

Staff Report 32

LESSEE/APPLICANT:

East Bay Regional Park District

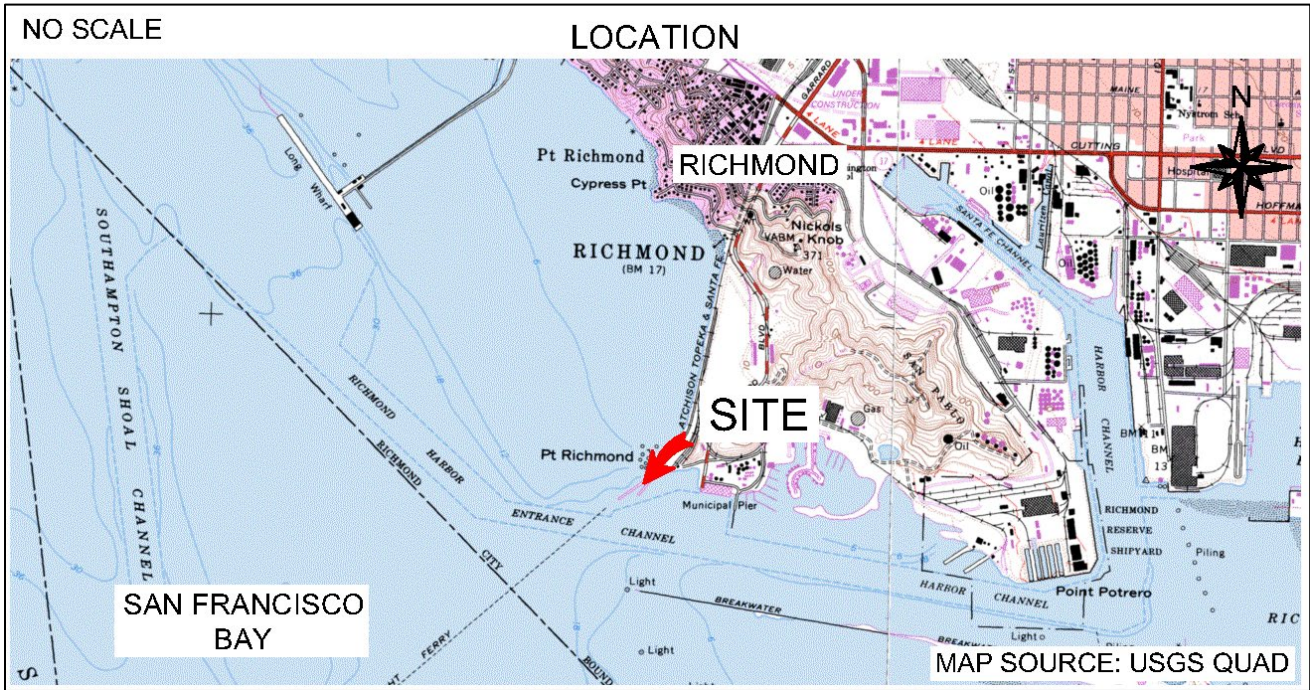
PROPOSED ACTION:

Amendment of Lease

AREA, LAND TYPE, AND LOCATION:

A 2.95-acre parcel, more or less, of tide and submerged land in San Francisco Bay at Point Richmond, in Richmond, Contra Costa County (as shown in Figure 1).

