

Staff Report 52

LESSEE/APPLICANT:

East Bay Regional Park District

PROPOSED ACTION:

Termination of a General Permit – Public Agency Use and Issuance of a General Lease - Public Agency and Protective Structure Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in San Leandro Bay, adjacent to Assessor's Parcel Numbers (APNs) 42-4404-1 and 42-4410-1-13, Oakland, Alameda County.

AUTHORIZED USE:

Use and maintenance of the existing Martin Luther King Jr. Regional Shoreline Park, portions of the San Francisco Bay Trail, a fishing pier, and shoreline protection; construction, use, and maintenance of a trail section with two bike pullouts, the overlay and widening of existing trail sections, a guardrail, and placement of additional shoreline protection; and removal of a boat ramp as part of the MLK Regional Shoreline Bay Trail Gap (Doolittle Drive South) Improvements Project.

TERM:

25 years, beginning February 28, 2023.

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:

- Within 60 days of completing the construction of authorized improvements, Lessee will provide Lessor with photographs and a set of "as-built" plans that will show where the improvements have been placed. Lessor shall then replace Exhibit A (Land Description) and Exhibit B (Site and Location Map) to

this Lease as necessary to accurately reflect the final location of the authorized improvements. Once approved by Lessor's Executive Officer or designee and Lessee, the revised Exhibits shall replace the Exhibits incorporated in the Lease at the time of Lease execution. The revised Exhibits shall be incorporated in this Lease as though fully set forth herein.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 6501.1, 6503 and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On October 26, 1978, the Commission authorized a 49-year General Permit – Public Agency Use to the East Bay Regional Park District for a regional shoreline park ([Item C36, October 26, 1978](#)). The lease will expire on October 1, 2027.

The regional shoreline park, formerly known as the San Leandro Bay Shoreline Park, is now known as the Martin Luther King Jr. Regional Shoreline Park (Park). The Park protects the remainder of a once extensive marshland at San Leandro Bay in Oakland and provides recreation and park space for residents of all ages and socioeconomic backgrounds from the City of Oakland and beyond. The Park also boasts the Shoreline Center, which is a rentable conference center facility that can accommodate 60 seated or 125 standing guests. The Tidewater Boating Center, located in the northeast corner of the Park, has an ADA accessible dock, turf sites for picnicking, and shoreline access for fishing. The 12,300 square-foot complex consists of a boathouse, training area, boat storage facility, and Park District office space. The Oakland Strokes, a non-profit junior rowing organization, operates the main boathouse and indoor training area and provides outreach to neighborhood youth. The Park District also offers year-round recreation and interpretive programs from the Park where the public can learn to kayak, identify birds, learn about the history of the Bay and the importance of wetlands, and much more.

The Applicant is now applying to terminate Permit Number PRC 5586 and for the issuance of a General Lease – Public Agency and Protective Structure Use for the existing and proposed improvements described above in the Authorized Use section. The proposed new improvements, including a trail section with two bike pullouts, the overlay and widening of existing trail sections, a guardrail, placement of additional shoreline protection, and removal of an existing boat ramp, are part of the District's MLK Regional Shoreline Bay Trail Gap (Doolittle Drive South)

Improvements Project (Project). The Applicant maintains a lease from the Port of Oakland for the upland area, which will expire on August 15, 2026.

The Project includes improvements to approximately 4,000 linear feet along the shoreline with construction of approximately 2,300 linear feet of a new trail section to fill the southern gap in the San Francisco Bay Trail (Trail), adjacent to Doolittle Drive and APNs 42-4404-1 and 42-4410-1-13.

The new Trail section would have two bike pullouts, be 12-feet-wide with a one-foot shoulder on the west side and a one-foot unpaved shoulder on the eastern side immediately prior to the change in slope leading to the Bay. The existing 10-foot-wide asphalt Trail sections north and south of the gap have no shoulders. The existing Trail section to the north of the Trail gap will be realigned and widened to 12 feet. The Trail section to the south of the Trail gap would be overlaid with new asphalt concrete and remain the same width. The Trail improvements will increase transportation connectivity, connecting residents to shoreline recreation and jobs at the airport and the airport industrial complex. A 32-inch-high metal guardrail will be installed between the Trail and Doolittle Drive to serve as a safety barrier.

Placement of shoreline protection is proposed along the new Trail section and for a section which has eroded to within 5 feet of the existing Trail. The shoreline protection would consist of a mix of various-sized rocks ranging from 10 inches square to about 18 inches square and would be placed from about elevation +5 feet to elevation +10 feet (mean high water is 5.9 feet), consistent with the existing shoreline treatments in the area.

An old approximately 2,500 square-foot, 6-inch-thick concrete boat ramp would be demolished and removed from the shoreline within the proposed lease area. Demolition and removal would either be performed at low tide, or a cofferdam may be constructed and the construction area dewatered prior to demolition.

Immediately north of the proposed lease area the Applicant plans to replace an existing two-lane boat launch ramp, create a kayak laydown area, overlay and widen a trail section, overlay and restripe a parking lot, and remove an asphalt concrete trail. Construction is estimated to begin in 2023 and be completed in 2024, with work within the waterway limited to June through November.

