

**STAFF REPORT
C50**

A 10, 17, 22
S 2, 11, 13

06/21/18
W 27161
D. Tutov

GENERAL LEASE – OTHER

APPLICANT:

San Francisco Estuary Institute

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in San Francisco and San Pablo Bays, in Alameda, Contra Costa, San Mateo, and Marin Counties.

AUTHORIZED USE:

Six buoys and subsurface cages containing California mussels to support a long-term bioaccumulation monitoring program.

LEASE TERM:

6 years, beginning June 21, 2018.

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.

SPECIFIC LEASE PROVISIONS:

Liability insurance in an amount no less than \$1,000,000 per occurrence.

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 Analysis:

The San Francisco Estuary Institute (SFEI) has applied for a General Lease – Other for temporary subsurface deployments to support a long-term bioaccumulation monitoring program in San Francisco and San Pablo Bays, in Alameda, Contra Costa, San Mateo, and Marin Counties.

STAFF REPORT NO. C50 (CONT'D)

SFEI is a nonprofit organization, with a mission to provide scientific support and tools for decision-making and communication through collaborative efforts. SFEI engages in independent scientific efforts to assess and improve the health of the waters, wetlands, wildlife, and landscapes of San Francisco Bay and the California Delta. SFEI advises and partners with federal, state, and regional agencies including the Environmental Protection Agency, state and regional water boards, and many land use and resource agencies.

The long-term bioaccumulation monitoring program in San Francisco and San Pablo Bays has been an ongoing project since the early 1990s as part of the Regional Monitoring Program for Water Quality, a collaborative effort of the San Francisco Bay Regional Water Quality Control Board, the regulated discharger community, and SFEI.

Bioaccumulation is the accumulation of substances, such as pesticides, or other chemicals in an organism and occurs when an organism absorbs a substance at a rate faster than that at which the substance is lost by catabolism and excretion. For the bioaccumulation monitoring program, California mussels (*Mytilus californianus*) are transplanted to seven locations in San Francisco and San Pablo Bays, six of which are located on State sovereign land and shown on Exhibit B. The seventh site is located on lands granted to the United States government and is not part of this lease application. The mussels are transplanted for approximately 100 days over the dry season (approximately June 15 through October 15) every other year and collected and analyzed for a suite of priority pollutants. Results are reported and available to Regional Monitoring Program sponsors, regulatory agencies, and the general public through SFEI's Contaminant Data Display and Download tool (<https://cd3.sfei.org>).

From the onset of the bioaccumulation monitoring program through 2016, subsurface deployments and retrievals were performed by SCUBA divers who affixed bivalve cages to U.S. Coast Guard-owned Aids to Navigation. Beginning in 2018, SFEI is proposing to transition to the deployment and retrieval of bivalves using weighted containment cages deployed from a vessel and retrieved through use of acoustic releases. This change is being made for both long-term cost efficiencies and because of uncertainty to the data collection efforts caused by failures in piles that the mussel deployments were attached to.

The standard configuration at each location would entail a three-part structure that consists of two to three 36-inch-long cylindrical cages with a diameter of 4.5 inches, secured to a buoy, which is attached to a weight

STAFF REPORT NO. **C50** (CONT'D)

that is retrievable through an acoustic release device. All deployments will be made on the edge or just outside of shipping lanes and completely submerged underwater. Lessee coordinates with U.S. Coast Guard (USGS) on installation locations and will receive USGS approval prior to each deployment period. Containment equipment, including weights, will be retrieved at the conclusion of the 100-day monitoring season.

Overall, the project is considered beneficial because it will advance science to assess and improve water quality and would thereby contribute to efforts to enhance public use and enjoyment of Public Trust resources. Additionally, courts have found that scientific research is a use which is not inconsistent with the Public Trust (*Marks v. Whitney* (1971) 6 Cal.3d 251, 259-60; *Santa Teresa Citizen Action Grp. v. City of San Jose* (2003) 114 Cal App.4th 689, 709). Furthermore, the project will not substantially impede or impair any other Public Trust uses in the area. The 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:

The project is a short-term research and monitoring project in San Francisco Bay. The activity would not involve the construction of permanent structures or facilities, and all monitoring equipment would be located underwater. Due to the type of activity and short-term, temporary nature of the project, the effects of sea-level rise would not affect the project.

Conclusion:

For all the reasons above, staff believes the issuance of this lease is consistent with the common law Public Trust Doctrine and will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. 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.
2. The 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 6,

STAFF REPORT NO. **C50** (CONT'D)

Information Collection; California Code of Regulations, title 2, section 2905, subdivisions (e)(3) and (e)(5).