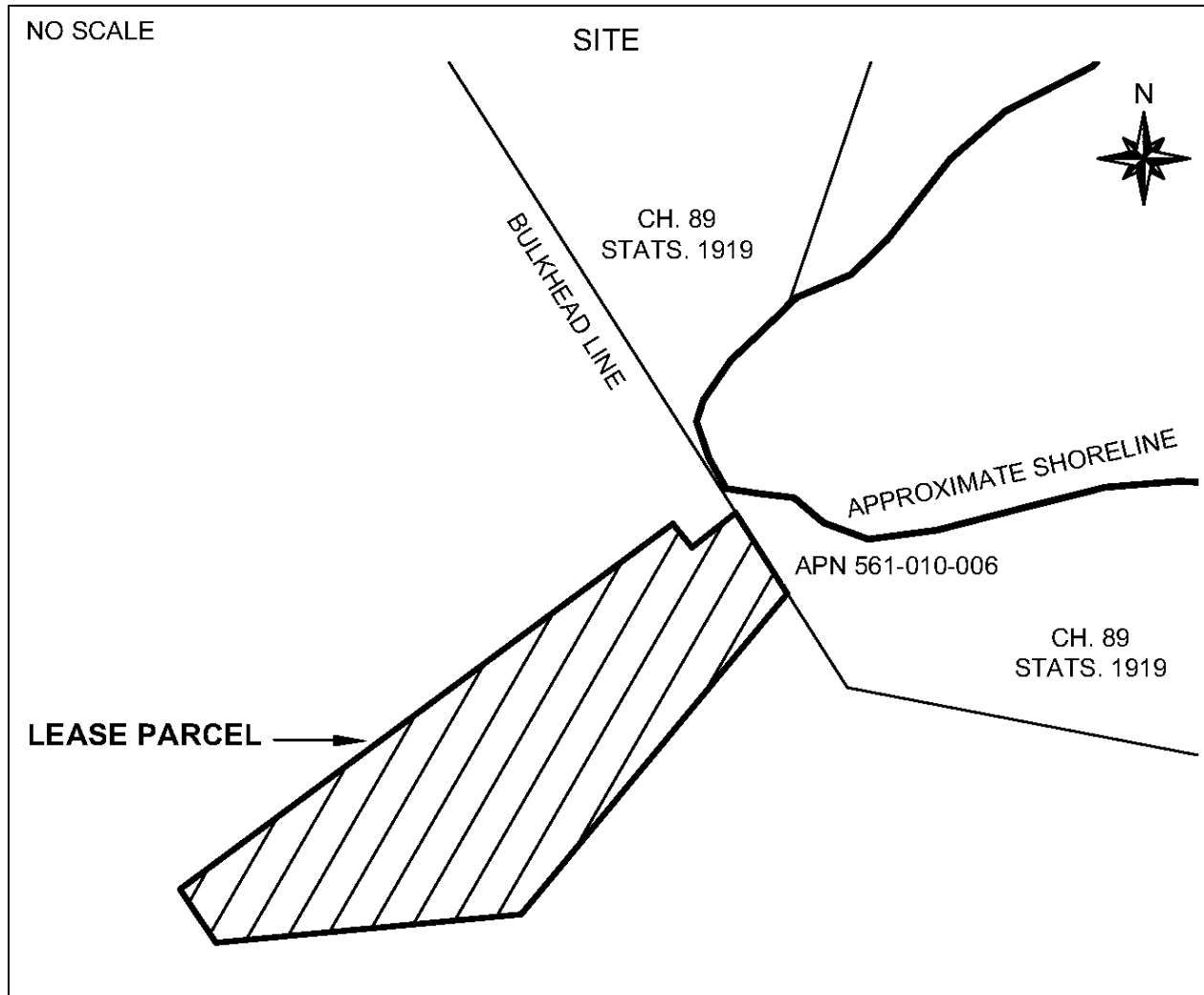
Figure 1. Location



AUTHORIZED USE:

Use and maintenance of the Ferry Point Pier (as shown in Figure 2).

Figure 2. Site Map



NOTE: This depiction of the lease premises is based on unverified information provided by the Applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

TERM:

15 years, beginning January 30, 2017.

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.

PROPOSED AMENDMENT:

- Authorization for Lessee to remove the existing deteriorating portions of the Ferry Point Pier (Pier) from the lease area.
- Authorization for the use and maintenance of the fishing pier, gantry, and gantry support structure.
- Within 60 days of completion of the removal, Lessee must attest, in writing, that it has fully removed the existing deteriorating portions of the Pier and provide photographs evidencing the removal and describe any remaining portions of the pilings that could not be fully removed.
- Upon completion of removal activities, Lessor will revise lease exhibits to reflect the then current lease premise.
- Lessee shall make a reasonable, good-faith effort to remove all existing piles in their entirety. Should full removal efforts prove to be infeasible due to site conditions, Lessee shall provide a written narrative detailing removal efforts and explaining why complete removal was unsuccessful. Any remaining improvements shall be removed to a minimum depth of one foot below the existing mud line.
- Lessee shall, within the 2 years prior to expiration of the Lease, conduct an underwater inspection of the pile locations to determine if the piles are exposed. No later than six months after the inspection, Lessee shall submit to Lessor an underwater inspection report that includes visual documentation.
- Lessee shall, within the 2 years prior to expiration of the Lease, conduct an environmental risk assessment of those piles not fully removed. The assessment shall include the risk of the piles becoming exposed, any potential impacts from such exposure, and the estimated cost to remove the remnant piles should it become necessary in the future.
- Should any of the improvements become hazards to navigation or the public, Lessee agrees to prepare a remediation plan for Lessor's review and approval, and to undertake the approved remediation plans within a reasonable time frame or to provide a surety bond to Lessor for the remediation.

