

STAFF REPORT

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PRC 9084.1

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**RESCISSION OF APPROVAL AND 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, LLC

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.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6106, 6216, 6301, and 6501.1.

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Public Trust and State's Best Interests Analysis:

On April 5, 2019, the Commission authorized 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 JP Morgan Chase Bank, N.A. and Starwood Property Mortgage Sub-14-A, LLC, referred to collectively as the Secured Party-Lender ([Item C23, April 5, 2019](#)).

The Secured Party-Lender has informed Commission staff that the actual principal amount of the loan is \$515 million. Commission authorization is needed for a revised Agreement and Consent to Encumbrancing of Lease that incorporates the increased amount.

The purpose of the loan is to complete construction of an office development project on an adjoining property that will include improvements to the Bay Trail and shoreline access at the site. 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 and sea-level rise, and the shoreline will be improved with an extension of the Bay Trail including benches, trash receptacles, signage, lighting, viewing platforms with mounted binoculars, cantilevered overlooks, stormwater retention areas, and landscaping. Four stormwater outfalls will be removed and replaced with two 30-inch-diameter outfalls with associated headwalls.

As a condition of the loan for the project, the Secured Party-Lender requires execution of the proposed Agreement and Consent to Encumbrancing of Lease by the Commission. The Agreement is meant to protect the Secured Party-Lender's interest in the lease. Among other things, the Agreement states that the Commission will not terminate Lease No. PRC 9084.1 for a default or breach without providing the Secured Party-Lender with 60 days' written notice and opportunity to correct the default or breach. It states that if the lease is terminated early, the Commission will issue a new lease to the Secured Party-Lender or its designee for the term that would have remained in the original lease as long as the defaults or breaches are cured. And the Agreement prospectively authorizes the transfer or assignment of Lease No. PRC 9084.1 to the Secured Party-Lender, or their designee, if the Secured Party-Lender forecloses on the loan.

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The proposed Agreement retains protections for the State sovereign land associated with the lease. These include: 1) no subsequent encumbrancing of the lease shall be executed without prior written consent of the Commission; 2) the Secured Party-Lender or its designee will be bound by all terms and conditions of the lease if it becomes lessee; and 3) any transaction requiring Commission approval and consent is void without such approval and consent.

The proposed Agreement and Consent to Encumbrancing of Lease is necessary to allow the Lessee to implement the project. The project is expected to provide public benefits such as improvements to the Bay Trail and shoreline access at the site. These benefits will support Public Trust uses and values at the site.

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. Approval or denial of the authorization to execute the agreement and consent to encumbrancing of the lease is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land (including encumbrancing of a lease for sovereign land), it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. Upon expiration or prior termination of the lease, the lessee has no right to a new lease or to renewal of any previous lease.
2. 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; and Strategy 1.3 to protect, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways..
3. Approving an agreement and consent to encumbrancing of the 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).

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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 revised 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 encumbered lease; and is in the best interests of the State.

AUTHORIZATION:

1. Rescind the Commission's April 5, 2019 authorization of an Agreement and Consent to Encumbrancing of Lease No. PRC 9084.1.
2. 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 \$515 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.
3. Authorize the Executive Officer or her designee to give approval on behalf of the Commission of prospective purchases during a foreclosure sale and to 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

LEASE PARCEL C

(FISHERMAN'S PARK)
(PORTION OF BLA 131)

LEASE PARCEL A

(PORTION OF BLA 131)

APN 026-350-080

APN 026-350-100

LEASE PARCEL B

(PORTION OF BLA 131)

AIRPORT BLVD.

SANCHEZ CHANNEL

BEACH ROAD

300 AIRPORT BLVD., BURLINGAME



NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 9084.1

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



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.

DJF 7/25/19