The proposed Project enhances access to Public Trust resources by improving and constructing facilities used for fishing and boating in the San Leandro Bay, and walking, bicycling, and enjoyment of nature and scenic views along the waterway. Recreational facilities that encourage and promote public access, use, and enjoyment of the State's waterways are 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 lease is limited to a 25-year term and does not grant the lessee exclusive rights to the lease premises. Upon termination of the lease, the lessee may be required to remove all improvements from State land.

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 facilities are located adjacent to San Leandro 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.

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, drought, and storms (especially when coupled with sea level rise). The combination of these conditions will likely result in increased wave run up, storm surge, and flooding in coastal and near coastal areas. Climate change and sea level rise will further influence coastal areas by changing erosion and sedimentation rates. Beaches, coastal landscapes, and near-coastal riverine areas will be exposed to increased wave force and run up, potentially resulting in greater beach or bank erosion than previously experienced. The combination of increased wave action, storm activity and sea level rise could result in additional damage or degradation to the Park facilities.

The combination of these projected conditions could increase the likelihood of damage to the existing facilities and improvements within the lease area during the term of the lease; however, the placement of additional shoreline protection will help to protect against sea level rise. The shoreline protection may need reinforcement and possibly replacement to withstand higher levels of flood exposure and more frequent storm events. Proposed modifications to the existing boat launch include an extension of the top and bottom of the concrete launch ramp to account for sea level rise. In addition, 850 feet of shoreline protection is proposed to prevent erosion that could threaten the future integrity of the Bay Trail.

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 and adjacent upland 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 the issuance of this lease will not substantially impair the public rights to navigation and fishing or substantially interfere with 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.

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 not conduct the proposed Project activities within lands under the Commission's jurisdiction. The lessee has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Leading Climate Activism" and "Meeting Evolving Public Trust Needs" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. Termination of the lease is not a project as defined by the California Environmental Quality Act (CEQA) 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).

4. A Mitigated Negative Declaration, State Clearinghouse No. 2020049031, and a Mitigation Monitoring and Reporting Program were prepared by the East Bay Regional Park District and adopted on May 19, 2020, for this project. Commission staff has reviewed these documents and prepared an independent Mitigation Monitoring Program (MMP) (attached, Exhibit C) incorporating the East Bay Regional Park District document and recommends adoption by the Commission.
5. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon staff's consultation with the persons nominating such lands and through the CEQA review process, it is staff's opinion that the project, as proposed, is consistent with its use classification.

APPROVALS OBTAINED:

Port of Oakland
San Francisco Bay Regional Water Quality Control Board
San Francisco Bay Conservation and Development Commission
California Department of Transportation
U.S. Army Corps of Engineers

EXHIBITS:

- A. Land Description
- B. Site and Location Map
- C. Mitigation and Monitoring Plan

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that a Mitigated Negative Declaration, State Clearinghouse No. 2020049031, and a Mitigation Monitoring and Reporting Program were prepared by the East Bay Regional Park District and adopted on May 19, 2020, for this project and that the Commission has reviewed and considered the information contained therein; that in the Commission's independent judgement, the scope

of activities to be carried out under the lease to be issued by this authorization have been adequately analyzed; that none of the events specified in Public Resources Code section 21166 or the State CEQA Guidelines section 15162 resulting in any new or substantially more severe significant impact has occurred; and, therefore no additional CEQA analysis is required.

Adopt the Mitigation Monitoring Program, as contained in the attached Exhibit C.

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 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.

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

1. Authorize termination, effective February 27, 2023, of Permit Number PRC 5586, a Public Agency Permit, issued to the East Bay Regional Park District.
2. Authorize issuance of a General Lease – Public Agency and Protective Structure Use to East Bay Regional Park District beginning February 28, 2023, for a term of 25 years, for the use and maintenance of the existing Martin Luther King Jr. Regional Shoreline Park, portions of the San Francisco Bay Trail, a fishing pier, and shoreline protection; construction, use, and maintenance of a trail section with two bike pullouts, the overlay and widening of existing trail sections, a guardrail, and placement of additional shoreline protection; and removal of a boat ramp, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration being 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.
3. Authorize the Executive Officer or designee to replace exhibits in the lease upon submission, review, and approval of as-built plans detailing the final location of the new improvements following construction.

EXHIBIT A

LEASE 5586

LAND DESCRIPTION

A parcel of tide and submerged lands, whether filled or unfilled, lying in the bed of San Leandro Bay, situated in the City of Oakland, County of Alameda, State of California, more particularly described as follows:

Bounded on the northwest by the northeasterly prolongation of the centerline of the most northwesterly portion of Sikorsky Street;

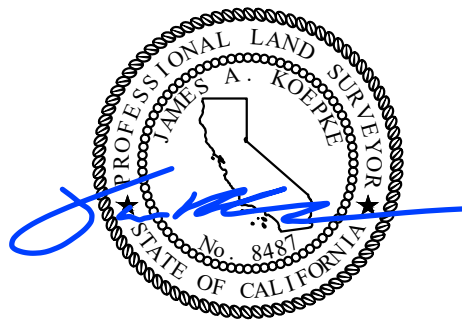
Bounded on the southeast by a line parallel with and 400 feet northwesterly of the centerline of that portion of Swan Way just northerly of the Doolittle Drive;

Bounded on the southwest by the ordinary high water mark of the San Leandro Bay;

Bounded on the northeast by a line parallel with and 100 feet northeasterly from the ordinary high water mark of said San Leandro Bay.

