

Staff Report 21

APPLICANT:

Alameda County Flood Control and Water Conservation District

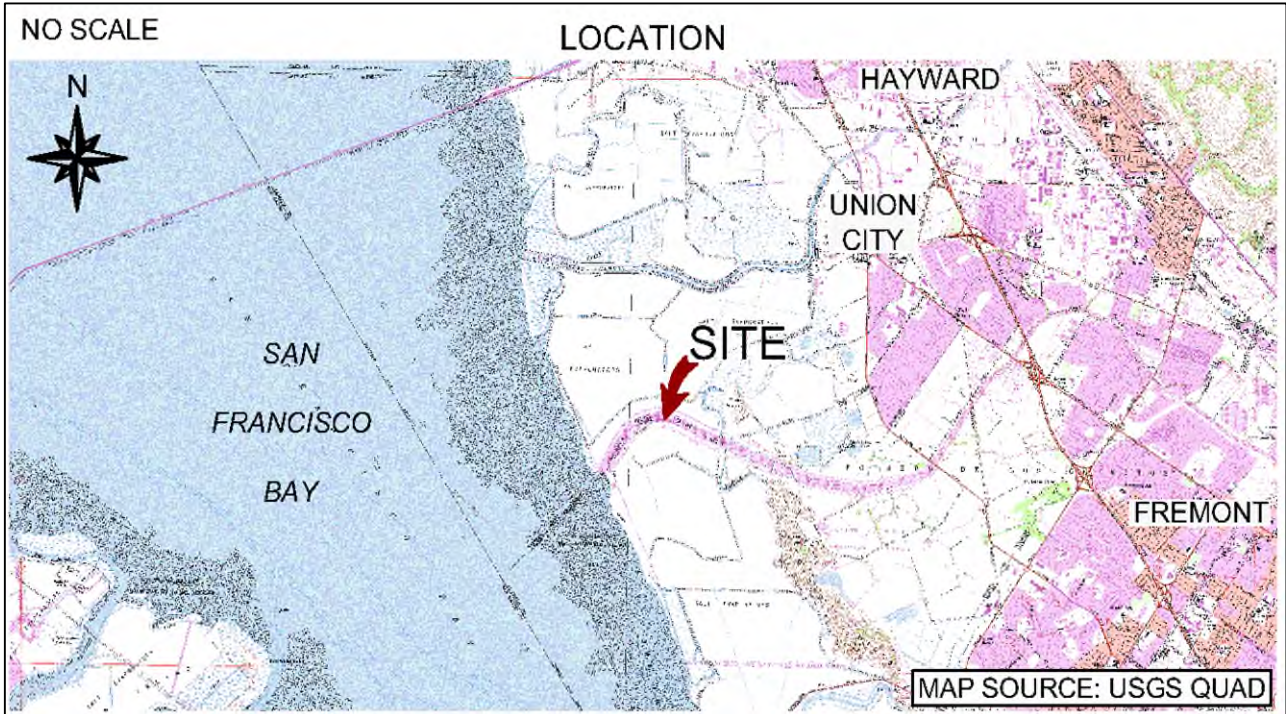
PROPOSED ACTION:

Issuance of a General Lease – Public Agency Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Coyote Hills Slough, adjacent to Assessor's Parcel Numbers 482-90-5 and 482-80-6, Union City, Alameda County (as shown in Figure 1).

