

# Staff Report 42

## LESSEE/APPLICANT:

West Bay Sanitary District

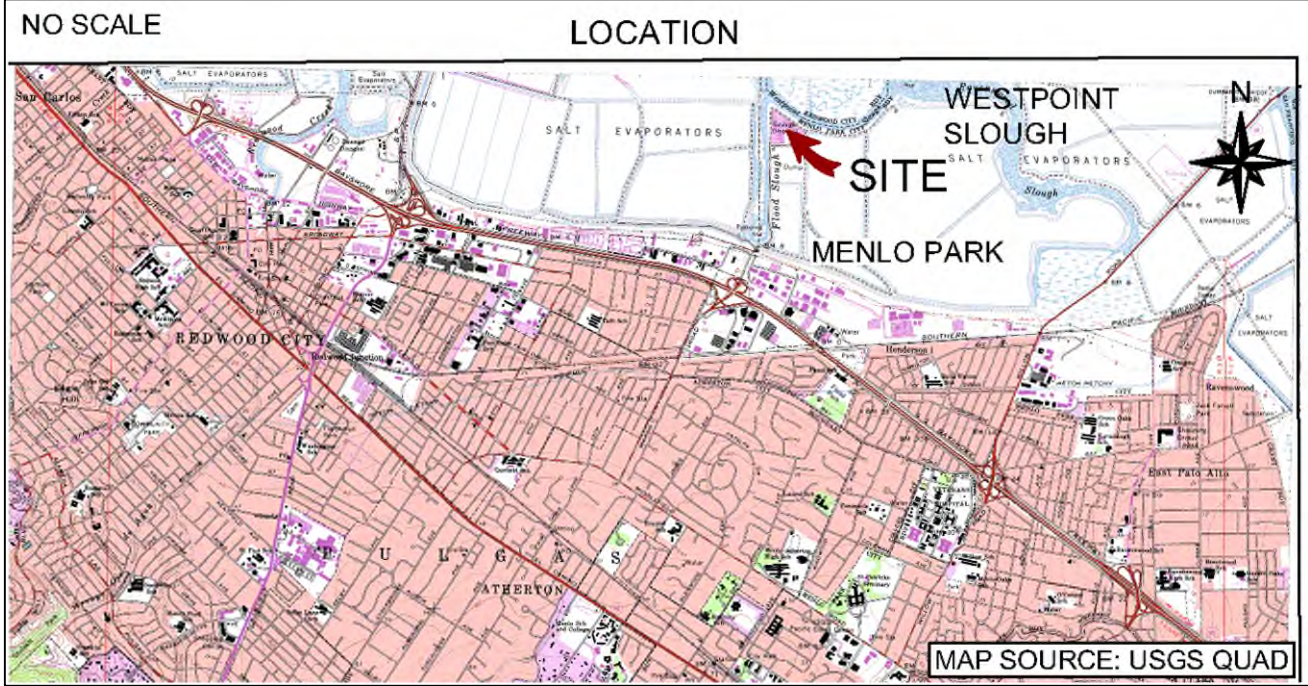
## PROPOSED ACTION:

Amendment of a General Lease – Public Agency Use.

## AREA, LAND TYPE, AND LOCATION:

Sovereign land in Westpoint Slough, adjacent to Assessor’s Parcel Numbers 055-400-010, 170, and 490, near Menlo Park, San Mateo County (as shown in Figure 1).