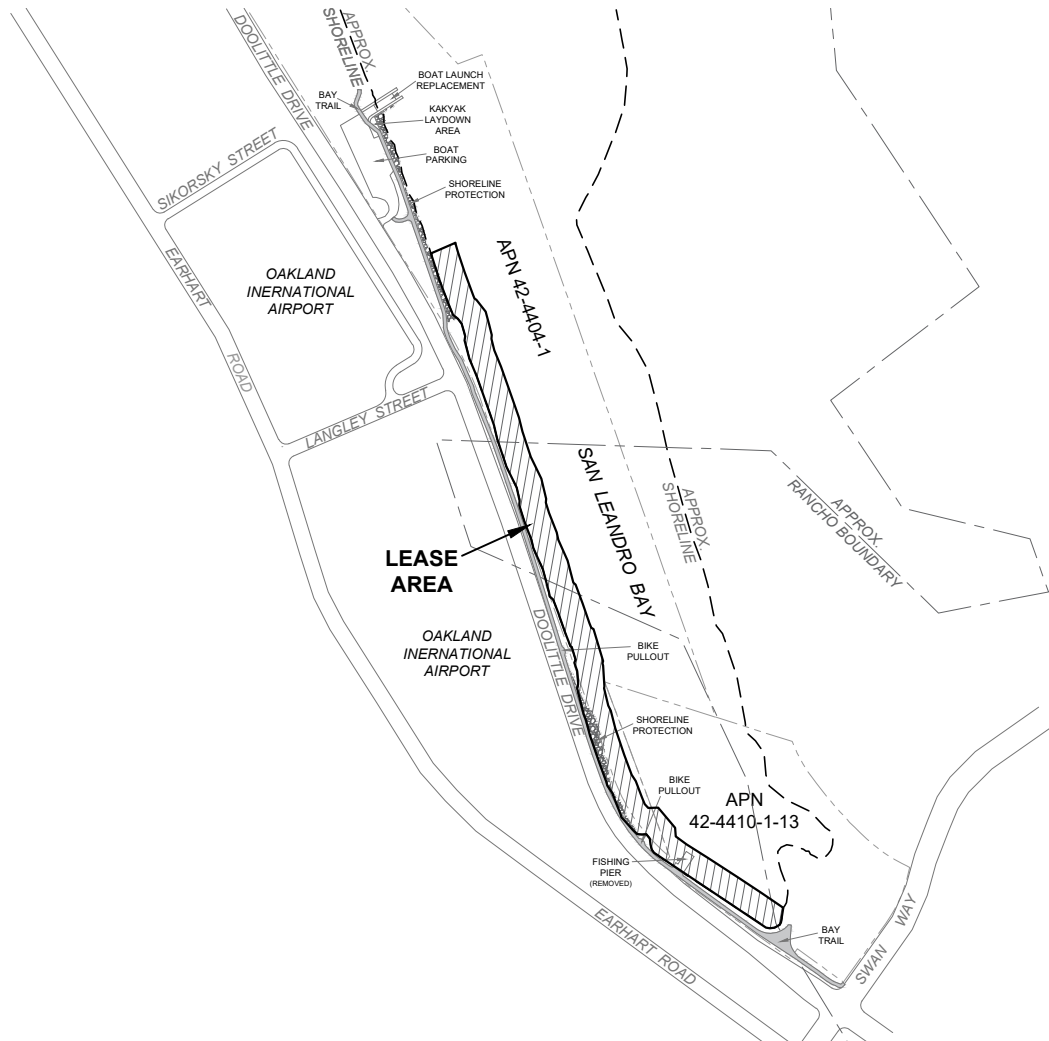
END OF DESCRIPTION

Prepared 10/20/2022 by the California State Lands Commission Boundary Unit.



NO SCALE

SITE



SAN LEANDRO BAY NEAR DOOLITTLE DRIVE AND SWAN WAY, OAKLAND

NO SCALE

LOCATION

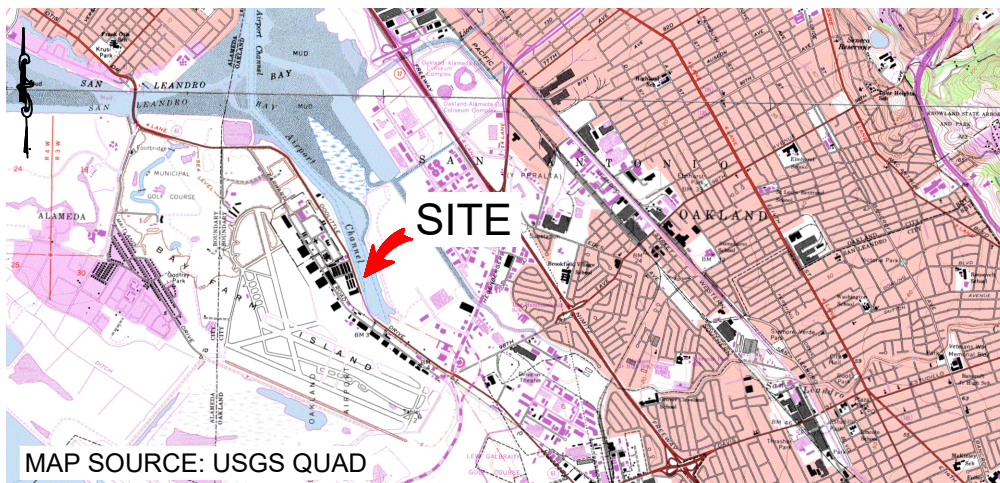


Exhibit B

LEASE 5586
EAST BAY REGIONAL PARK
DISTRICT
APNs: 42-4404-1, 42-4410-1-13
GENERAL LEASE -
PUBLIC AGENCY USE &
PROTECTIVE STRUCTURE
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.

