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by DISTRICT, its officers, directors, officials, agents, employees, or volunteers will be excess of LICENSEE's insurance and will not contribute with it.
3. **Waiver of Subrogation.** LICENSEE hereby grants to DISTRICT a waiver of any right to subrogation which any insurer of LICENSEE may acquire against the DISTRICT by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not DISTRICT has received a waiver of subrogation endorsement from the insurer.
4. **Self-Insured Retentions.** Self-insured retentions must be declared to and approved by DISTRICT. DISTRICT may require LICENSEE to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
5. **Acceptability of Insurers.** Insurers must maintain a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to DISTRICT.
6. **Verification of Coverage.** LICENSEE will furnish DISTRICT with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by DISTRICT before work commences. However, failure to obtain the required documents prior to the work beginning will not waive LICENSEE's obligation to provide them. DISTRICT reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
7. **Special Risks or Circumstances.** DISTRICT reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

8. Failure of Coverage. Failure, inability or refusal of LICENSEE to take out and maintain during the entire term of this License any and all of the insurance as aforesaid shall at the option of DISTRICT constitute a breach of this License and justify immediate termination of the same.
9. Self Insurance. LICENSEE has the right and option to self-insure the requirements under this Section upon written notice to DISTRICT that LICENSEE assumes the obligations in the place and stead of any insurance carrier, any reference to failure to coverage notwithstanding. In the event that LICENSEE elects to self-insure, LICENSEE shall provide to DISTRICT a certificate or other evidence of self-insurance acceptable to DISTRICT.

If required, LICENSEE shall cause to be procured and maintained in force during all times this License is in effect and during the time any of the work herein referred to is being performed, and six months thereafter, public liability and property damage insurance, including completed operations, contractual, and owned and non-owned automobiles in the sum of one million and no/100 dollars (\$1,000,000.00) combined single limit. DISTRICT and its directors, officers, agents and employees shall be named as additional insureds in such insurance coverage by LICENSEE's contractor shall be filed with DISTRICT prior to the time of issuance of this License. Said certificate shall provide that such insurance coverage will not be canceled or reduced without at least 30 days' prior written notice to the DISTRICT Representative.

Qualified public agencies will be permitted to self-insure in lieu of the requirements for insurance secured from a private carrier. A letter describing the levels of self-insurance must be provided to the DISTRICT.

18. CONFLICT OF INTEREST

Neither DISTRICT, nor any director, employee, agent, representative, contractor or supplier of DISTRICT, may in connection with this License (A) give to or receive from any director, officer, employee, or agent of LICENSEE or its affiliate anything that is more than a nominal cost or value, or (B) enter into any business arrangement with any director, officer, employee, or agent of LICENSEE or its affiliate without LICENSEE's prior written consent.

19. RECORDS AND INSPECTION

Up until 24 months from the end of the calendar year in which this License is terminated, (A) DISTRICT and LICENSEE shall retain all records related to this License and, (B) the other Party may inspect at any time all records to confirm that the requirements of this License are met.

20. COUNTERPARTS

The exchange of counterpart signature pages between the parties constitutes execution and delivery of this License. Executed signature pages sent by email, scan or otherwise by photocopy are valid means of delivery.

21. SEVERABILITY AND SAVINGS

Each provision of this License is severable and any determination of invalidity does not affect any other provision.

22. PRIOR AGREEMENTS

This License supersedes all prior and contemporaneous representations, agreements, and commitments between the parties concerning the subject matter of this License.

23. RESOLUTION OF DISPUTES

If a dispute arises between the parties relating to this License, the parties agree to resolve the dispute first by negotiation in good faith. If the dispute cannot be resolved by direct negotiation, the parties agree to mediate the dispute before initiating litigation or arbitration. All mediation and arbitration fees and costs must be paid equally and each party shall bear its own attorneys' fees and costs in connection with such mediation and arbitration.

IN WITNESS WHEREOF, the parties have executed this License effective as of the last date set forth below ("EFFECTIVE DATE").

LICENSOR

LICENSEE

EAST BAY REGIONAL PARK DISTRICT

**CHEVRON ENVIRONMENTAL
MANAGEMENT COMPANY**

By _____
General Manager Sabrina Landreth

By _____

Date _____

Date _____

As Approved to Form:

By _____
DISTRICT Counsel

Date _____

EXHIBIT A

MAP OF THE LICENSE AREA