

Staff Report 28

APPLICANT:

City of Milpitas

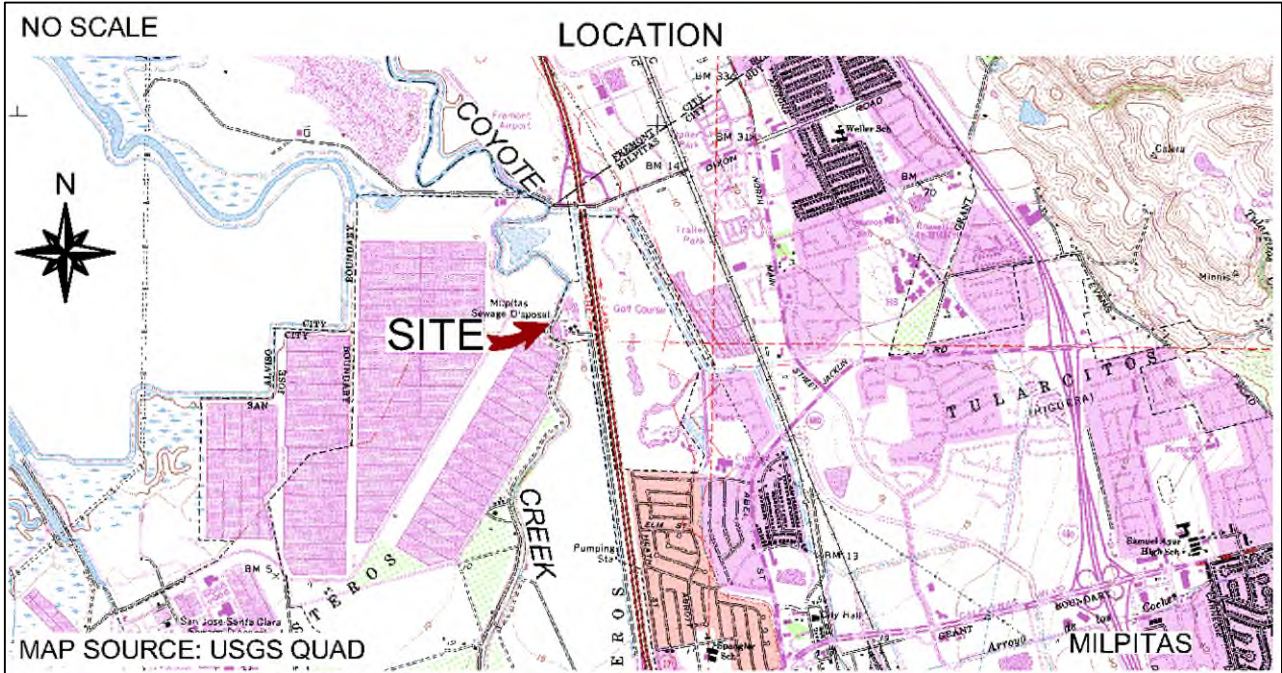
PROPOSED ACTION:

Issuance of a General Lease – Public Agency Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Coyote Creek, adjacent to Santa Clara County Assessor's Parcel Number 022-30-049, Milpitas, Santa Clara County (as shown in Figure 1).