TS 11/16/2022

EXHIBIT C
CALIFORNIA STATE LANDS COMMISSION
MITIGATION MONITORING PROGRAM
MLK REGIONAL SHORELINE BAY TRAIL GAP (DOOLITTLE DRIVE SOUTH) AND
IMPROVEMENTS PROJECT
(A2926, State Clearinghouse No. 2020049031)

The California State Lands Commission (Commission or CSLC) is a responsible agency under the California Environmental Quality Act (CEQA) for the MLK Regional Shoreline Bay Trail Gap (Doolittle Drive South) and Improvements Project (Project). The CEQA lead agency for the Project is the East Bay Regional Park District.

In conjunction with approval of this Project, the Commission adopts this Mitigation Monitoring Program (MMP) for the implementation of mitigation measures for the portion(s) of the Project located on Commission lands. The purpose of a MMP is to impose feasible measures to avoid or substantially reduce the significant environmental impacts from a project identified in an Environmental Impact Report (EIR) or a Mitigated Negative Declaration (MND). State CEQA Guidelines¹ section 15097, subdivision (a), states in part:

In order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. A public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.

The lead agency adopted an MND, State Clearinghouse No. 2020049031, on May 19, 2020, and adopted a Mitigation Monitoring and Reporting Program (MMRP) for the whole of the Project (see Exhibit C, Attachment C-1). The lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with its program. The Commission's action and authority as a responsible agency apply only to the mitigation measures listed in Table C-1 below. The full text of each mitigation measure, as set forth in the

¹ The State CEQA Guidelines are found at California Code of Regulations, title 14, section 15000 et seq.

MMRP prepared by the CEQA lead agency and provided in Attachment C-1, is incorporated by reference in this Exhibit C.

Table C-1. Project Impacts and Applicable Mitigation Measures

Potential Impact	Mitigation Measure (MM) ²	Difference Between CSLC MMP and Lead Agency MMRP
Air Quality	AQ-1	None
Biological Resources	BIO-1, BIO-2, BIO-4, BIO-5	None
Archaeological Resources	CR-1, CR-2	See addition to MM CR-1 below; No changes to CR-2
Geological Resources	GEO-1	None
Water Quality	HYD-1, HYD-2	None
Recreation	AQ-1, BIO-1, BIO-2, BIO-4, BIO-5, CR-1, CR-2, HYD-1, HYD-2, TR-1	See addition to MM CR-1 below; No changes to all others.
Tribal Cultural Resources	TR-1	None

Addition to MM CR-1: Title to all archaeological sites and historic or cultural resources on or in the tide and submerged lands of California is vested in the State and under the jurisdiction of the California State Lands Commission (Commission). Commission staff shall be notified of any cultural resources or paleontological specimens discovered on lands under the jurisdiction of the Commission. The final disposition of archaeological and historical resources or paleontological specimens from such lands must be approved by the Commission. In addition, if requested by a Tribe, a Native American Monitor shall remain onsite during Project construction.

² See Attachment C-1 for the full text of each MM taken from the MMRP prepared by the CEQA lead agency.

ATTACHMENT C-1

**Mitigation Monitoring and Reporting Program Adopted by the
East Bay Regional Park District**

EXHIBIT A - MITIGATION MONITORING AND REPORTING PROGRAM**MLK Regional Shoreline Bay Trail Gap (Doolittle Drive South) and Improvements Project**

Mitigation Measures	Implementation Procedure	Monitoring Responsibility	Monitoring / Reporting Action & Schedule	Monitoring Compliance Record (Name/Date)
<p>Mitigation Measure AQ-1: Implement Basic Air Quality Control Measures during Construction</p> <p>To limit dust, criteria pollutants, and precursor emissions associated with the construction activity, the following Bay Area Air Quality Management District (BAAQMD) recommended Basic Construction Measures will be included in construction contract specifications and required during implementation of the Project:</p> <ul style="list-style-type: none">• All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas and unpaved access roads) shall be watered two times per day;• All haul trucks transporting soil, sand, or other loose material off-site shall be covered or shall have at least two feet of freeboard;• All visible mud or dirt tracked-out onto adjacent public roads shall be removed using wet	<p>Incorporate into final plans and specifications.</p>	<p>East Bay Regional Park District</p>	<p>Verify in construction documents prior to bid for construction.</p> <p>Monitor daily during construction.</p> <p>Verify compliance during construction, as necessary.</p>	

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<p>power vacuum street sweepers at least once per day. The use of dry power sweeping shall be prohibited;</p> <ul style="list-style-type: none">• All vehicle speeds on unpaved areas shall be limited to 15 miles per hour;• All paving shall be completed as soon as possible after trenching work is finished;• Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Clear signage shall be provided for construction workers at all access points;• All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications.				

