

**STAFF REPORT
C71**

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R. B. Greenwood

**CONSIDER AN APPLICATION FOR A NON-EXCLUSIVE GEOLOGICAL
SURVEY PERMIT ON SOVEREIGN TIDE AND SUBMERGED LANDS
LOCATED IN SAN PABLO BAY, MARIN COUNTY**

APPLICANT:

U.S. Department of Agriculture Natural Resources Conservation Service

BACKGROUND:

The U.S. Department of Agriculture Natural Resources Conservation Service (Applicant) has applied for a 4-month General Permit to conduct Geological Surveys (Permit) at 10 sample sites near the northwest shore of San Pablo Bay. The geological surveys authorized under the terms of the proposed Permit are for the purpose of obtaining shallow soil samples for updating regional soil databases and soil maps. The data obtained will be used in San Pablo Bay-Delta area tidal flood plain and marsh management. The shallow samples would be acquired by digging small soil pits using hand tools. A common soil pit is 12 inches by 18 inches at the surface and excavated to a practical depth using a shovel. Soil samples are then collected using a 3-inch-diameter hand-turned bucket auger to a depth of 6 feet. Detritus that is not used is placed on a tarp to maintain a clean worksite. The pit is then backfilled by shovel, leaving little to no trace of sampling activities.

This Permit requires the permittee to provide staff at least 5 working days advance notice of operations and the specifications of the equipment to be employed, including specific latitude/longitude coordinates of sample sites, and to clearly mark as confidential any inadvertent discovery of archeological information. Permittee coordination with other permitting agencies is also required prior to commencing survey activities. If requested, staff may obtain copies of all data derived from any and all surveys under this Permit.

STAFF ANALYSIS AND RECOMMENDATION:

Public Trust and State's Best Interests Analysis:

The Permit would allow geological surveys to obtain scientific data, a use recognized by the courts to be consistent with the common law Public Trust Doctrine, and is in the best interests of the State by providing greater understanding of tide and submerged lands. (See, for example, *Marks v.*

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Whitney (1971) 6 Cal.3d 251, 259-260.) The Permit contains restrictions that protect public rights and environmental resources; for example, the Permit would be non-exclusive and is limited to 4 months. The permitted activity is not expected to interfere with navigation or the use and enjoyment of sovereign land. Commission staff believes that granting the Permit will not substantially interfere with Public Trust needs at these locations, at this time, or for the foreseeable term of the Permit.

For all the reasons above, Commission staff believes the approval of the Permit application is consistent with the common law Public Trust Doctrine and is in the best interests of the State. Staff recommends approval of this Non-Exclusive Geological Survey Permit application.

TERM OF PROPOSED PERMIT:

4 months beginning August 17 through December 16, 2017.

PREREQUISITE CONDITIONS, FEES AND EXPENSES:

Required fees, expense deposit, and other security have been received.

STATUTORY AUTHORITY AND OTHER REFERENCES:

- A. Public Resources Code sections 6005, 6212.2, 6106, and 6301
- B. California Code of Regulations, title 2, section 2905, subdivision (e)(3)
- C. California Code of Regulations, title 14, section 15061

OTHER PERTINENT INFORMATION:

1. Staff recommends that the Commission find that this activity is exempt from the requirements of California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 6, Information Collection; California Code of Regulations, title 2, section 2905, subdivision (e)(3).

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

2. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon staff's consultation with the persons nominating such lands and through the CEQA review process, it is staff's opinion that the project, as proposed, is consistent with its use classification.

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3. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.

EXHIBIT:

- A. Project Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDINGS:

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 6, Information Collection; California Code of Regulations, title 2, section 2905, subdivision (e)(3).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that proposed Permit will not substantially interfere with Public Trust needs and values, 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.

