

**STAFF REPORT
C46**

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02/27/18
PRC 4683.1
A. Franzoia

AMENDMENT OF LEASE AND REVISION OF RENT

LESSEE:

Che Sheng Chao and Wei Yuan Chao; Keith Kai Tsu and Carmelita Ko; Burk H. Chung and Mary A.L. Chung; Charles Nip and Patricia Nip; Raymond K. Li and Chi F. Li; and Kwok Hung Szeto and Nikki Szeto

AREA, LAND TYPE, AND LOCATION:

Filled and unfilled submerged sovereign land in San Francisco Bay, in Burlingame, San Mateo County.

AUTHORIZED USE:

Continued use, maintenance, and operation of a commercial parking lot.

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 \$626 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 \$59,580 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 \$78,331 per year, effective July 1, 2017.

OTHER PERTINENT INFORMATION:

1. Lessee has the right to use the land adjoining the lease premises.

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2. 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 as required by a Boundary Agreement and Land Exchange, (State Lands Commission File No. BLA 131) ([Item C26, July 6, 1972](#)), for filled and unfilled submerged land in San Francisco Bay, adjacent to the city of Burlingame.
3. On March 25, 1976, pursuant to BLA 131 the Commission authorized an assignment ([Item C47, March 25, 1976](#)) from Anza Pacific Corporation to Anza Shareholder's Liquidating Trust.
4. On December 16, 1980, the Commission authorized an assignment ([Item C29, December 16, 1980](#)) from Anza Shareholder's Liquidating Trust to Lessee.
5. 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 as described in the two options presented in item 7 below to ensure the State obtains fair market rent for the lease.
6. 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, so that any additional time to reach a resolution would not be at the expense of the State.
7. Staff believes an agreement on the rent adjustment is imminent; however the Lessee does not believe that an annual CPI adjustment is fair, nor consistent enough to give the Lessee the ability to plan with confidence. Therefore, staff recommends two options for setting the rent.

Option 1: Set the new rent at \$59,580 per year, effective July 1, 2016, with an annual CPI adjustment, 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.

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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 \$78,331 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 and gives the Lessee a flat fixed rent that will allow the Lessee to have the stability they desire over remaining term of the lease. This proposed rent averages the annual increase in the CPI over the last 20 years and projects the average increase over the remaining term of the lease.

8. 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.
9. 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).

EXHIBIT:

- A. Site and Location Map

RECOMMENDED ACTION:

