

Staff Report 21

APPLICANT:

K.M.C., Inc., a California corporation

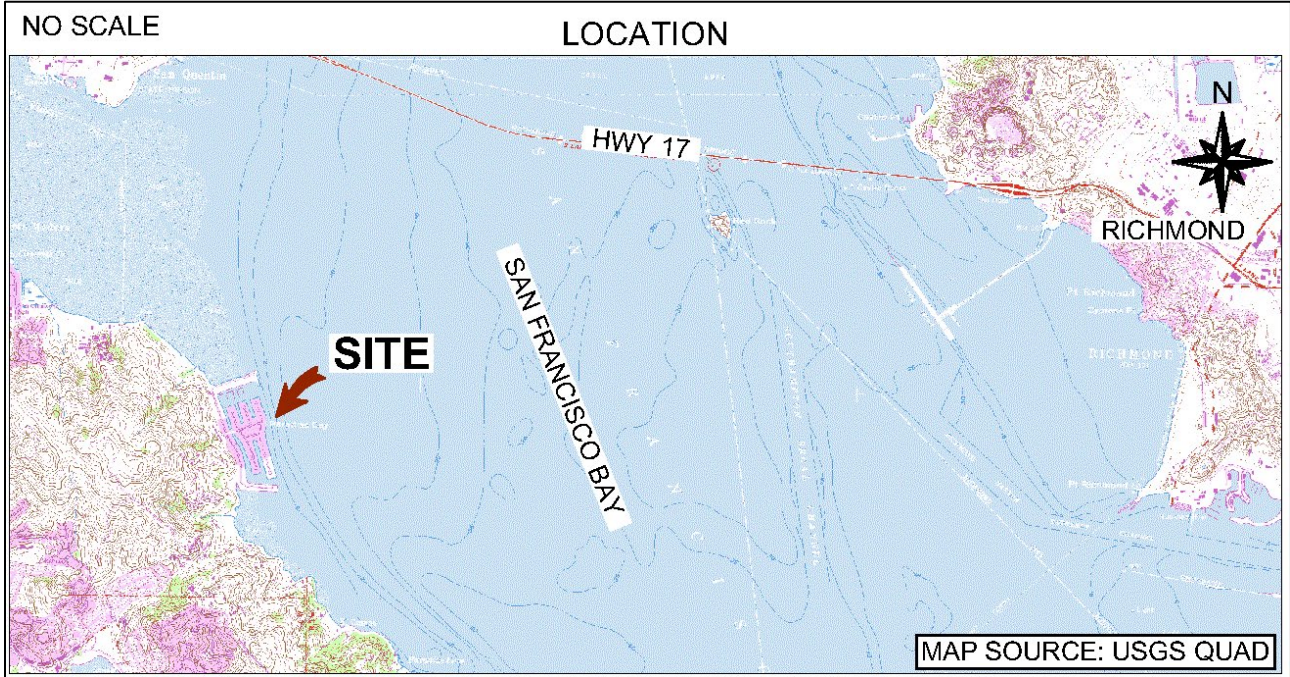
PROPOSED ACTION:

Issuance of a General Lease – Other.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the San Francisco Bay, adjacent to adjacent to Assessor's Parcel Numbers 038-201-59, 038-201-60, 038-460-37, and 038-460-38, near Tiburon, Marin County (as shown in Figure 1).