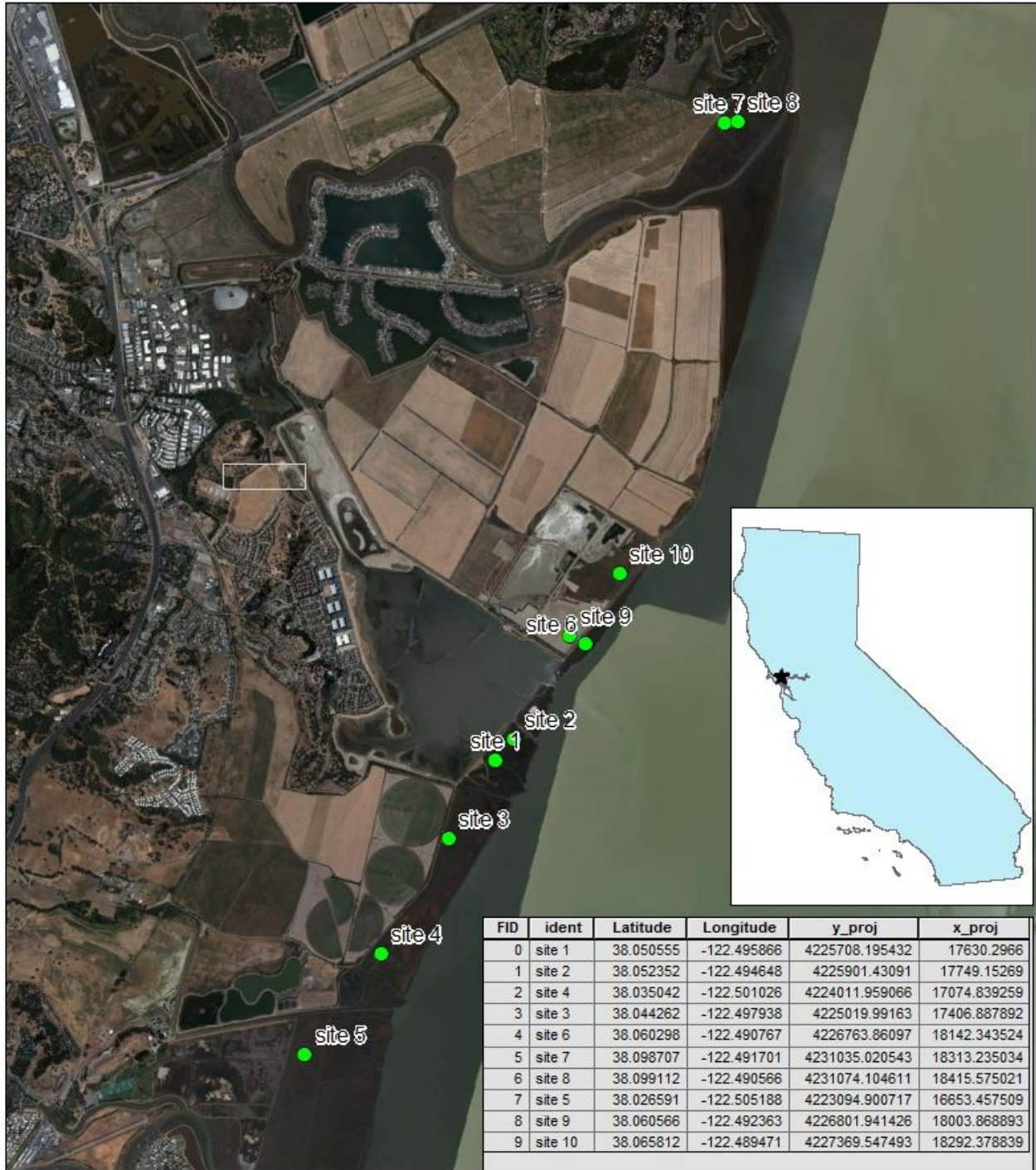
AUTHORIZATION:

Authorize issuance of a General Permit to conduct Geological Surveys to the U.S. Department of Agriculture Natural Resources Conservation Service for the period August 17 through December 16, 2017, within project locations as designated on the attached Exhibit A, attached and incorporated by reference herein.

Exhibit A

Project Location Map

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5/18/2017
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