

**STAFF REPORT  
C45**

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02/27/18  
PRC 4687.1  
A. Franzoia

**AMENDMENT OF LEASE AND REVISION OF RENT**

**LESSEE:**

Burlingame Bay Associates

**AREA, LAND TYPE, AND LOCATION:**

6.04 acres of filled and unfilled sovereign land in San Francisco Bay, in Burlingame, San Mateo County.

**AUTHORIZED USE:**

Use and maintenance of a restaurant, parking lot, lagoon, footbridge, paved pedestrian path, landscaping, and shoreline protection.

**LEASE TERM:**

66 years, beginning July 1, 1972

**CONSIDERATION:**

Current rent is one-half the net cash income from the lease property, which in no event shall be less than \$3,000 per year.

**PROPOSED AMENDMENT:**

Amend the lease to include provisions detailing the process for adjusting the rent on an annual basis beginning July 1, 2017; all other terms and conditions of the lease shall remain in effect without amendment. This lease currently provides that the Commission may modify the rent one time over the lease term, on or after July 1, 2007. Pursuant to this provision, staff conducted a review of the rent under this lease and recommends that rent be revised to a fixed rent of \$74,286 per year with an annual Consumer Price Index adjustment, effective July 1, 2016, provided the Lessee delivers a properly executed lease amendment to staff by June 1, 2018; otherwise to a fixed rent of \$97,665 per year, effective July 1, 2016.

**OTHER PERTINENT INFORMATION:**

1. On July 6, 1972, the Commission authorized a General Lease – Commercial Use for a term of 66 years, beginning July 1, 1972, and ending June 30, 2038, to Anza Pacific Corporation in conjunction with a Boundary Agreement and Land Exchange, (BLA 131) ([Item 24, July 6,](#)

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[1972](#)), for filled and unfilled submerged land in San Francisco Bay, in the city of Burlingame.

2. On March 25, 1976, pursuant to BLA 131, the Commission authorized an assignment ([Item 47, March 25, 1976](#)) from Anza Pacific Corporation to Anza Shareholder's Liquidating Trust (Anza Trust) for the purpose of receiving transfers or assignments of all the assets, liabilities, and properties of Anza Pacific.
3. On July 19, 1978, the Commission authorized a sublease under PRC 4687.1 ([Item 17, July 19, 1978](#)) between Anza Trust and Victoria Station, Inc., for construction of a restaurant on approximately 2.28 acres of the 6.04-acre lease premises.
4. On November 16, 1982, the Commission authorized an assignment of Lease No. PRC 4687.1 ([Item 1, November 16, 1982](#)) from Anza Trust to Kwok Hung Szeto and Nikki Szeto. At the same meeting, the Commission authorized an amendment to the assignment to substitute Burlingame Bay Associates as assignee.
5. On May 20, 1986, Victoria Station filed Chapter 11 bankruptcy and entered into an agreement to sell its leasehold interest and personal property to Restaurants Unlimited, Inc. The U.S. Bankruptcy Court stipulated to the assignment of lease and for modification of lease terms on September 26, 1986. On October 29, 1990, the Commission approved the amendment of the sublease between Burlingame Bay Associates and Restaurants Unlimited, Inc. ([Item C10, October 29, 1990](#)).
6. The lease has 20 years and 4 months remaining with no additional opportunity to modify the rental rate. Therefore, staff recommends that any new rent considers the time value of money by adjusting the rent annually by the California Consumer Price Index (CPI) to ensure the State obtains fair market rent for the lease. Such a change would require an amendment to the lease. If the Lessee does not agree to an amendment, staff recommends factoring the time value of money into the new annual fixed rent. Both options are factored into staff's recommendation.
7. On March 25, 2016, staff sent notice to the Lessee of staff's review of their rent pursuant to the terms of the lease. On March 31, 2016, staff received a response from the Lessee stating that they did not agree with staff's recommendation and that they would have the fair market value determined by a certified appraiser. Staff notified the Lessee that any adjustment to rent negotiated would be applied beginning on July 1, 2016,

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so that any additional time to reach a resolution would not be at the expense of the State.

8. Staff believed an agreement on the rent adjustment was imminent, until a letter was received from the Lessee on January 11, 2018, that appears to put the negotiations back to the beginning. The Lessee has proposed the rent be increased from one-half the net cash income from the lease property, which in no event shall be less than \$3,000 per year, to \$4,000 per year. Staff recommends a new rent be set that is fair and represents the best interests of the State while not unduly burdening the Lessee to a degree that would cause them to abandon the lease premises. Therefore, staff recommends two options for setting the rent.

Option 1: Set the new rent at \$74,286 per year, effective July 1, 2016, with an annual adjustment using the CPI, beginning July 1, 2017. The Commission regularly authorizes rents adjusted annually by the CPI to ensure rent remains current and relevant based on the time value of money. This annual adjustment should be memorialized, however, and staff recommends an annual CPI adjustment only if the Lessee agrees to a lease amendment specifying how and when CPI will be used.