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:

The Ferry Point Pier was built in the early 1900s by the Santa Fe Railroad Company. It previously served as a terminal for passenger ferries and for intermodal freight, loading train cars onto barges that operated in San Francisco Bay. Passenger ferry service ended in 1933 after bridges were constructed in San Francisco Bay, but the Pier continued to be used for freight and barge operations until 1975. In 1992, the East Bay Regional Park District (District) purchased the Pier and the adjacent upland parcel and incorporated them into the Miller-Knox Regional Shoreline.

On November 9, 1993, the Commission accepted a quitclaim deed from Atchison, Topeka, and Santa Fe Railway Company and issued a General Lease – Public Agency Use to the District ([Item 01, November 9, 1993](#)). On October 28, 1996, the Commission authorized a lease amendment to the District to rehabilitate the Pier and provide public access and recreational use ([Item 27, October 28, 1996](#)). On June 22, 2017, the Commission authorized a 15-year General Lease – Public Agency Use for the continued use and maintenance of the Pier ([Item 48, June 22, 2017](#)). The lease will expire on January 29, 2032.

The Pier originally consisted of a north pier, south pier, and a gantry/gangway structure. In 2001, the shoreward portion of the north pier was demolished and reconstructed to serve as a public fishing pier; it consists of a concrete deck and concrete piles. The south pier is connected to the gantry structure which is steel framed and is supported by concrete piles and a thick concrete pile cap.

In January and August of 2021, portions of the Pier collapsed and broke away into the San Francisco Bay (Bay). After both events, the District performed emergency repairs to minimize risks to public health and safety from large debris entering the shipping channel. The August 2021 collapse of the south pier fender exposed the remaining north pier structures to increased loading by waves, currents, and storm surges. Finally, between February and April 2022, approximately 1,200 square feet of the south dolphin bullnose decking collapsed into San Francisco Bay. A third emergency repair or retrieval was not performed because the collapsed portions have not been found. The majority of the Pier has been determined to be damaged beyond repair and a significant portion is in danger of imminent collapse.

The Lessee is now requesting an amendment of the lease to remove the deteriorating portions of the Pier as part of the Ferry Point Pier Removal Project (Project); and for the continued use and maintenance of the existing fishing pier, gantry, and gantry support structure.

The Project would remove the north and south piers, including the dolphin bullnose and fender wall associated with each pier, and a portion of the pier access

structure. This would include approximately 1,040 12- to 14-inch-diameter creosote-treated timber piles and approximately 16,500 square feet of overwater creosote-treated wood decking that would be removed from the Bay.

Several beneficial impacts to recreational activities and subtidal habitat within the Bay are anticipated as a result of the Project, including:

- Removed risk of vessels colliding with portions of the Pier that are collapsing and falling into the Bay.
- Addressing goals established in the 2010 San Francisco Subtidal Habitat Goals Report prepared by the State Coastal Conservancy, which prioritized recommendations for removal of pilings and artificial structures to protect and restore subtidal habitats in the San Francisco Bay Estuary.
- Improved marine environment that would benefit benthic invertebrates and the species of fish that prey on these invertebrates. Creosote contains polycyclic aromatic hydrocarbons (PAHs) that are persistent in the environment and toxic to some organisms. Sediments in the Project area may be contaminated with PAH from the creosote pilings, which suggests benthic invertebrates could also be contaminated.
- Enabling the active, natural spread of existing eelgrass beds by removing overwater structures. Eelgrass is considered a “foundation” or habitat forming species and contributes to ecosystem functions at multiple levels as a primary and secondary producer, as a substrate for epiphytes and epifauna, and as a sediment stabilizer.

Demolition equipment is expected to include floating barges, boats, cranes, excavators, vibratory pile extractors, pneumatic tools, and hand tools. Land access is limited at the site, therefore, most of the construction would need to be completed from the water. The demolition would likely progress in stages with the decking, stringers, and pile caps being removed before the timber piles are extracted. Removal of the timber piles will be performed by grasping the pile and pulling them upward and slightly sideways. The Lessee will attempt to completely remove the piles; however, some of the deteriorating piles may break and would be removed down to at least 1-foot below the mudline. Efforts for further removal would require excavation of the bottom of the bay to allow grasping of the embedded piles. Excavation would disturb a large area of the bay bottom and significantly increase levels turbidity in the water, which may negatively impact the nearby eelgrass beds, and are likely to be unsuccessful due to the deteriorated condition of the piles that led to the breakage. The Lessee agrees to maintain any remaining portions of the piles under lease and to perform an underwater

inspection and environmental risk assessment within the 2 years prior to the expiration of this lease. The Lessee further agrees to undertake a remediation plan approved by the Commission within a reasonable time period, if deemed necessary by the Commission. Demolition of the entire structure would take approximately 1 to 3 months.

