

**STAFF REPORT
C23**

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04/05/19
PRC 9084.1
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**AUTHORIZATION OF AN AGREEMENT AND CONSENT TO
ENCUMBRANCING OF LEASE**

LESSEE/TRUSTOR:

Burlingame Point, LLC

SECURED PARTY LENDER/BENEFICIARY:

JP Morgan Chase Bank, N.A. and Starwood Property Mortgage Sub-14-A, L.L.C.

AREA, LAND TYPE, AND LOCATION:

4.4 acres, more or less, of filled and unfilled sovereign land in San Francisco Bay, Burlingame, San Mateo County.

AUTHORIZED USE:

Parcel A – North/South Parcel (Parcel A): Improvements to and maintenance of the San Francisco Bay Trail including access to Fisherman’s Park, public utilities, shoreline protection, and realigned Airport Boulevard improvements.

Parcel B – East/West Parcel (Parcel B): Improvements to and maintenance of a public roadway with at least 25 public parking spaces for access to the San Francisco Bay Trail (Bay Trail), Fisherman’s Park driveway, realigned Airport Boulevard improvements.

Parcel C – Fisherman’s Park Parcel (Parcel C): Right of entry and construction of interim park improvements to Fisherman’s Park and a 12-month maintenance warranty.

LEASE TERM:

49 years, beginning September 20, 2013.

CONSIDERATION:

Annual rent of \$3,660 to be adjusted by the California Consumer Price Index on the fifth anniversary of the lease and every 5 years thereafter.

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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:

In 2012, the Lessee obtained certain land use entitlements from the City of Burlingame (City) and entered into a Development Agreement (DA) with the City for a development project, known as Burlingame Point (Development), located on property adjacent to the existing lease premises in an area commonly referred to as Anza Point North.

On September 20, 2013, the Commission authorized Lease No. PRC 9084.1, to 350 Beach Road LLC to improve Parcel A and Parcel B ([Item C73, September 20, 2013](#)).

The DA contains provisions regarding the lease premises including the Lessee's obligation to the City to form an entity to fund and maintain the proposed public open space areas within the lease premises.

On November 20, 2014, the San Francisco Bay Conservation and Development Commission (BCDC) issued an original permit to the Lessee and City to conduct activities within the 100-foot shoreline band. That permit was amended October 18, 2017.

On June 6, 2018, the Lessee and City entered into a long-term Site Maintenance Agreement and the Lessee and BCDC entered into an Agreement Imposing Public Access Restrictions on the Use of Real Property that affects Parcel A.

The easterly edge of the North/South Parcel, adjacent to San Francisco Bay, consists of sections of broken reinforced concrete from the old San Mateo Bridge. This edge will be removed and replaced with an engineered rock revetment to accommodate climate change, sea-level rise and improved with an extension of the Bay Trail including benches, trash receptacles, binoculars, signage, lighting, viewing platforms, cantilevered overlooks, storm water retention areas, and landscaping. Four storm water outfalls will be removed and replaced with two 30-inch-diameter outfalls with associated headwalls.

As part of Lessee's development project, existing utilities within the lease premises are to be abandoned in place including a 12-inch-diameter water line, 12-inch-diameter sewer pipeline, and communication facilities. The

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overhead electric lines and street lights are to be removed. Two 30-inch-diameter storm drain lines with outfall structures will be constructed that serve the Development.

The existing Airport Boulevard: (a) on the western portion of the East/West Parcel will be replaced with an improved section of Airport Boulevard connected to the roadway's new alignment through the Burlingame Point project; and (b) on the eastern portion of the East/West Parcel will be improved to provide access to Fisherman's Park and adjacent private property, and will include public parking for the Bay Trail.

On February 20, 2015, the Commission authorized an amendment and assignment of Lease No. PRC 9084.1, from 350 Beach Road to Burlingame Point, LLC ([Item C51, February 20, 2015](#)). The amendment included adding Parcel C for the purpose of designing and installing interim park improvements that includes an extension of the Bay Trail, new benches, seating, trash containers, and signage.

On February 4, 2019, the Commission authorized an amendment of the lease to extend the time to complete the Parcel C interim improvements ([Item C30, February 4, 2019](#)).

The Lessee/Trustor is applying for an agreement and consent to encumbrancing of lease in favor of Secured Party Lender or Lender/Beneficiary, for a loan amount not to exceed \$500 million. The purpose of the loan is to complete construction of the Development.