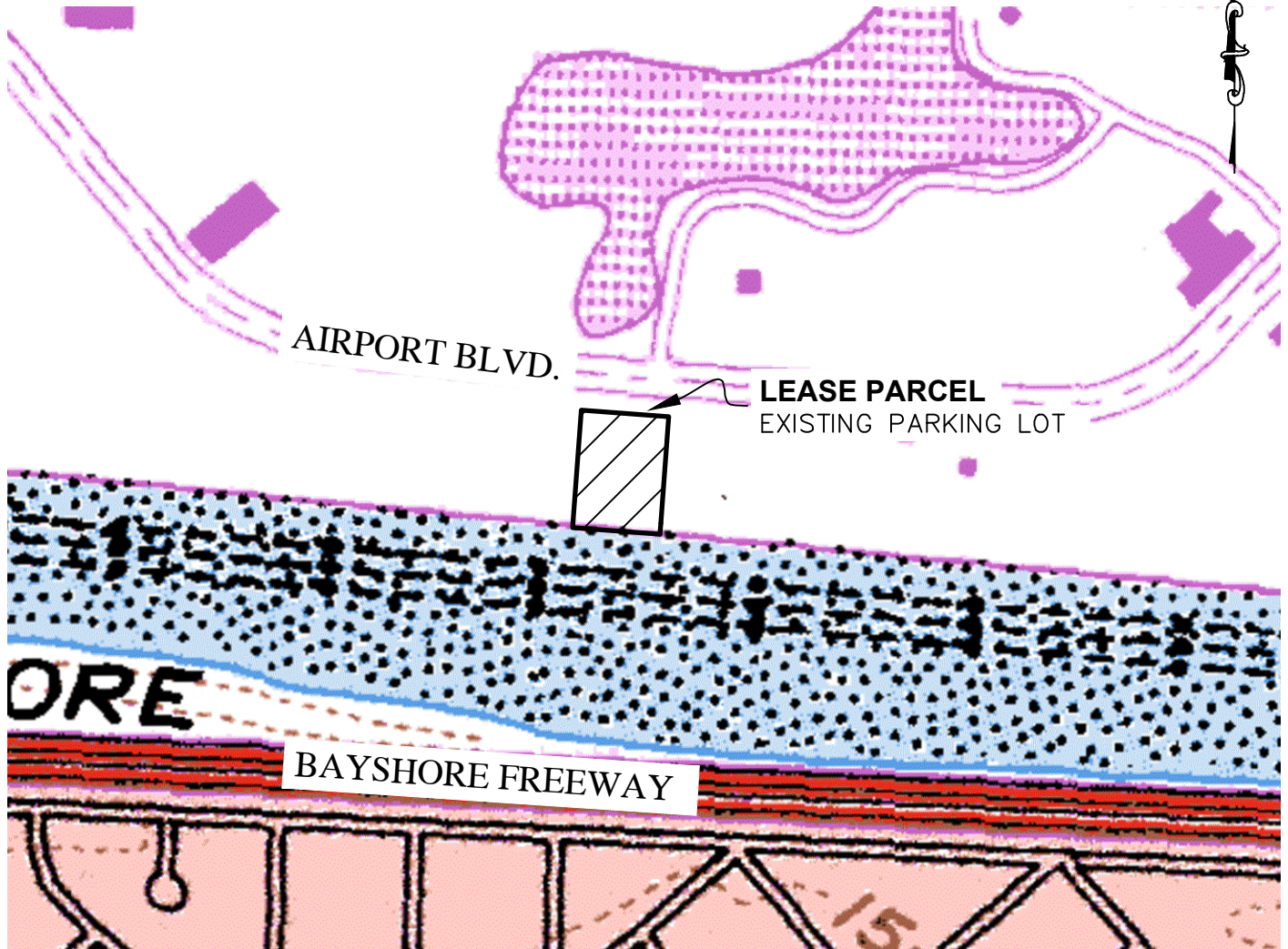
It is recommended that the Commission:

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 \$626 per year, to a fixed rent of \$59,580 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 4683.1 from one-half the net cash income from the lease property, which in no event shall be less than \$626 per year, to a fixed rent of \$78,331 per year, effective July 1, 2016.

NO SCALE

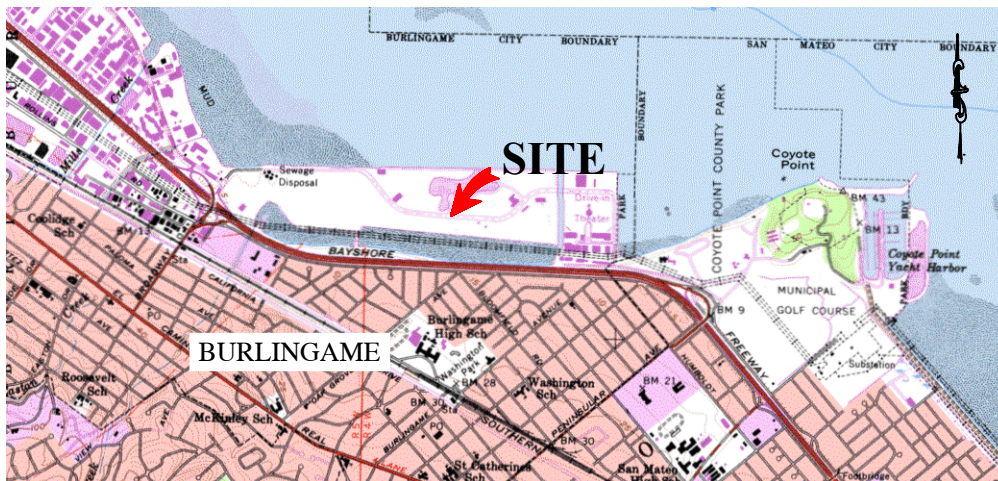
SITE



701 AIRPORT BLVD., BURLINGAME

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit A

PRC 4683.1

CHE SHENG CHAO AND
WEI YUAN CHAO, ET AL.

APN 026-344-100

COMMERCIAL LEASE
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.