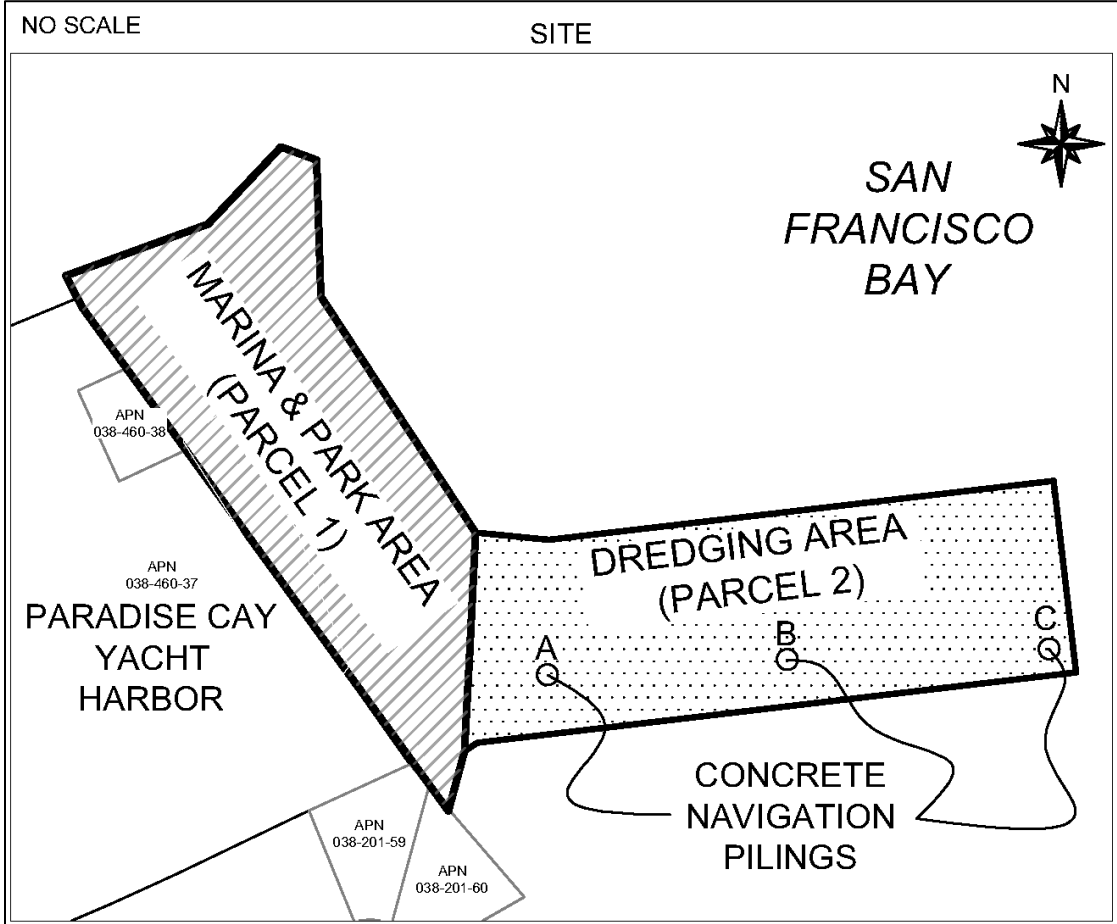
Figure 1. Location



AUTHORIZED USE:

Use and maintenance of an existing public park, a north and south breakwater, three navigational pilings, and maintenance dredging of approximately 120,000 cubic yards of material during the term of the lease (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:

10 years, beginning April 7, 2023.

CONSIDERATION:

\$3,865 per year, with an annual Consumer Price Index; and the State reserving the right to fix a different rent periodically during the lease term, as provided for in the lease.

SPECIFIC LEASE PROVISIONS:

- Liability Insurance in an amount no less than \$2,000,000 per occurrence.
- Surety bond or other security in the amount of \$150,000.
- Lessee may submit a good-faith estimate prepared by a licensed engineering contractor for the costs of full removal of the Improvements as a basis to revise the Surety amount. If such a cost estimate is received prior to September 7, 2024, and Lessor's staff concurs with the estimate, the Surety amount may be revised by the Executive Officer or designee. Any requests to revise the Surety amount after September 7, 2024 shall require Lessor's review and approval to amend the Lease.
- Lessee acknowledges that material dredged from the Lease Premises is the property of the State of California and shall not be sold, and that Lessee is not authorized to dredge for purposes of commercial resale, environmental mitigation credits, or other private benefit without Lessor's prior written consent.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6303, 6321, 6321.2, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On September 20, 2013, the Commission authorized a General Lease – Commercial Use to K.M.C., Inc, a California corporation ([Item 61, September 20, 2013](#)). The lease was for a term of 10 years for the continued use and maintenance of an existing public park, a north and south breakwater, three navigational pilings, and maintenance dredging. The lease expired on April 6, 2023. The Applicant is now applying for the issuance of a General Lease – Other for the use and maintenance of the existing facilities and for maintenance dredging of approximately 120,000

cubic yards of material from the lease area adjacent to Paradise Cay Yacht Harbor during the 10-year term of the proposed lease.

The lease premises does not include any docks and slips at the adjacent Paradise Cay Yacht Harbor. Improvements within the lease area include filled sovereign lands used as a public park, two breakwaters at the mouth of the harbor, and the submerged land associated with the entrance to the marina and the three navigational pilings. Dredging is also proposed for the lease area at the navigation channel along the navigational pilings leading into the marina.

The existing public park is fully accessible to the public with access to the waterfront at no cost with free parking, restrooms, benches, and trash cans. The park provides scenic views of San Francisco Bay and the city of San Francisco. Commission staff has witnessed members of the public enjoying the park on several occasions, including people walking dogs and fishing. As such, staff believes this area provides a substantial regional public benefit, and recommends no monetary consideration for this portion of the lease area. As the park also extends onto the north breakwater, a similar regional public benefit is partially derived, and staff recommends a discount of monetary rent for this portion of the lease area. The remainder of the lease premises solely benefits the Lessee and staff recommends monetary rent with no discount.

