

Staff Report 40

APPLICANT:

San Rafael Rock Quarry, Inc.

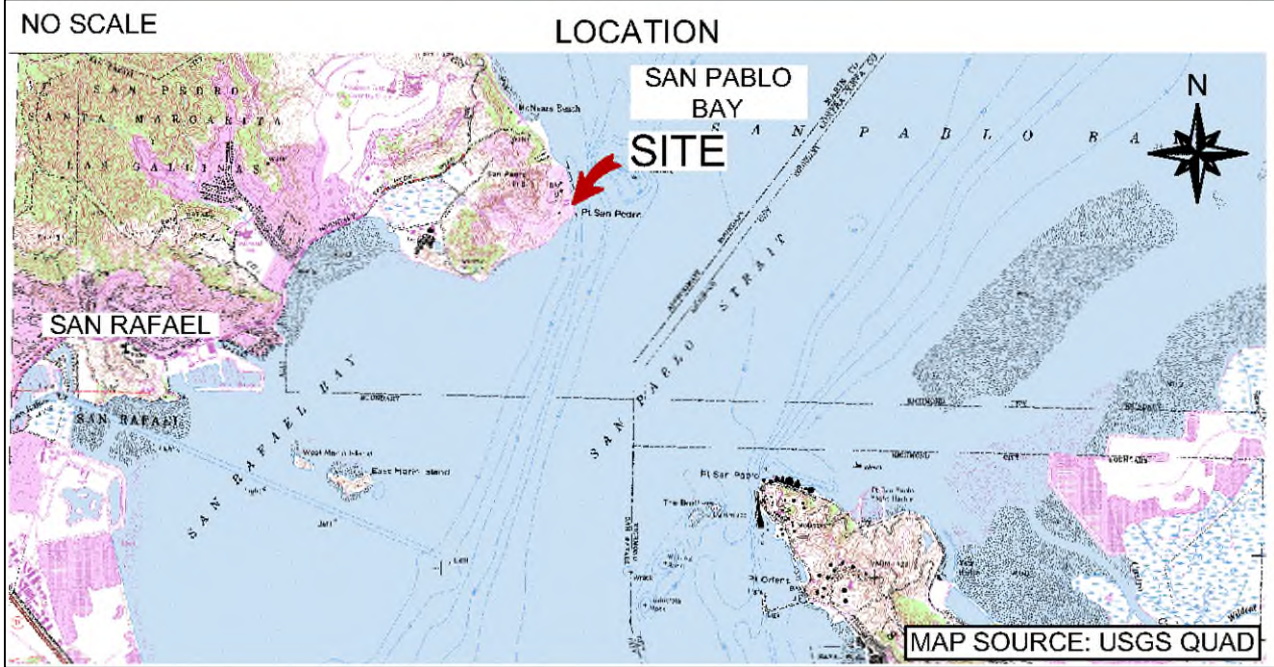
PROPOSED ACTION:

Issuance of a General Lease – Industrial Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in San Pablo Bay at the San Rafael Rock Quarry Wharf, near San Rafael, Marin County (as shown in Figure 1).