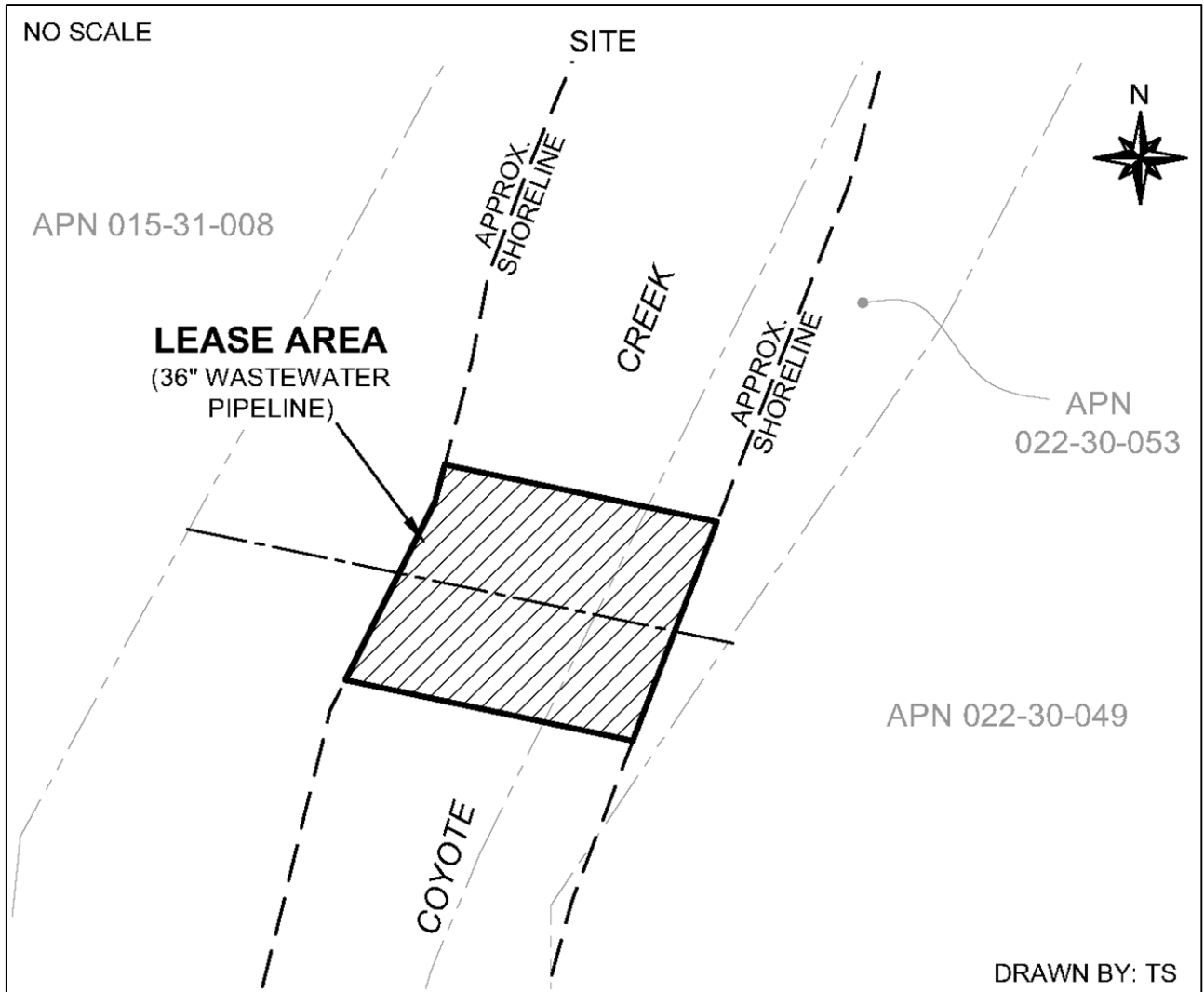
Figure 1. Location



AUTHORIZED USE:

Use of an existing 36-inch-diameter wastewater pipeline (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 December 17, 2024.

CONSIDERATION:

The public use and benefit, with the State reserving the right to set a monetary rent if the Commission finds such an action to be in the State's best interests.

SPECIFIC LEASE PROVISIONS:

- No refueling or maintenance of vehicles, equipment, or watercraft shall take place within the Lease Premises.
- Lessee shall conduct an inspection of the authorized wastewater pipeline when warranted by extraordinary circumstances including, but not limited to, significant seismic events.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

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

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On June 28, 1973, the Commission authorized issuance of a Public Agency Permit to the City of Milpitas for the construction and maintenance of a 36-inch-diameter wastewater pipeline located in Coyote Creek, Milpitas, Santa Clara County ([Item 2, June 28, 1973](#)). This lease expired on June 30, 2022.

Subsequent to issuance of this lease, and as indicated by as-built drawings certified on May 28, 1975, the authorized wastewater pipeline was successfully constructed and put into use.

Now, the Applicant is applying for a General Lease – Public Agency Use for use of the existing 36-inch wastewater pipeline. Staff recommends issuance of a General Lease – Public Agency Use to the Applicant, effective December 17, 2024.

The subject wastewater pipeline is one of two force mains within the City's sanitary sewer system and is used to transport wastewater from the City of Milpitas Main Lift Sewer Pump Station to the San Jose/Santa Clara Regional Wastewater Facility where the wastewater is treated and cleaned so it can be safely reintroduced into the environment. As such, the wastewater pipeline is an essential part of the wastewater infrastructure in the region and is vitally important for ensuring both public health and environmental protection. Additionally, because the subject wastewater pipeline is buried below the bed of Coyote Creek, its existence does not have any significant impact on Public Trust consistent uses in the area.

The Applicant has occupied State land without authorization since the previous lease expired on June 30, 2022. However, because the subject improvement is a critical component of the regional wastewater treatment infrastructure and provides a significant public benefit which is considered sufficient compensation for the State, both the previous lease and the proposed lease do not require monetary rent. Therefore, staff does not recommend that the proposed lease require monetary compensation for the Applicant's occupation of State land following expiration of the prior lease. Nevertheless, the proposed lease will require that the Applicant indemnify the State for the entire period of unauthorized occupation prior to December 17, 2024, to ensure that the State is protected from potential liability.

The proposed Lease does not alienate the State's sovereign interest or permanently impair public rights. The lease is limited to a 20-year term, does not grant the lessee exclusive rights to the lease premises, and will have no significant impact on Public Trust-consistent uses or resources in the area. Upon termination of the lease, the lessee may be required to remove any improvements from State land and restore the lease premises to their original condition. The proposed lease requires the lessee to indemnify the State for any liability incurred as a result of the lessee's activities thereon.

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 in Coyote Creek, 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, 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.

This effect could increase Coyote Creek's inundation levels within the lease area. In addition, 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, fire, drought, extreme heat, and storms (especially when coupled with sea level rise). In rivers and tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris as well as decreased bank stability and structure. Conversely, climate change induced droughts could decrease river levels and flow for extended periods of time. Climate change and sea level rise will further influence riverine areas by changing erosion and sedimentation rates. Flooding and storm flow, as well as runoff, will likely increase scour and decrease bank stability at a faster rate.

The lease structure includes a 36-inch-diameter wastewater pipeline that is approximately 4 feet below the bottom of the creek bed. It is unlikely that climate change events, including sea level rise, will have an impact on the wastewater pipeline.

Regular maintenance, as referenced in the terms of the lease, may reduce the likelihood of severe structural damage 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 approval of this lease will not substantially interfere with Public Trust needs at this location, at this time, and for the term of the lease; 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 must remove the improvements and restore the property to its original condition. 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 categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 14, section 15301.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15061.

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, Class 1, Existing Facilities; California Code of Regulations, title 14, section 15301.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

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

AUTHORIZATION:

Authorize issuance of a General Lease – Public Agency Use to the Applicant beginning December 17, 2024, for a term of 20 years, for the use of an existing 36-inch-diameter wastewater pipeline; consideration being the public use and benefit, with the State reserving the right to set a monetary rent if the Commission finds such an action to be in the State's best interests.