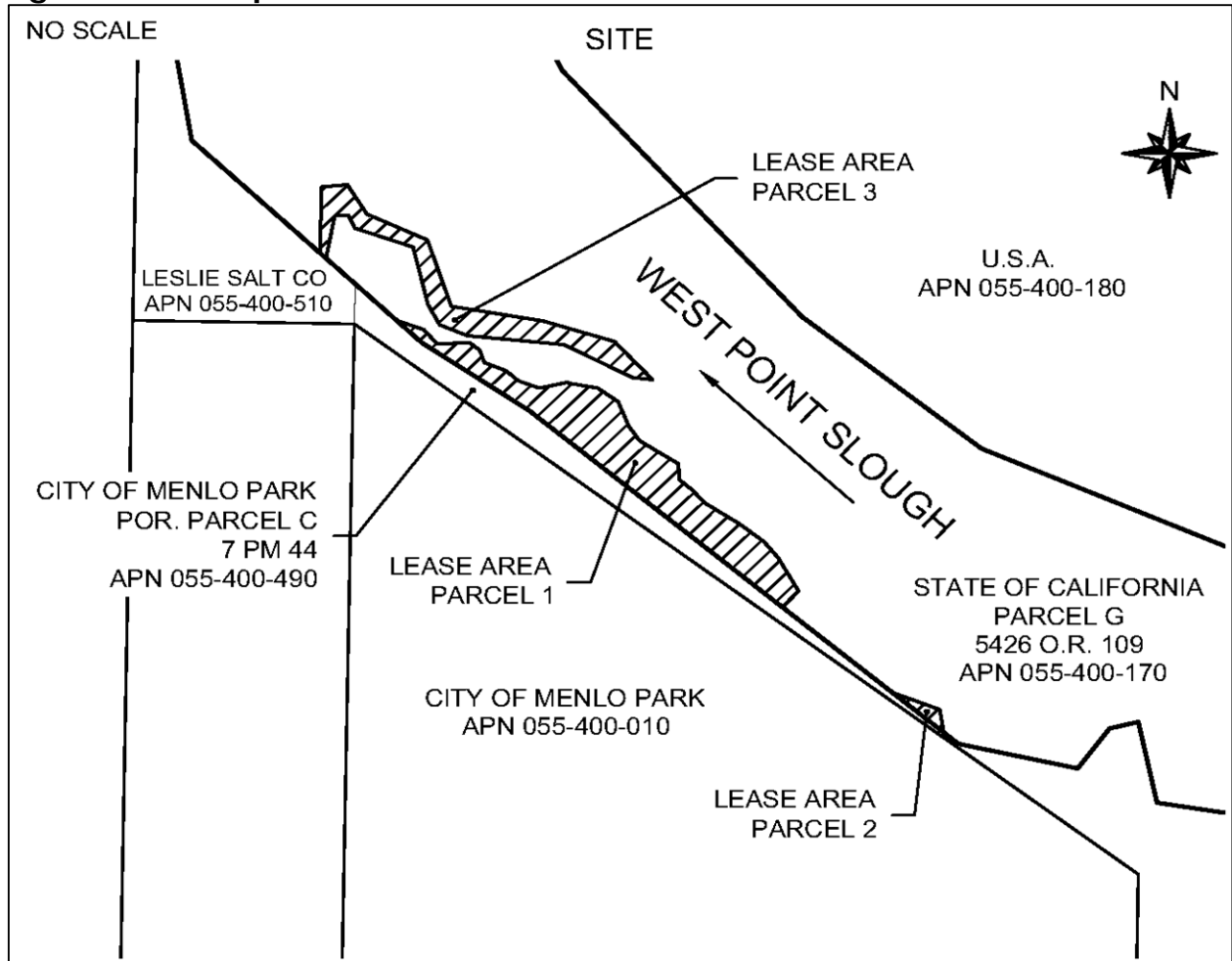
Figure 1. Location



**AUTHORIZED USE:**

Construction, use, and maintenance of an ecotone levee as part of the Flow Equalization and Resource Recovery Facility Levee Improvements and Bayfront Recycled Water Facility Project (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:**

20 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.

**PROPOSED AMENDMENT:**

- Authorize installation of oyster reef structures.
- Replace the existing Exhibit A, Land Description, and Exhibit B, Site and Location Map, with a new Exhibit A, Land Description, and Exhibit B, Site and Location Map (for reference purposes only), in the lease.

All other terms and conditions of the lease shall remain in effect without amendment.

**STAFF ANALYSIS AND RECOMMENDATION:**

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**AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 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 February 28, 2023, the Commission authorized issuance of Lease 9722 for a General Lease – Public Agency Use for a term of 20 years for the construction, use, and maintenance of an ecotone levee as part of the Flow Equalization and Resource Recovery Facility Levee improvements and Bayfront Recycled Water Facility Project ([Item 65, February 28, 2023](#)). The lease will expire on February 27, 2043.

The Lessee is now applying for an amendment of lease for installation of oyster reef structures along West Point Slough. The structures consist of lightweight, modular, table-shaped units, each measuring approximately 3-feet by 3-feet. The overall configuration of the structures resembles a ladder shape when viewed from above. The structures are made of plant-based cloths consisting of coconut coir (fiber) infused with erodible concrete, that is intended to degrade over time and leave only oyster shells behind and form the reef over the mudflat.

Although there are no existing oyster habitats at the site, an oyster survey indicated that oysters and oyster larvae occur in South Bay waters, including the waters off Menlo Park. Creating successful oyster reefs requires offering oyster larvae a substrate surface to settle on that also provides protection for juvenile and adult oysters and architecture for long-term reef development. The design features of the oyster reef structures meet these criteria.

The units would be assembled offsite, shipped by truck, and temporarily stored in the designated staging area on the upland owned by the Applicant. The structures would be placed onto a boat and placed manually into the waterway. Installation of the units would occur over a four-to-six-week period. The oyster reef structures would extend approximately 15 feet into the waterway and approximately 836 linear feet. The structures would be installed in the intertidal zone and would be submerged underwater during most high tides. The area of sovereign land is less than a quarter acre. The project is not expected to have any significant impacts on boating and navigation in the vicinity of the project or to West Point Slough more generally .

The proposed project is part of the larger levee improvements project wherein a living shoreline would be constructed. The proposed oyster reef structures would assist in the reduction of tidal action on the levee, assist in the improvement of water quality, and promote resilience for the living shoreline. The proposed living shoreline would provide higher-quality native upland habitat as well as a natural wildlife corridor.

Staff therefore believes the proposed amendment of the lease for the proposed installation of oyster reef structures will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the term of the lease. The proposed oyster reef structures would occupy a small segment of sovereign land and, as a result, would not significantly alter the land.