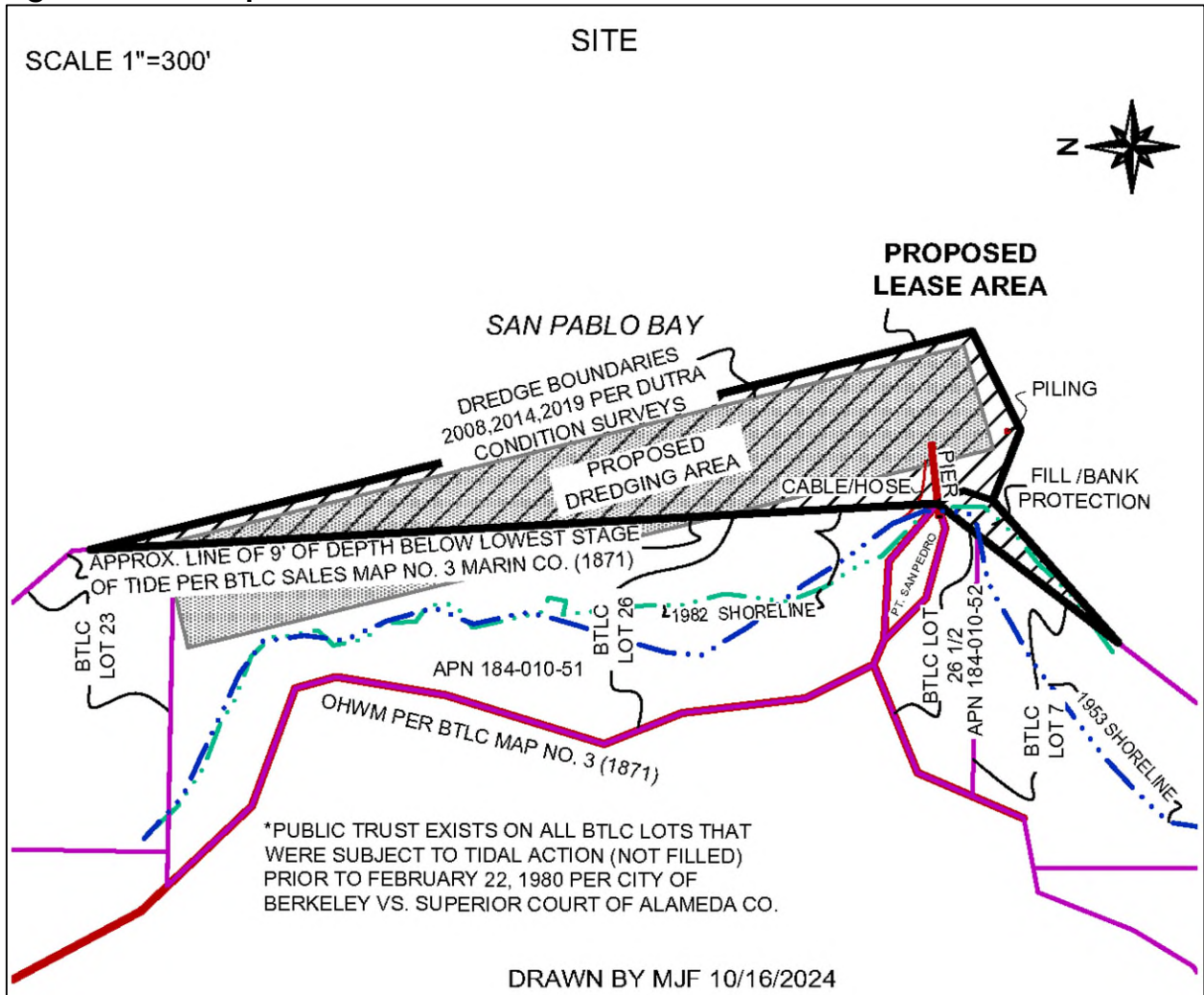
Figure 1. Location



AUTHORIZED USE:

Use of an existing off-loading pier, cable/hose, mooring piling, and artificial fill/bank protection; and maintenance dredging up to a maximum of 120,000 cubic yards of sediment over the lease term (as shown in Figure 2), and periodic dredging as needed during the lease term to reclaim rock that may inadvertently spill during the barge loading process.

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 December 17, 2024.

CONSIDERATION:

Off-Loading Pier, Cable/Hose, Mooring Piling, and Artificial Fill/Bank Protection:

\$5,135 per year, with an annual Consumer Price Index adjustment as provided for in the lease; and \$25,706 to compensate for the unauthorized occupation of state sovereign land for the existing facilities for the period prior to December 17, 2024.