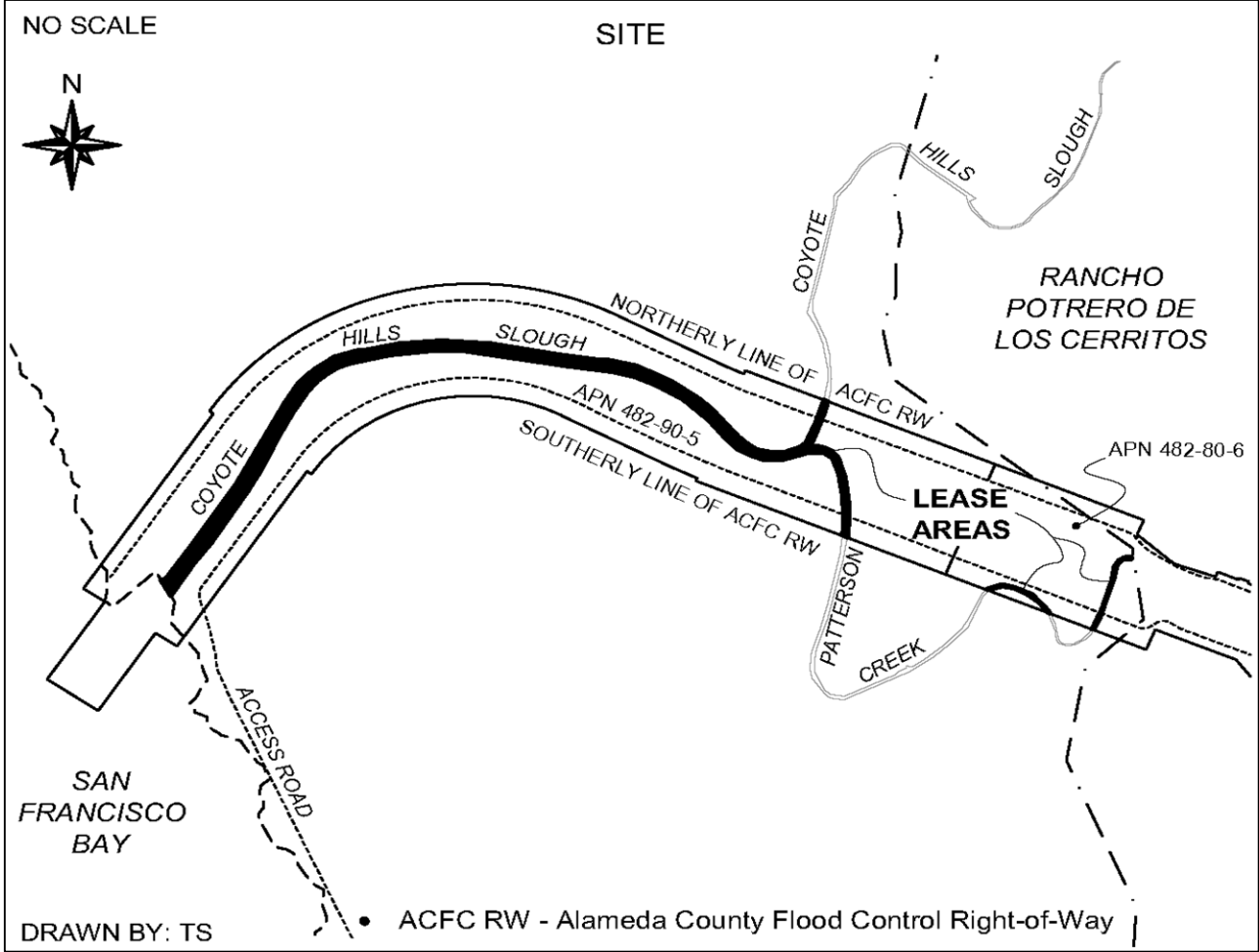
Figure 1. Location



AUTHORIZED USE:

Use and maintenance of an existing flood control channel previously authorized by the Commission; and unpaved access road not previously authorized by the Commission (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 March 1, 2025.

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 improvements or structures shall be constructed or placed on the Lease Premises without Lessor's prior approval.
- Lessee agrees the provisions of Section 3, Paragraph 11 shall also extend to the period of Lessee's unauthorized occupation of state-owned lands prior to March 1, 2025.

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 December 19, 1968, the Commission authorized a General Permit – Public Agency Use to the Applicant for the use and maintenance of an existing flood control channel along Coyote Hills Slough ([Item 5, December 19, 1968](#)). The lease expired on November 20, 2017. The Applicant is now applying for a new lease for the existing flood control channel previously authorized by the Commission and an unpaved access road not previously authorized by the Commission.

The flood control channel was constructed by the U.S. Army Corps of Engineers in the 1970s to contain and channelize storm flows to the San Francisco Bay during storm events to provide flood protection and minimize flood risk in the adjacent urbanized cities. The flood control channel, now maintained by Alameda County Flood Control and Water Conservation District, aims to mitigate and eliminate harmful impacts of floodwaters to human life and properties, and the access road helps to facilitate channel access and maintenance.

The lease provisions regarding indemnity will apply for the entire period of unauthorized occupation from November 21, 2017, the day after the lease expiration date, through February 28, 2025, the day before the beginning of the proposed lease. However, since neither the previous lease nor the proposed lease will include monetary rent, staff does not recommend charging compensation for the unauthorized occupation.

The proposed lease does not alienate the State's fee simple interest in the underlying land, nor will it permanently impair public rights. The lease is limited to a

20-year term and requires the lessee to keep and maintain the flood control channel and access road in good order and repair. The proposed lease 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.

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 the Coyote Hills Slough near 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.

Sea level rise could increase 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 combination of these projected conditions could increase the likelihood of damage and affect access to structures within the lease premises during the term of the lease. For example, the potential for more frequent and stronger storm events may expose the lease area structures to higher flood risks and cause facilities to be damaged or dislodged, presenting hazards to public safety as well as dangers for navigation within the channel. Conversely, prolonged drought conditions could lower water levels, exposing previously submerged structures to the elements. Lowered water levels could also reduce navigability of the channel, thereby increasing hazards and impacting the function and utility of the lease area structures.

Coyote Hills Slough was part of a larger flood control project developed in the 1970s by the U.S. Army Corps of Engineers. Alameda Creek was rerouted and connected with Coyote Hills Slough, which included construction of levees and dikes to create the largest drainage system for this area of San Francisco Bay. Coyote Hills Slough is managed as part of a flood control system for conveyance of flows from the upper basin drainage system. Although flood control structures within the lease area are designed for conveyance of high flow events and flood protection, climate change will test the structural integrity of the aging infrastructure from upper basin runoff and sea level rise from tidal influence.

Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation of flood control structures. 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 believe 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 will not be authorized to use and maintain the improvements as defined in the lease documents. The Applicant has no right to a new lease or a 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 recommend 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).

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

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 2, section 2905, subdivision (a)(2).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

1. Find that the existing and, for a limited period, continuing use of the existing flood control channel will not substantially interfere with Public Trust needs and values at this location and is consistent with the common law Public Trust Doctrine.

2. Find the existing and, for a limited period, continuing use of the access road are generally not consistent with the Public Trust Doctrine, but the current use does not substantially interfere with the Public Trust.
3. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Public Agency Use to the Applicant beginning March 1, 2025, for a term of 20 years, for the use and maintenance of an existing flood control channel and unpaved access road; consideration being 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.