The encumbrancing of the lease is a condition of the Lender/Beneficiary under the terms of a certain "Construction Loan and Security Agreement" between the Lessee and Secured Party-Lender for the permanent financing of Lessee's acquisition of a fee simple interest, construction and other costs and expenses as set forth in the "Loan Agreement". The Secured Party-Lender requires execution of one or more security instruments in the form of a Deed of Trust, mortgage, equity pledge, or other security device encumbering the Lease to secure the financing required by the Lessee.

The encumbrance of the lease will be implemented through a document, "Agreement and Consent to Encumbrancing of Lease", that will include protections for the State land associated with the lease. These protections include requirements that: 1) no subsequent encumbrancing of the lease shall be executed without prior written consent of the Commission; 2) the Secured Party-Lender will be bound by all terms and conditions of the

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lease if it becomes lessee; and 3) any transaction requiring Commission approval and consent shall be void in the absence of such approval and consent.

The existing 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. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved.

For all the reasons above, staff believes that the proposed agreement and consent to encumbrancing of the lease will not result in a change in the use of, or impacts to, Public Trust resources 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. Approving an agreement and consent to encumbrancing of lease is not a project as defined by the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, sections 15378, subdivision (b)(5).

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed agreement and consent to encumbrancing of the lease will not impact 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; and is in the best interests of the State.

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AUTHORIZATION:

1. Authorize the Executive Officer or her designee to execute the document titled "Agreement and Consent to Encumbrancing of Lease", allowing Lessee's right, title, and interest in Lease No. PRC 9084.1 to be pledged as partial security for a loan in the principal amount not to exceed \$500 million in favor of Secured Party-Lender, in substantially the same form as that on file in the Sacramento office of the Commission; authorize the Executive Officer or her designee to execute, acknowledge, accept, and record all related documents as may be reasonably necessary to complete the transaction, effective upon signature by all parties.

2. Authorize the Executive Officer or her designee to give approval on behalf of the Commission of prospective purchases during a foreclosure sale and make any other approvals required of the Commission under the Agreement.

EXHIBIT A

PRC 9084.1

LAND DESCRIPTION

Three parcels of State owned land lying in the City of Burlingame, County of San Mateo, State of California, described as follows:

PARCEL A

Parcel 3 as described in Exhibit A of Grant Deed recorded in Book 6198, Page 76, Official Records of said County.

PARCEL B

The South 956 feet of Parcel 4 as described in Exhibit A of Grant Deed recorded in Book 6198, Page 76, Official Records of said County.

PARCEL C

Parcel 4 as described in Exhibit A of Grant Deed recorded in Book 6198, Page 76, Official Records of said County.

EXCEPTING THEREFROM the South 956 feet of said Parcel 4.