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

EXHIBITS:

- A. Land Description
- B. Site and Location Map

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 6, Information Collection; California Code of Regulations, title 2, section 2905, subdivisions (e)(3) and (e)(5).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Other to the San Francisco Estuary Institute beginning June 21, 2018, for a term of 6 years, for six buoys and cages containing California mussels to support a long-term bioaccumulation monitoring program, as described in Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof; consideration being the public use and benefit, with the State reserving the right, at any time, to set a monetary rent as specified in the lease if the Commission finds such action to be in the State's best interests; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

W 27161

LAND DESCRIPTION

Six (6) circular parcels of submerged land situate in the bed of San Francisco Bay and San Pablo Bay, Alameda County, Contra Costa County, Marin County and San Mateo County State of California, and more particularly described as follows:

PARCEL 1

A circular parcel of submerged land, 10 feet diameter, situate in the bed of San Francisco Bay, Alameda County, State of California, the center point of which is described as follows:

COMMENCING at a NGS monument "MARSH" (PID HT2315), said monument being a triangulation station disk stamped "MARSH 1925" which bears N 11° 19' 21" W 32,962.28 feet from the NGS monument "STANFORD" (PID HT3263), said monument being a triangulation station disk stamped "STANFORD 1957", thence N 75° 37' 11" E 32,552.22 feet to said center point.

PARCEL 2

A circular parcel of submerged land, 10 feet diameter, situate in the bed of San Francisco Bay, San Mateo County, State of California, the center point of which is described as follows:

COMMENCING at a NGS monument "MARSH" (PID HT2315), said monument being a triangulation station disk stamped "MARSH 1925" which bears N 11° 19' 21" W 32,962.28 feet from the NGS monument "STANFORD" (PID HT3263), said monument being a triangulation station disk stamped "STANFORD 1957", thence N 24° 52' 28" E 26,754.03 feet to said center point.

PARCEL 3

A circular parcel of submerged land, 10 feet diameter, situate in the bed of San Francisco Bay, San Mateo County, State of California, the center point of which is described as follows:

COMMENCING at a NGS monument "STANFORD" (PID HT3263), said monument being a triangulation station disk stamped "STANFORD 1957" which bears S 11° 19' 21" E 32,962.28 feet from the NGS monument "MARSH" (PID HT2315), said monument being a triangulation station disk stamped "MARSH 1925", thence N 05° 42' 30" E 4,542.68 feet to said center point.

PARCEL 4

A circular parcel of submerged land, 10 feet diameter, situate in the bed of San Francisco Bay, San Mateo County, State of California, the center point of which is described as follows:

COMMENCING at a NGS monument "COLEMAN" (PID HT2720) which bears N 81° 56' 24" W 2,720.53 feet from the NGS monument "BLDG 253" (PID HT2724), thence S 25° 07' 06" E 12,640.60 feet to said center point.

PARCEL 5

A circular parcel of submerged land, 10 feet diameter, situate in the bed of San Pablo Bay, Contra Costa County, State of California, the center point of which is described as follows:

COMMENCING at a NGS monument "PT PINOLE 3 RM" (PID JT0569), said monument being refence mark disk stamped "PT PINOLE 3 1897 1917" which bears N 37° 36' 27" E 23,927.60 feet from the NGS monument "SAN PABLO RIDGE RESET" (PID HT3155), said monument being survey disk stamped "SAN PABLO RIDGE 1897-1917", thence N 05° 28' 40" W 1,833.26 feet to said center point.

PARCEL 6

A circular parcel of submerged land, 10 feet diameter, situate in the bed of San Pablo Bay, Marin County, State of California, the center point of which is described as follows:

COMMENCING at a NGS monument "PT PINOLE 3 RM" (PID JT0569), said monument being refence mark disk stamped "PT PINOLE 3 1897 1917" which bears N 37° 36' 27" E 23,927.60 feet from the NGS monument "SAN PABLO RIDGE RESET" (PID HT3155), said monument being survey disk stamped "SAN PABLO RIDGE 1897-1917", thence N 42° 23' 49" W 23,783.04 feet to said center point.

The BASIS OF BEARINGS of this description is the California Coordinate System of 1983, Zone 3 (1991.35). All distances are grid distances.