Maintenance Dredging: 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. The dredged material may not be sold.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$4,000,000 per occurrence.
- Surety bond or other security in the amount of \$2,000,000.
- 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 the first lease anniversary date of December 17, 2025, 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 following the first Lease anniversary date shall require Lessor's review and approval to amend the Lease.
- In performing maintenance dredging operations, the Lessee will ensure conformance with the San Francisco Bay Dredge Material Management Office (DMMO) prior to future maintenance dredging events. The Lessee will abide by Best Management Practices to control turbidity to protect marine resources and habitats from excessive siltation in the general vicinity of the project.
- Lessee acknowledges that material dredged during maintenance dredging 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, 6321, 6321.2, 6303, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On August 22, 2008, the Commission authorized a 10-year Dredging Lease to the Applicant for maintenance dredging a maximum 60,000 cubic yards of material; and when needed, for periodic dredging to reclaim rock that might inadvertently spill during the barge loading process. The reclaimed rock may be used for commercial purposes ([Item 33, August 22, 2008](#)). That lease expired on August 21, 2018. The Applicant is now applying for a new lease to include maintenance dredging for safe vessel navigation and mooring, dredging as needed to reclaim rock that may have inadvertently spilled during barge loading operations, and an existing off-loading pier, cable/hose, mooring piling, and artificial fill/bank protection that have occupied sovereign lands at the site for many years but were not previously authorized by the Commission.

Staff is requesting compensation from the Applicant for the unauthorized occupation of State land in the amount of \$25,706 for the period prior to December 17, 2024, the day the proposed new lease would become effective. The proposed lease will require the Applicant to indemnify the State for the entire period of occupation prior to December 17, 2024, ensuring the State is protected. In addition, the compensation ensures that the State is made whole for the Lessee's occupation.

The Applicant operates the San Rafael Rock Quarry located on the upland. As part of the operations, the Applicant exports quarry material via barge from its private wharf. The wharf is located on the Applicant's privately owned parcel and outside of the Commission's jurisdiction. The Applicant also imports varying quantities of sand from third-party dredging operations using the existing off-loading pier, cable/hose, and mooring piling that are located within Commission jurisdiction. These improvements are used in conjunction with waterborne commerce which is a Public Trust consistent use.

The proposed lease includes maintenance dredging up to a maximum of 120,000 cubic yards of material during the term of the lease. Maintenance dredging is

needed to accommodate commercial vessel navigation as well as berthing at existing piers and structures. The Applicant has received permit authorizations from regulatory agencies allowing up to 120,000 cubic yards of material to be dredged within the maintenance dredging footprint, which would allow for continued navigable access to the Applicant's facilities. The lease restricts the lessee from selling or using the dredged material for commercial purposes. Rock reclaimed during dredging operations may be used for commercial purposes or sold. Dredging to maintain the navigability of waterways is generally consistent with the common law Public Trust Doctrine.

The proposed dredging will be performed by a crane barge with a clamshell bucket, which would load the sediment onto another barge to transport the sediment to disposal sites. The sediment proposed for dredging was determined by the DMMO to be suitable for disposal at existing state and federally authorized in-Bay disposal sites and as beneficial reuse at the Montezuma Wetland Restoration Project. Prior to each future dredging event, the DMMO will evaluate the dredging area and the sediments to be dredged for disposal or reuse suitability, and the lessee is required to provide written authorization from the DMMO regarding sediment suitability and disposal to comply with the Commission's lease terms and provisions. The dredging and disposal work window in the San Pablo Bay is from June 1 to November 30.

The existing facilities are in an industrial area of Marin County with limited recreational use. The existing improvements do not substantially interfere with Public Trust uses and needs in the area, and the lease does not alienate the State's fee simple interest or grant the lessee exclusive rights to the lease premises. Prior to the termination of the lease, Lessee may be required to remove all improvements from State land and restore the lease premises to its natural state.

Furthermore, the proposed lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred, directly or indirectly, as a result of the lessee's activities thereon. The 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, increased wave activity, storm events, and flooding may impact the lease area in San Francisco Bay.

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 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. 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 and riverine 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 majority of the dredging area on the north side of Point San Pedro resides within a shallow, low gradient extension of the Petaluma River and Napa River estuary and sedimentary plain. As outgoing currents are driven around the north side of the Point San Pedro Peninsula, the lower current, shallow flats location of the dredging area performs as a sediment trap from the Petaluma and Napa Rivers prior to movement into the San Pablo Strait.