**CLIMATE CHANGE:**

Climate change impacts, including sea level rise, increased wave activity, storm events, and flooding may impact an oyster reef living shoreline protective structure subject to the proposed lease, located along the shoreline of San Francisco Bay, in the vicinity of Bayfront Park in San Mateo County.

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 (below).

**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. In tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris. 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 West Bay Sanitary District (District) considered future climate change projection scenarios until 2070, combined with 100-year storm projections and flood maps, to inform the Project design (Flow Equalization and Resource Recovery Facility Levee Improvements and Bayfront Recycled Water Facility (FERRF) Environmental Impact Report (2021)). This analysis of sea level rise relied on the [San Mateo County Sea Level Rise and Overtopping Analysis for San Mateo County's Bayshore](#) (2016).

The oyster reef will span 836 linear feet over the mudflats and stand at least 2.5 feet high above the surface substrate (or higher, depending on the volume and structure of oyster growth) within the intertidal zone. The oyster reef will be installed at the toe of the ecotone levee and create a wider upland transition zone, planted with native vegetation, between existing salt marsh habitat and the levee on the north side of the project site. This transition zone is a buffer that can provide high-tide refuge for marsh wildlife, allow room for the marsh to move upslope with sea level rise, and attenuate wave energy in the wetland part of the Project area. Collectively, the oyster reef and ecotone levee will be a living shoreline that will increase the region's adaptability and resiliency to climate change impacts by improving ecosystem function and providing wetland habitat. The oyster reef concept is consistent with the Commission's 2023 [Shoreline Adaptation and the Public Trust](#) report which recommends the use of nature-based strategies like living

shorelines wherever possible as an approach to increasing resiliency to sea level rise and maximizing benefits to Public Trust lands and resources.

**CONCLUSION:**

For all the reasons above, staff believes approval of the proposed amendment of lease is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

**OTHER PERTINENT INFORMATION:**

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1. Approval or denial of the proposed 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. An Environmental Impact Report (EIR), State Clearinghouse No. 2020050414, was prepared for this Project by the West Bay Sanitary District. The West Bay Sanitary District, as CEQA lead agency, certified the document on May 12, 2021. As part of its project approval, the West Bay Sanitary District made a Statement of Findings of Fact and adopted a Mitigation Monitoring and Reporting Program.

The Commission considered the EIR at its February 28, 2023 meeting ([Item 65, February 28, 2023](#)). As part of the Commission’s approval of the lease, the Commission adopted an independent Mitigation Monitoring Program (MMP) and Statement of Findings made in conformance with the State CEQA Guidelines (Cal. Code Regs., tit. 14, §§ 15091, 15093, and 15096), as contained on file in the Sacramento office of the California State Lands Commission and incorporated by reference hereto. The Commission’s previously adopted MMP remains in full force and effect.

The District then prepared an Addendum to the EIR to address changes to the proposed Project, pursuant to State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15164) and adopted the Addendum on June 26, 2024. Staff has reviewed the Addendum and the EIR, and the proposed lease amendment does not create



substantial changes to the project, to the circumstances in which the project occurs, or present other new information that would require a subsequent or supplemental EIR. The Applicant is required by the terms of the amended lease to continue to implement the Commission's previously imposed MMP.

4. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq. At the time the Commission considered the EIR on February 28, 2023, staff concluded that such activity would not affect those significant lands, and the Commission found the activity to be consistent with its use classification pursuant to Public Resources Code section 6370 et seq.

## **APPROVALS REQUIRED:**

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- San Francisco Bay Conservation and Development Commission
- National Oceanic and Atmospheric Administration
- California Department of Fish and Wildlife
- Central Valley Flood Protection Board
- Central Valley Regional Water Quality Control Board
- U.S. Army Corps of Engineers

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

### **CEQA FINDING:**

Find that an EIR, State Clearinghouse No. 2020050414, was prepared for this project by the West Bay Sanitary District and was certified by the District acting as the CEQA lead agency on May 12, 2021. Acting as a CEQA responsible agency, the Commission considered the EIR at its February 28, 2023 meeting ([Item 65, February 28, 2023](#)) and adopted an independent MMP and Statement of Findings made in conformance with the State CEQA Guidelines. Subsequently, an Addendum to the EIR was adopted on June 26, 2024, by the District.

The Commission has reviewed and considered the information contained in the Addendum along with the EIR and finds that in the Commission's independent

judgement, the scope of activities to be carried out under the lease as amended 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 have occurred; and, therefore no additional CEQA analysis is required.

Find that the Commission's previously adopted MMP remains in full force and effect.

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

Find that the proposed amendment 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:**

Authorize amendment of Lease 9722, a General Lease – Public Agency Use effective October 17, 2024; to allow for the installation and use of oyster reef structures; replace the existing Exhibit A, Land Description, and Exhibit B, Site and Location Map, with a new Exhibit A, Land Description, and Exhibit B, Site and Location Map (for reference purposes), in the lease; all other terms and conditions of the lease will remain in effect without amendment.