Option 2: If the Lessee is not willing to amend the lease to allow for the annual adjustment of the rent, staff recommends that the rent be adjusted to \$97,665 per year. This proposed rent will allow the State to collect a fixed rent for the remaining term of the lease that considers the time value of money. This proposed rent averages the annual increase in the CPI over the last 20 years and projects the average increase forward over the remaining term of the lease.

9. This action is consistent with Strategy 2.2 of the Commission's Strategic Plan to ensure timely receipt of revenues and royalties from the use and development of State lands and minerals.
10. Approving the amendment of lease and revision of rent 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, section 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:

**AUTHORIZATION:**

1. Authorize an amendment of the lease to revise the rent from one-half the net cash income from the lease property, which in no event shall be less than \$3,000 per year, to a fixed rent of \$74,286 per year, effective July 1, 2016, with an annual CPI adjustment beginning July 1, 2017.
2. If the Lessee does not deliver a properly executed lease amendment to staff by June 1, 2018, authorize a revision of rent for Lease No. PRC 4687.1 from one-half the net cash income from the lease property, which in no event shall be less than \$3,000 per year, to a fixed rent of \$97,665 per year, effective July 1, 2016.

**EXHIBIT A**

**PRC 4687.1**

**LAND DESCRIPTION**

A parcel of State owned land lying the City of Burlingame, County of San Mateo, State of California, being a portion of Section 18, Township 4 South, Range 4 West, Mount Diablo Base & Meridian described as follows:

COMMENCING at the northwest corner of said Section 18; thence from said point along the north line of said Section 18 North  $89^{\circ} 43' 01''$  East 2258.92 feet to the POINT OF BEGINNING; thence from said point continuing along said north line of Section 18 North  $89^{\circ} 43' 01''$  East 523.17 feet; thence South  $0^{\circ} 16' 59''$  East 297.66 feet; thence along the arc of a curve to the right tangent to a line that bears South  $76^{\circ} 34' 43''$  East having a radius of 628 feet and a central angle of  $11^{\circ} 34' 43''$  and an arc length of 126.91 feet to a point in the exterior line of Anza Airport Park Unit No. 6 as shown on that certain map which was filed for record on February 27, 1970 in Volume 70 of Maps at Page 33, Records of San Mateo County, California; thence along said exterior line of Unit 6 South  $25^{\circ} 00' 00''$  West 149.09 feet; thence South  $89^{\circ} 43' 01''$  West 578.93 feet; thence North  $0^{\circ} 16' 59''$  West 474.74 feet to the POINT OF BEGINNING.

**END OF DESCRIPTION**

Revised by the California State Lands Commission Boundary Unit 08/14/2017. Original description prepared by Boundary and Title Unit on 10/28/1982 as found in PRC 4687 file, Calendar Item 26.



NO SCALE

# SITE

SAN FRANCISCO BAY

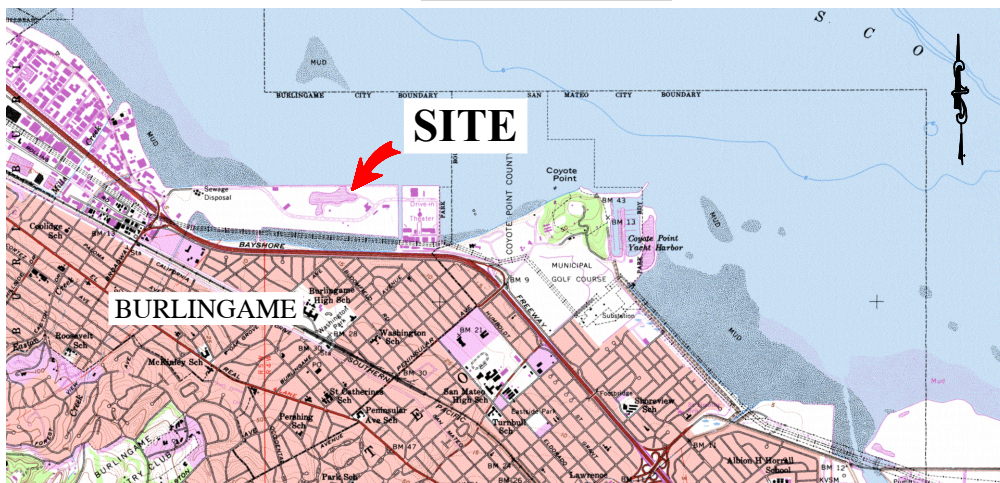
LEASE PARCEL



60 BAY VIEW PLACE, BURLINGAME

NO SCALE

# LOCATION



MAP SOURCE: USGS QUAD

## Exhibit B

PRC 4687.1  
 BURLINGAME BAY  
 ASSOCIATES  
 APN 026-363-510  
 GENERAL LEASE -  
 COMMERCIAL 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.

TS 08/14/17