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<p>All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation;</p> <ul style="list-style-type: none">• A publicly visible sign shall be posted with the telephone number and person to contact at the City regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.				
<p>Mitigation Measure BIO-1: Avoid Impacts to Special-Status Plants</p> <p>Prior to the start of Construction, the District shall hire a qualified botanist to conduct protocol-level surveys in the project site for Point Reyes salty bird's-beak, Long-styled sand-spurrey, California seablite, and saline clover during their appropriate blooming or identification periods in accordance</p>	<p>Conduct preconstruction survey during bloom season.</p> <p>Prepare report of findings.</p> <p>Prepare salvage, relocation, and monitoring plan.</p>	<p>East Bay Regional Park District</p>	<p>Verify preconstruction survey is conducted during bloom season and prior to start of construction.</p> <p>If needed, verify implementation of salvage, relocation, and monitor plan.</p>	<p>-</p>

EXHIBIT A - MITIGATION MONITORING AND REPORTING PROGRAM
MLK Regional Shoreline Bay Trail Gap (Doolittle Drive South) and Improvements Project

Mitigation Measures	Implementation Procedure	Monitoring Responsibility	Monitoring / Reporting Action & Schedule	Monitoring Compliance Record (Name/Date)
<p>with CDFW protocols. Survey results will be documented in a brief report or technical memorandum. If the survey efforts demonstrate absence of special-status plant species in the improvements area, no further action will be required.</p> <p>If the protocol-level botanical survey reveals the presence of special-status plant species in the project site, the District will notify USFWS and/or CDFW. If any special-status plants would be directly impacted by construction, a qualified botanist or restoration ecologist will prepare a salvage, relocation, or propagation and monitoring plan for impacted plants in coordination with USFWS and/or CDFW. The plan will include the following components, at a minimum:</p> <ul style="list-style-type: none"> • Description of proposed salvage and transplantation techniques. • Description (e.g., location, soils, existing vegetation and 				

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Mitigation Measures	Implementation Procedure	Monitoring Responsibility	Monitoring / Reporting Action & Schedule	Monitoring Compliance Record (Name/Date)
management) of proposed replanting sites. <ul style="list-style-type: none">• Description of proposed monitoring program for newly established plants, including performance criteria (e.g., percent survival of plantings), methodology (e.g., frequency of and timing of visits, sampling techniques), location and condition of reference sites, and remedial actions if performance criteria are not met.				
Mitigation Measure BIO-2: Protect Nesting Birds The District shall implement the following procedures to protect nesting birds. <ul style="list-style-type: none">• If feasible, remove the sycamore tree adjacent to the boat launch between September and January, to avoid the bird nesting season.• Prior to any construction activities scheduled during the	Conduct preconstruction nesting surveys if grading or vegetation removal occurs during nesting season. Implement recommended protection measures, if needed.	East Bay Regional Park District	If needed, verify preconstruction survey is conducted within 7 days prior to start of construction. If needed, verify exclusion zone fencing is installed prior to start of construction.	-

EXHIBIT A - MITIGATION MONITORING AND REPORTING PROGRAM
MLK Regional Shoreline Bay Trail Gap (Doolittle Drive South) and Improvements Project

Mitigation Measures	Implementation Procedure	Monitoring Responsibility	Monitoring / Reporting Action & Schedule	Monitoring Compliance Record (Name/Date)
<p>bird nesting season (February 1 to August 31), the project proponent will retain a qualified wildlife biologist with demonstrated nest-searching experience to conduct preconstruction surveys for nesting birds, including white-tailed kite and other raptors. The survey will occur no more than seven days prior to the initiation of demolition and ground-disturbing activities.</p> <ul style="list-style-type: none"> If active nests are found during the survey, the biologist will establish exclusion zones around each nest in which no work will be allowed until he/she has determined that the young have fledged or the nest is no longer active. The size of the exclusion zone(s) will be based on the species' sensitivity to disturbance and planned work activities in the vicinity; typical buffer sizes are 			If needed, monitor nest and fencing during construction.	

EXHIBIT A - MITIGATION MONITORING AND REPORTING PROGRAM**MLK Regional Shoreline Bay Trail Gap (Doolittle Drive South) and Improvements Project**

Mitigation Measures	Implementation Procedure	Monitoring Responsibility	Monitoring / Reporting Action & Schedule	Monitoring Compliance Record (Name/Date)
300 feet for raptors and 50 feet for other birds. <ul style="list-style-type: none">○ If a lapse in project-related activities of 15 days or longer occurs, another preconstruction survey will be conducted.○ After all nest surveys and monitoring are completed, the biologist will prepare a memorandum summarizing the survey effort and results and submit to the lead agency within seven days of survey completion.				
Mitigation Measure BIO-3: Protect Burrowing Owl Prior to any construction activity, the District shall retain a qualified wildlife biologist to conduct a preconstruction survey for burrowing owls. To maximize the likelihood of detecting	Conduct preconstruction survey.	East Bay Regional Park District	If needed, verify applicable buffer is established. If needed, monitor burrow and buffer during construction.	-

EXHIBIT A - MITIGATION MONITORING AND REPORTING PROGRAM
MLK Regional Shoreline Bay Trail Gap (Doolittle Drive South) and Improvements Project