END OF DESCRIPTION

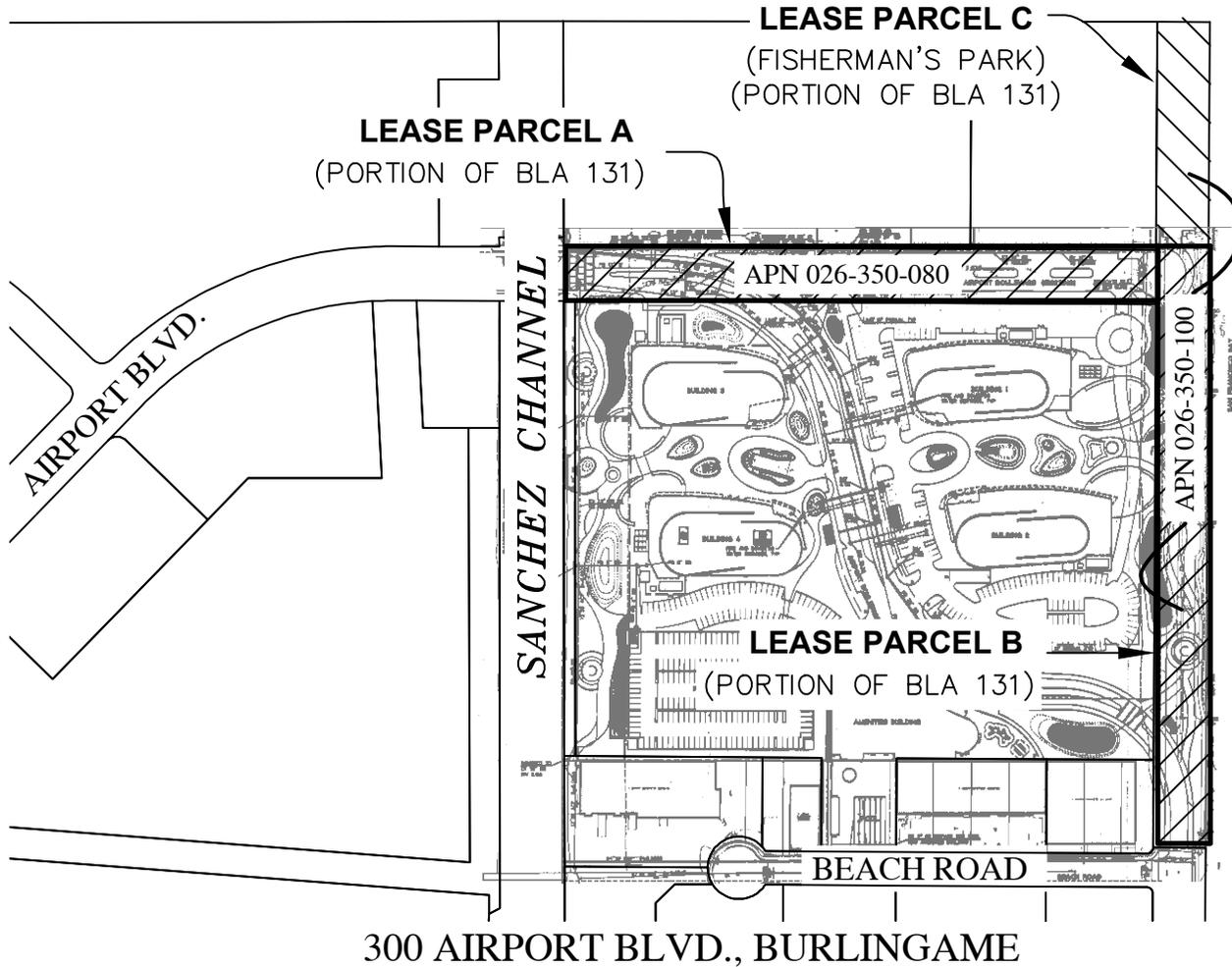
Prepared 2/10/2015 by the California State Lands Commission Boundary Unit.



NO SCALE

SITE

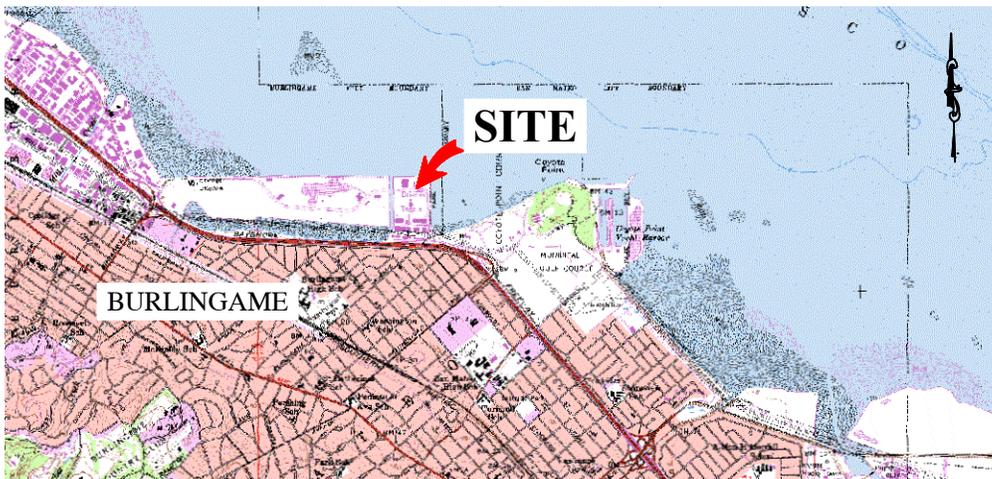
SAN FRANCISCO BAY



300 AIRPORT BLVD., BURLINGAME

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

PRC 9084.1

BURLINGAME POINT, LLC
APN 026-350-080 & 026-350-100
GENERAL LEASE -
RECREATIONAL, PROTECTIVE
STRUCTURE AND
RIGHT - OF - WAY USE
SAN MATEO COUNTY



DJF 12/17/18