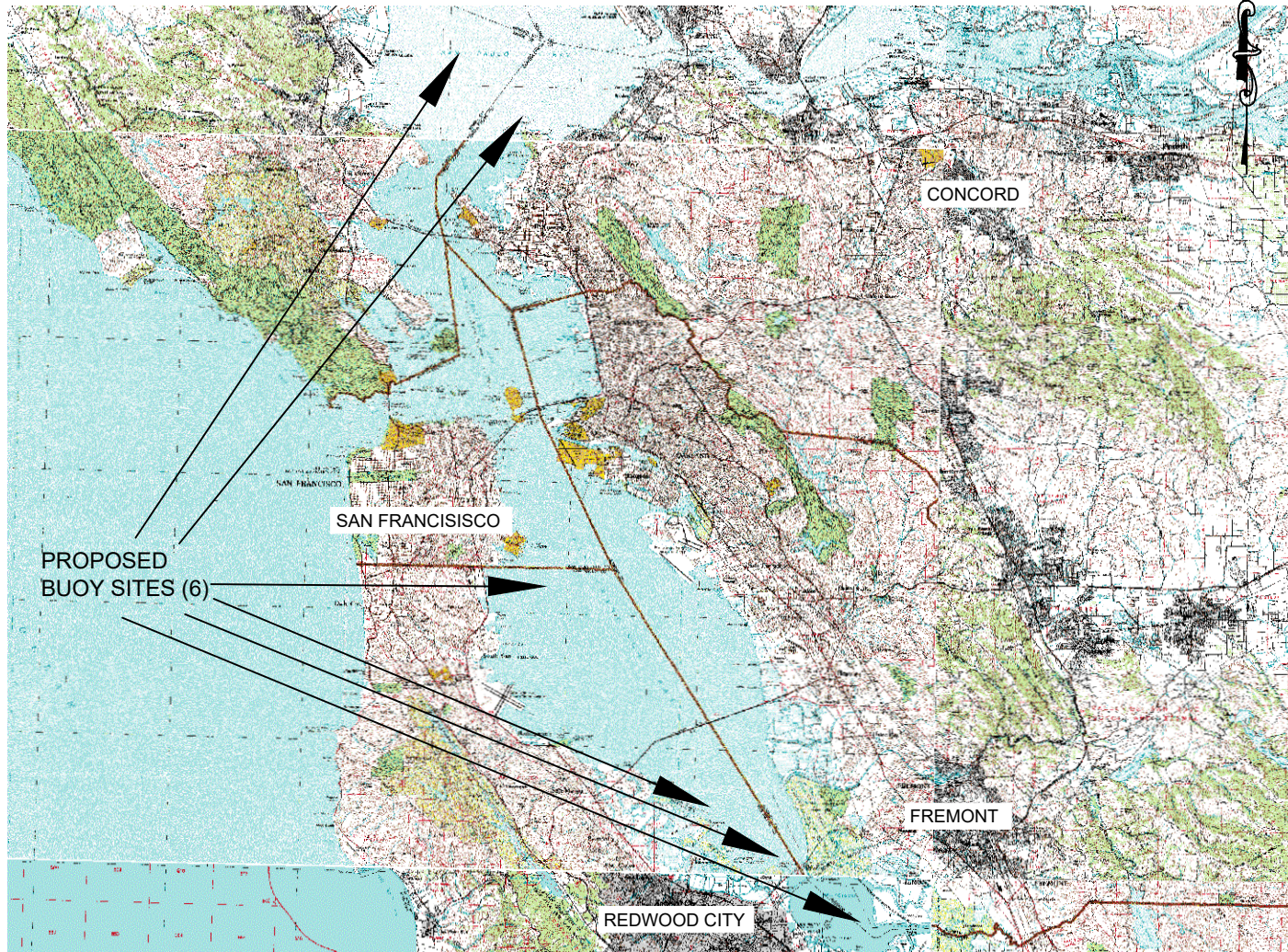
END OF DESCRIPTION

Prepared 04/18/2018 by the California State Lands Commission Boundary Unit.



NO SCALE

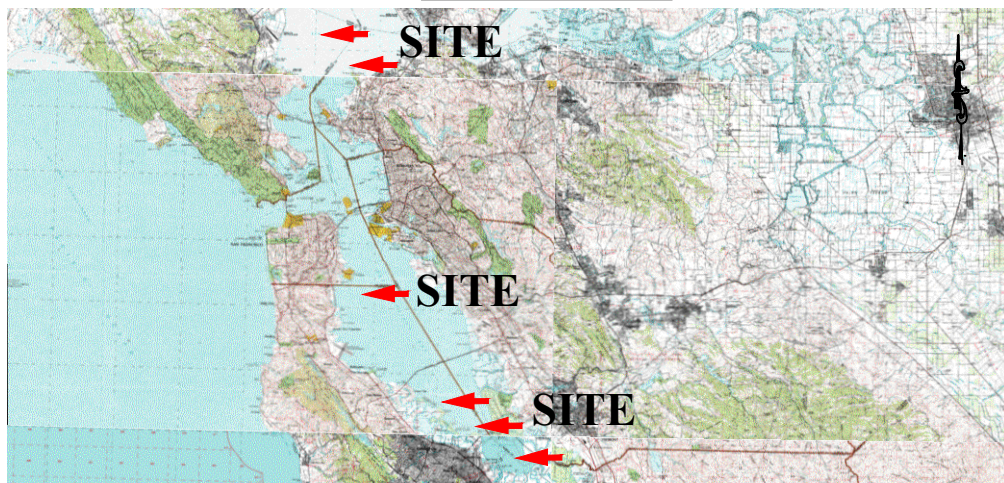
SITE



SIX (6) BUOYS IN THE SAN PABLO & SAN FRANCISCO BAY

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit B

W27161
SAN FRANCISCO
ESTUARY INSTITUTE
GENERAL LEASE -
OTHER
ALAMEDA, CONTRA COSTA,
MARIN & SAN MATEO COUNTIES



RPF 04/18/2018