Mitigation Measures	Implementation Procedure	Monitoring Responsibility	Monitoring / Reporting Action & Schedule	Monitoring Compliance Record (Name/Date)
<p>owls, the preconstruction survey will last a minimum of three hours. The survey will begin 1 hour before sunrise and continue until 2 hours after sunrise (3 hours total) or begin 2 hours before sunset and continue until 1 hour after sunset. A minimum of two surveys will be conducted (if owls are detected on the first survey, a second survey is not needed). All owls observed will be counted and their location will be mapped.</p> <p>Surveys will conclude no more than 2 calendar days prior to construction. Therefore, surveys must begin no more than 4 days prior to construction (2 days of surveying plus up to 2 days between surveys and construction).</p> <p>To avoid last minute changes in schedule or contracting that may occur if burrowing owls are found, the project proponent may also conduct a preliminary survey up to 14 days before construction. This preliminary survey may count as the first of the two required surveys as long as the second survey concludes no more</p>				

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Mitigation Measures	Implementation Procedure	Monitoring Responsibility	Monitoring / Reporting Action & Schedule	Monitoring Compliance Record (Name/Date)
<p>than 2 calendar days in advance of construction.</p> <p>If the preconstruction survey identifies burrowing owls using the site during the breeding season (February 1 to August 31), the project proponent will establish a 100-foot non-disturbance buffer around occupied burrows. Construction activities within the non-disturbance buffer may be allowed if:</p> <ul style="list-style-type: none"> • A qualified biologist monitors the owls for at least 3 days prior to construction to determine baseline nesting and foraging behavior (i.e., behavior without construction). • The same qualified biologist monitors the owls during construction and finds no change in owl nesting and foraging behavior in response to construction activities. • If there is any change in owl nesting and foraging behavior as a result of construction activities, these activities will 				

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<p>cease within the 100-foot buffer. Construction cannot resume within the buffer until the adults and young have moved out of the work area.</p> <ul style="list-style-type: none">• If the owls are gone for at least one week, the project proponent may request approval from the CDFW that a qualified biologist excavate usable burrows to prevent owls from re-occupying the site. After all usable burrows are excavated, the buffer zone will be removed and construction may continue. <p>If preconstruction surveys document burrowing owl presence during the nonbreeding season (September 1 to January 31), the contractor would establish a 50-foot nondisturbance buffer around occupied burrows as determined by a qualified biologist. Construction activities outside of this 50-foot buffer are allowed. Construction activities within the non-</p>				

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<p>disturbance buffer are allowed if the following criteria are met to prevent owls from abandoning important overwintering sites:</p> <ul style="list-style-type: none">• A qualified biologist monitors the owls for at least 3 days prior to construction to determine baseline foraging behavior (i.e., behavior without construction).• The same qualified biologist monitors the owls during construction and finds no change in owl foraging behavior in response to construction activities.• If there is any change in owl nesting and foraging behavior as a result of construction activities, these activities would cease within the 50-foot buffer.• If the owls are gone for at least 1 week, the Authority may request approval from the CDFW that a qualified biologist excavate usable burrows to				

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Mitigation Measures	Implementation Procedure	Monitoring Responsibility	Monitoring / Reporting Action & Schedule	Monitoring Compliance Record (Name/Date)
<p>prevent owls from reoccupying the site. After all usable burrows are excavated, the buffer zone would be removed and construction may continue.</p> <ul style="list-style-type: none">Monitoring must continue as described above for the non-breeding season as long as the burrow remains active.				
<p>Mitigation Measure BIO-4: Protect Salt Marsh Harvest Mouse</p> <p>To prevent salt-marsh harvest mice and salt-marsh wandering shrews potentially occurring in higher quality tidal marsh habitat northwest of the site from entering the work area during construction, the District shall install temporary exclusion fencing at the northern boundary of the construction footprint prior to the initiation of ground disturbance. In addition, if restoration activities were implemented adjacent to New Marsh, exclusion fencing may be required as well. The fence will be made of a heavy plastic sheeting material that</p>	<p>Incorporate fencing requirement into specifications. Install fencing.</p>	<p>East Bay Regional Park District</p>	<p>Verify in construction documents prior to bid for construction. Verify fencing installed properly prior to start of construction and maintained during construction.</p>	<p>-</p>

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does not allow salt marsh harvest mice or salt marsh wandering shrew to pass through or climb, and the bottom will be buried to a depth of 4 inches so that mice or shrews cannot crawl under the fence. Fence height will be at least 12 inches higher than the highest adjacent vegetation with a maximum height of 4 feet. All fence supports will be placed on the side facing the construction footprint.				
Mitigation Measure BIO-5: Avoid and Minimize Impacts to Special-Status Fish Species and Marine Mammals The District shall implement the following avoidance and minimization measures, in consultation with the resource agencies with jurisdiction over special-status species potentially occurring at the Project site: <ul style="list-style-type: none">• In-water work will be conducted between June 1 and November 30 outside the peak migration period for special-status fish species.	Incorporate pile-driving requirement into specifications.	East Bay Regional Park District	Verify in construction documents prior to bid. Verify requirements implemented during construction.	-

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<ul style="list-style-type: none"> When pile driving, the contractor will use a "soft start" technique when initiating a prolonged pile-driving session to allow fish to vacate the area. Steel pilings will be installed with a vibratory pile driver to the deepest depth practicable. An impact pile driver may be used only where necessary, as determined by the contractor and/or project engineer, to complete installation of the steel pilings, in accordance with seismic safety or other engineering criteria. A bubble curtain, air barrier, or other NMFS-approved method will be used to reduce underwater noise levels from impact hammer pile driving, when appropriate and water depth is acceptable for proper function. 				