An increase in more frequent and stronger storm events due to climate change and associated throughput of stormwater from the Delta and major tributaries of San Pablo Bay, combined with sea level rise, will expose the lease area to higher flood risks, comprised of greater total water levels for longer periods of time,

including an increase in sediment load. Consequently, the effects of climate change may require more frequent maintenance dredging for the shallow flats portion of the lease area.

At the south end of the lease area at the northern tip of Point San Pedro, the existing off-loading pier extends from a rocky bluff with areas of rock outcroppings in the backshore. The backshore transitions to a rocky beach of boulder/cobble/gravel sized materials along the south side of the pier, with areas of imported rock cast along the foundation of the pier and shoreline within the lease area to enhance the natural hard rock shoreline armoring and protection. Areas of bedrock are also present waterward of the Mean High Tide Line. The combination of natural and imported rock help protect the foundation of the off-loading pier and shoreline from erosion, as the south end of the lease area is subject to stronger currents, due to proximity to San Pablo Strait and exposure from prevailing westerly winds. The mooring piling waterward of the off-loading pier may be vulnerable to the effects of climate change and may require more frequent maintenance and repair.

As sea levels rise, the shoreline bank protection will provide less defense against flood waters, increasing the vulnerability of the upland parcel. Maintaining a wide buffer between the bank and upland improvements will minimize potential impacts from flooding and erosion. The bank may also suffer increased erosion from sea level rise and storm flooding. Consistent with the Commission's 2023 report, [Shoreline Adaptation and the Public Trust](#), if erosion of the shoreline requires modifications to the bank protection, Commission staff suggests the lessee consider nature-based solutions such as living seawalls to stabilize the bank. Any future construction or activities on state land would require a separate authorization from the Commission.

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 stated above, staff believes that issuance of the proposed lease will not substantially interfere with the Public Trust needs at this location, at this time, nor for the term of the proposed 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. The lessee has no right to a new lease or to renewal of any previous lease.
2. The San Francisco Bay DMMO is an interagency group comprised of representatives from the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the San Francisco Bay Conservation and Development Commission, the San Francisco Bay Regional Water Quality Control Board, the California State Lands Commission, and state and federal wildlife agencies. The DMMO serves to evaluate dredging proposals for impacts to environmental resources and for disposal or reuse suitability determinations to streamline permitting for regulatory agencies.
3. 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.
4. **Existing Structures:** 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 2, section 2905, subdivision (a)(2).

Maintenance Dredging: Staff recommends that the Commission find that 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.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15061 and California Code of Regulations, title 2, section 2905.

APPROVALS OBTAINED:

- U.S. Army Corps of Engineers
- San Francisco Bay Regional Water Quality Control Board

- San Francisco Bay Conservation and Development Commission
- San Francisco Bay DMMO

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that this 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.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

1. Find that the existing and, for a limited time, use of the off-loading pier, cable/hose, mooring piling, and maintenance dredging is consistent with the common law Public Trust Doctrine.
2. Find that the existing and, for a limited time, use of the artificial fill/bank protection will not substantially interfere with Public Trust uses.
3. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of compensation from the Applicant in the amount of \$25,706 for the unauthorized occupation of state sovereign land for the period prior to December 17, 2024.
2. Authorize the issuance of a General Lease – Industrial Use to the Applicant beginning December 17, 2024, for a term of 10 years, for the use of an existing off-loading pier, cable/hose, mooring piling, and artificial fill/bank protection; and maintenance dredging up to a maximum of 120,000 cubic yards of sediment over the lease term; and periodic dredging as needed over the lease term to reclaim rock that may inadvertently spill during the barge loading process; Consideration: off-loading pier, cable/hose, mooring piling, and artificial fill/bank protection: \$5,135 with an annual Consumer Price Index

adjustment; maintenance dredging: 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; liability insurance in an amount no less than \$4,000,000 per occurrence; and a surety bond in the amount of \$2,000,000.

3. Authorize the Executive Officer or designee to modify the Surety Bond amount based on an estimate of the full improvement removal costs, if an estimate is received within the first year of the lease, as specified in the lease.