Maintenance dredging may occur, as identified in the proposed lease. The dredging is contingent upon the Applicant complying with applicable permits, recommendations, or limitations issued by federal, state, and local governments, and restricts the Applicant from using the dredged material for commercial purposes. Dredged material will be deposited at U.S. Army Corps of Engineers-approved disposal sites or at approved beneficial upland use sites. The dredging will maintain a navigable depth for recreational boating in San Francisco Bay and will allow the harbor to remain accessible.

The filled park area is a visitor-serving amenity that is freely accessible by the public and provides access to the waterfront. The breakwaters and the navigational pilings are consistent with the Public Trust as they facilitate maritime recreation. The dredging is consistent with the common law Public Trust Doctrine because it is intended to facilitate navigation and supports water-dependent recreation.

The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The proposed lease is limited to a 10-year term, does not grant

the Lessee exclusive rights to the lease premises, and requires the Lessee to insure the lease premises and indemnify the State for any liability incurred as a result of the Lessee’s activities thereon. The proposed lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved.

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 Francisco Bay, in a tidally influenced site vulnerable to flooding at current sea levels and at a higher risk of flood exposure given projected scenarios of sea level rise.

The California Ocean Protection Council updated the *State of California Sea-Level Rise Guidance* in 2018 to provide a synthesis of the best available science on sea level rise projections and rates. Commission staff evaluated the “high emissions,” “medium-high risk aversion” scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. The San Francisco tide gauge was used for the projected sea level rise scenario for the 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.

As stated in the [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 breakwaters and pilings are fixed structures and therefore more vulnerable to sea level rise and more frequent flood events. Currently the elevation of the breakwaters range from 8.97 to 14.63 feet above mean sea level. Per the Applicant, the composition of the northern breakwater is compacted fill and riprap with a barrier of ArmorFlex hard armor erosion control, which maintains the integrity of the breakwater. The breakwater at the southern mouth of the marina entrance is composed of riprap. This breakwater is lower than the northern breakwater and can become submerged during severe winter storms. When submerged, the southern breakwater is unable to reduce or stop wave action and force when the waves are from the southwest. This can allow disruptive waves to enter the marina basin. Although not required at this time, in the future the applicant may wish to consider increasing the breakwater elevations or explore use of nature-based alternative solutions (e.g., living sea walls) to create better protection from sea level rise (for more information see the report [Shoreline Adaptation and the Public Trust](#)). The existing pilings may also need additional fortification or repair and maintenance to ensure they do not become dislodged or degraded, as they could pose risks to public safety and navigation.

Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises are located in an area that may be subject to the effects of climate change, including sea level rise.

CONCLUSION:

For all the reasons above, staff believes the issuance of the proposed lease will not substantially interfere with the Public Trust needs and values at this location, at this time, nor for the term of the proposed; 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. 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" and "Leading Climate Activism" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. **Public park, breakwaters, and three navigational pilings:** Staff recommends that the Commission find 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 2, section 2905, subdivision (a)(2).

Maintenance Dredging: Staff recommends that the Commission find this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304, subdivision (g).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

APPROVALS REQUIRED:

- U.S. Army Corps of Engineers
- U.S. Coast Guard
- U.S. Environmental Protection Agency
- U.S. Fish and Wildlife Service
- National Marine Fisheries Service
- California Department of Fish and Wildlife
- Regional Water Quality Control Board
- San Francisco Bay Conservation and Development Commission

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 categorically exempt project through the combination of the following exemptions: Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2), and Class 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304, subdivision (g).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that issuance of the proposed lease will not significantly impair the public rights to navigation, fishing, and commerce; or substantially interfere with the Public Trust needs and values at this location, at this time, and for the term of the proposed lease; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize issuance of a General Lease – Other to the Applicant, beginning April 7, 2023, for a term of 10 years, for the use and maintenance of an existing public park, a north and south breakwater, three navigational pilings, and maintenance dredging of approximately 120,000 cubic yards of material during the term of the lease, as further described in the lease; annual rent in the amount of \$3,865, with an annual Consumer Price Index adjustment with the State reserving the right to fix a different rent periodically during the lease term, as provided for in the lease; liability insurance in an amount no less than \$2,000,000 per occurrence; and a surety bond in the amount of \$150,000.
2. Authorize the Executive Officer or designee to modify the Surety Bond amount based on an estimate of the full improvement removal costs, if such estimate is received prior to September 7, 2024, as specified in the lease. Any requests to revise the Surety amount after September 7, 2024 shall require Lessor's review and approval to amend the Lease.