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<p>Mitigation Measure BIO-6: Avoid and Compensate for Impacts to Jurisdictional Waters</p> <p>The District shall clearly identify <u>seasonal</u> wetland areas to be preserved within and abutting the project footprint with high-visibility construction fencing or markers (e.g., lathe or pin flags) before site preparation. Construction will not encroach upon jurisdictional wetlands as defined in the <i>Delineation of Waters of the United States</i> (ICF 2019). No construction activity, traffic, equipment, or materials will be permitted in fenced wetland areas. The fencing will be maintained throughout the construction period. Exclusion fencing and markers will be removed following the completion of construction activities.</p> <p>All conditions imposed by the project's state and federal permits will be implemented as part of the project construction. The conditions will be clearly identified in the construction</p>	<p>Incorporate fencing requirements for SW-1, SW-2, and D-1 into specifications.</p> <p>Finalize mitigation strategy for fill impacts to tidal waters.</p>	<p>East Bay Regional Park District</p>	<p>Verify in construction documents prior to bid.</p> <p>Verify fencing requirements implemented during construction.</p> <p>Implement mitigation strategy as follows:</p> <ul style="list-style-type: none"> • For mitigation bank or CC project pay prior to start of construction. • For enhancement, complete prior to end of construction. • For restoration/ expansion of New Marsh develop construction documents prior to end of construction and implement within 1 year. 	<p>-</p>

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<p>plans and specifications and monitored during and after construction to ensure compliance. Permanent loss of jurisdictional aquatic features shall be mitigated through a mitigation banking option, Coastal Conservancy mitigation project, or an on-site restoration/enhancement mitigation plan. On-site restoration opportunities exist adjacent to, and south of, New Marsh. Enhancement opportunities exist along the shoreline. If an on-site restoration/enhancement mitigation plan is developed, the plan will identify the type and quantity of impacted aquatic resources and a strategy for preservation, enhancement, or re-establishment/restoration of mitigation features suitable for the setting. The plan also will identify monitoring methods and success criteria for the proposed mitigation. Potential mitigation options include pile or other structure removal, man-made debris removal, marsh restoration, and shoreline layback or other shoreline</p>				

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improvements that are compatible with the project. Enhancement and restoration activities will be located as near to the impact location as possible; however, in the event that local mitigation opportunities are not available, such activities could occur elsewhere within the San Francisco Bay. Mitigation ratio for mitigation identified within San Leandro Bay will be 1:1, and would increase the further from the Project site that mitigation was identified or as negotiated with jurisdictional resource agencies.				
Mitigation Measure CR-1: Protect Archaeological Resources during Construction In the event that any subsurface archaeological features or deposits, including locally darkened soil, are discovered during construction-related earth-moving activities, all ground-disturbing activity within 50 feet of the resource shall be halted, a District Inspector notified immediately, a qualified professional archaeologist	Incorporate requirement into construction documents.	East Bay Regional Park District	Verify in construction documents prior to bid. If needed, halt work and follow evaluation procedures.	-

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retained to evaluate the find, and the appropriate tribal representative(s) notified. If the find qualifies as a historical resource or unique archaeological resource as defined by CEQA, the archaeologist shall develop appropriate measures to protect the integrity of the resource and ensure that no additional resources are affected. Mitigation could include but would not necessarily be limited to avoidance, preservation in place, archival research, subsurface testing, or excavation and data recovery.				
Mitigation Measure CR-2: Protect Human Remains if Encountered during Construction If human remains, associated grave goods, or items of cultural patrimony are encountered during construction, work shall halt within 50 feet of the find and the District Inspector and the County Coroner shall be notified immediately. The following procedures shall be followed as required by Public	Incorporate requirement into construction documents.	East Bay Regional Park District	Verify in construction documents prior to start of construction. If needed, halt work and follow evaluation procedures.	-

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Resources Code § 5097.9 and Health and Safety Code § 7050.5. If the human remains are determined to be of Native American origin, the Coroner shall notify the Native American Heritage Commission within 24 hours of the determination. The Native American Heritage Commission shall then notify the Most Likely Descendant (MLD), who has 48 hours to make recommendations to the landowner for the disposition of the remains. A qualified archaeologist, the District and the MLD shall make all reasonable efforts to develop an agreement for the treatment, with appropriate dignity, of any human remains and associated or unassociated funerary objects. The agreement would take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, and final disposition of the human remains and associated or unassociated funerary objects.				

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<p>Mitigation Measure GEO-1: Implement Site-Specific Geotechnical Recommendations</p> <p>The Parks District shall design and construct the project in conformance with the specific recommendations contained in the geotechnical investigation (GHD 2017), including recommendations for subgrade preparation, engineered fill, compaction, pile considerations, pavements, seismic design, and construction observation. The recommendations contained in the geotechnical study shall be incorporated into the final plans and specifications for the project and implemented during construction. Recommendations include, but are not limited to, the following:</p> <ul style="list-style-type: none"> Stabilize soft, loose, saturated, or unstable soils using a combination of stabilization fabric and compacted Caltrans Class 2 aggregate base. 	Incorporate into final plans and specifications.	East Bay Regional Park District	Verify geotechnical study design recommendations are incorporated into construction documents prior to bid.	-

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<ul style="list-style-type: none">• Use only engineered fill that meets the recommended specifications.• Compact engineered fill to the recommended density as determined by ASTM D1557.• Construct pile foundations using the recommendation material, spacing, and depth specifications.• Use recommended pavement material, thickness, and compaction rating• Utilize recommended seismic design parameters.• Protect the path from erosion by installing rock slope protection to protect against wave action, constructing path drainage to prevent saturation of adjacent soils, and implement Best Management Practices to reduce erosion and transport of soil particles during construction.				