Reasonable efforts to prevent hardware and non-floating debris from entering the water would be made. Floatable materials that break off during demolition would be contained by a floating debris boom placed around the perimeter of the active work area. Creosote-treated wood and pressure-treated wood would be disposed of at an appropriate upland facility. Construction would occur between June 15 and November 30, consistent with regulatory guidance and the construction windows established by the National Marine Fisheries Service (NMFS).

The San Francisco Bay Area Water Trail is located within and adjacent to the Project site. Keller Beach and Ferry Point Beach are nearby and provide public access to the Bay. The latter beach includes an ADA accessible ramp where kayakers can launch. The proposed amendment will benefit Public Trust resources and values, including public health and safety by removing the threat of large debris entering the shipping channel; by protecting habitat for special status species and commercially important fish and sharks; and by supporting the use of the fishing pier and enjoyment of recreational activities along the Bay. Recreational fishing is water-dependent and consistent with the common law Public Trust Doctrine. The California Legislature has identified private recreational fishing facilities as an authorized use of Public Trust lands (Pub. Resources Code, §6503.5).

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 the San Francisco Bay, near Richmond, which is a tidally influenced site vulnerable to flooding at current sea levels; therefore, this area will likely be at a higher risk of flood exposure given future projection 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
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 areas. In tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris. Climate change and sea level rise will further influence coastal areas by changing erosion and sedimentation rates. Beaches and coastal landscapes will be exposed to increased wave force and run-up, potentially resulting in greater erosion than previously experienced.

The proposed activities include the removal of the dilapidated north and south piers, which have already been damaged and dislodged due to storm and tide conditions. However, the District may not be able to fully remove all piles. If this occurs, remnant timber piles would remain in place 1-foot below the mudline. Climate change will worsen the conditions the lease area already experiences from flooding, storm surge, wave run-up, and wave action during extreme tides and storms. Any remnant timber piles within the lease area may become vulnerable to exposure in the future as a result of storms, wave action, and sediment movement. Exposed pier infrastructure could affect wildlife as well as the public's ability to safely access the area. In addition, exposed pile remnants could further exacerbate any localized scour effects. However, the proposed lease amendment would require underwater inspection and environmental risk assessment reports within the 2 years prior to lease expiration that would identify any pile remnant exposure and any necessary remediation.

Timber pile removal, whether complete or partial, will greatly reduce the likelihood of further structural degradation or dislodgement. The existing lease includes an acknowledgment that the lease premises are located in an area that may be subject to effects of climate change, including sea level rise, and that the premises may require additional maintenance or protection as a result, for which the lessee agrees to be solely responsible.

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 lease amendment 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 "Leading Climate Activism" and "Meeting Evolving Public Trust Needs" Strategic Focus Areas 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 statutorily exempt project. The project is exempt because it involves a specific action to prevent or mitigate an emergency.

Authority: Public Resources Code section 21080, subdivision (b)(4) and California Code of Regulations, title 14, section 15269, subdivision (c).

APPROVALS OBTAINED:

San Francisco Bay Conservation and Development Commission
National Marine Fisheries Service
California Department of Fish and Wildlife

APPROVALS REQUIRED:

United States Army Corps of Engineers
City of Richmond

RECOMMENDED ACTION:

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 statutorily exempt project pursuant to Public Resources Code section 21080, subdivision (b)(4) and California Code of Regulations, title 14, section 15269, subdivision (c), specific actions necessary to prevent or mitigate an emergency.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the amendment will not substantially interfere with the Public Trust needs and values at this location, at this time, is consistent with the Public Trust, and for the foreseeable term of the lease; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize the amendment of Lease Number PRC 5617, effective April 7, 2023, for the removal of the deteriorating portions of the Ferry Point Pier (north pier, including the dolphin bullnose and fender wall; south pier, including the dolphin bullnose and fender wall; and a portion of the pier access structure); the use and maintenance of the fishing pier, gantry, gantry support structure, and any remaining portions of the Pier piles; and the State reserving the right impose a surety bond for any remaining Pier piles that have become exposed and become hazards to navigation or the public; all other terms and conditions of the lease shall remain in effect without amendment.
2. Authorize the Executive Office or designee to replace Lease Exhibits after the removal is complete and staff receives a written letter by Lessee attesting that the Project is complete.