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<ul style="list-style-type: none">Observe and test subsurface conditions intermittently during construction.				
<p>Mitigation Measure HYD-1: Protect San Leandro Bay Water Quality during Construction Activities</p> <p>The Park District shall implement the following measures during construction.</p> <ol style="list-style-type: none">A sediment curtain shall be installed and utilized around the boat launch and boat ramp during demolition and installation. The curtain shall be inspected daily and maintained to function for its intended purpose.A floating debris barrier (or the sediment curtain installed around the boat launch and boat ramp could be used) shall be placed as needed around and beneath the work areas to capture any debris that could accidentally be released from the work area. The debris boom shall be deployed and maintained to prevent any	Incorporate measures into final plans and specifications.	East Bay Regional Park District	Verify measures are incorporated into construction documents prior to bid.	-

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<p>floating debris from escaping the work area. At the end of each work day, any floating debris within the barrier shall be removed.</p> <p>3. If dewatering is required, water shall be pumped within the limits of the sediment curtain. Flows shall be monitored during pumping. If dewatering related turbidity expands beyond the boundary of the silt curtain, flows shall be reduced until turbidity is contained.</p> <p>4. Immediately upon completion of in-water work, sediment curtains, cofferdams, and other in-water structures shall be removed in a manner that minimizes disturbance to sediments.</p> <p>5. No construction material, including asphalt, concrete, wood, chemicals, or fuels shall be discharged directly or drained indirectly to the San Leandro Bay from the construction or staging areas.</p>				

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<p>6. Construction equipment shall be cleaned and inspected prior to use. Mechanized construction equipment that will be used on the banks and in the channel will be cleaned and inspected daily prior to use. Servicing and refueling of vehicles and equipment shall be conducted a minimum of 50 feet from the Mean High Tide of San Leandro Bay at designated staging areas to avoid contamination through accidental drips and spills. If refuelling or servicing of equipment within 50 feet of San Leandro Bay is necessary, secondary containment and absorbent pads shall be used and spill response kits will be available to rapidly respond to accidental spills.</p> <p>7. Equipment shall be inspected daily by the operator for leaks or spills. If leaks or spills are encountered, they shall be cleaned up, and the cleaning</p>				

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materials shall be collected and shall be properly disposed. The source of the leak shall be identified prior to operating the equipment, and the project foreman shall document the resolution of the leak. Spills shall be cleaned up immediately using spill response equipment. 8. Hazardous materials shall not be stored within 200 feet of San Leandro Bay. 9. The amount of construction-related disturbance shall be limited to the extent feasible. 10. Once the Project construction is completed, water shall be released slowly back into the work area so as to prevent erosion and increased turbidity.				
Mitigation Measure HYD-2: Implement Erosion Control Measures during Construction The Park District shall prevent soil erosion and sedimentation during construction by developing and	Incorporate measures into final plans and specifications.	East Bay Regional Park District	Verify measures are incorporated into construction documents prior to bid.	-

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<p>implementing an Erosion and Sediment Control Plan for the Project. The Plan will address how the Contractor will manage erosion and sediment control measures, general site and materials management, and inspection and maintenance. The Plan shall specifically address how all jurisdictional waters will be protected including San Leandro Bay, the two seasonal wetlands, and the ditch adjacent to the seasonal wetland. These measures may also be incorporated by the Contractor into the construction Stormwater Pollution Prevention Plan, in lieu of preparing a separate Erosion and Sediment Control Plan if appropriate and approved by the Park District. The following minimum measures shall be included in the Plan and incorporated into Project construction to reduce soil erosion and protect water quality.</p> <ul style="list-style-type: none">• Erosion and sediment control measures will be in effect and				

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<p>maintained by the Contractor for the duration of construction.</p> <ul style="list-style-type: none">• Fiber rolls or similar products will be utilized to reduce sediment runoff from disturbed soils.• Protection shall be installed around the seasonal wetland and ditch.• A stabilized construction entrance will be maintained to minimize tracking of mud and dirt from construction vehicles onto public roads.• Storm drain inlets receiving storm water runoff will be equipped with inlet protection.				
<p>Mitigation Measure TR-1: Protect Tribal Cultural Resources during Construction Activities</p> <p>In the event that any potential tribal cultural resources are discovered during construction-related earth-moving activities, the District shall halt all ground-disturbing activity in the vicinity of the resource and an</p>	<p>Incorporate requirement into construction documents.</p>	<p>East Bay Regional Park District</p>	<p>Verify in construction documents prior to bid.</p> <p>If needed, halt work and follow evaluation procedures.</p>	<p>-</p>

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appropriate tribal representative(s)/archaeologist shall be notified. If the find is determined to constitute a tribal cultural resource per Public Resources Code Section 21074, the appropriate tribal representative(s)/archaeologist shall develop appropriate mitigation to protect the integrity of the resource and ensure that no additional resources are affected. Mitigation could include but would not necessarily be limited to avoidance, preservation in place, archival research, subsurface testing, or excavation and data recovery.				