

**STAFF REPORT**

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**AUTHORIZE THE EXECUTIVE OFFICER TO SOLICIT PROPOSALS,  
INFORMED BY THE PUBLIC TRUST NEEDS ASSESSMENT, FOR  
THE DEVELOPMENT, OPERATION, AND MAINTENANCE OF  
FILLED SOVEREIGN PUBLIC TRUST LAND, CONSISTING OF  
APPROXIMATELY 9.4 ACRES ADJACENT TO SAN FRANCISCO  
BAY, CITY OF BURLINGAME, SAN MATEO COUNTY**

**PARTY:**

California State Lands Commission

**BACKGROUND:**

On July 6, 1972, the Commission authorized the execution of a Boundary Settlement and Exchange Agreement (BLA 131) between the Commission, Anza Pacific Corporation, Transamerica Title Insurance Company, and other parties for filled and unfilled lands, near Burlingame, in San Francisco Bay ([Item 26, July 6, 1972](#)).

San Mateo County Assessor's Parcel Nos. 026-363-600 and -610 (Subject Property), as shown on Exhibit A, were confirmed as sovereign land by BLA 131 and remain undeveloped. A chain link fence encloses a portion of the Subject Property, while the remaining portion is open, providing public parking and access to an unimproved portion of the San Francisco Bay Trail (Bay Trail). The bayfront portion is unfenced and is lined with shoreline protection consisting of broken concrete which partially underlies and parallels the Bay Trail.

Pursuant to BLA 131, beginning in 1976 and continuing through 1983, the Commission authorized leases and subleases for various land uses on the Subject Property, ranging from restaurants and entertainment centers to hotels and convention centers, in alignment with City of Burlingame zoning and land use ordinances. For a variety of reasons, the property was never developed, and these authorizations were either rescinded or the leases were quitclaimed to the State.

On October 26, 1983, the Commission authorized three leases to The Burlingame Group for a hotel development at the Subject Property ([Item C28, October 26, 1983](#)). On two separate occasions, the Commission found the Lessee in breach of the leases for not paying rent and authorized termination of

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the leases ([Item C17, March 27, 1986](#) and [Item 15, July 16, 1987](#)). As part of a foreclosure, the leasehold interests were transferred to First South Savings and Loan, and the Commission recognized First South as Lessee on August 20, 1987 ([Item C16, August 20, 1987](#)). The Resolution Trust Corporation (RTC) was appointed receiver of First South on December 14, 1990. Under terms of a settlement with the RTC, the Commission received back rent along with \$200,000 for site clean-up, maintenance, and expenses to market the Subject Property. The \$200,000 was placed in the Kapiloff Land Bank Fund, and the three leases were terminated ([Item C52, October 17, 1995](#)).

On February 27, 1998, the Commission authorized use of the Kapiloff funds to conduct market studies, land use analysis, remove trash and debris, and install perimeter security fencing to prevent unauthorized trash dumping ([Item C83, February 27, 1998](#)). On April 24, 2001, the Commission authorized the Executive Officer to solicit proposals for the development and operation of a hotel ([Item C94, April 24, 2001](#)). On November 26, 2001, following market exposure to 1,100 prospective developers, the Commission received only one proposal. The Commission rejected the proposal submitted for not meeting the requirements of the Request for Proposals and authorized the Executive Officer to explore other avenues for site development ([Item C68, November 26, 2001](#)).

Since 1995, the site has remained unleased and has been intermittently maintained as needed. The Commission has expended most of the \$200,000 in settlement money received from RTC to market the site, demolish derelict storage buildings, install fencing and concrete barricades, and remove trash, debris, and vegetative overgrowth.

The existing shoreline protection and unimproved Bay Trail segment need rehabilitation and replacement. The shoreline protection was constructed when the site was filled in the 1960s and consists of broken concrete slabs, with exposed rebar, from the old San Mateo bridge. The unimproved dirt segment of the Bay Trail inhibits safe access to the bay waters, which have eroded soil around the protective structure, exposed rusted rebar, and created hazardous voids that are a liability risk to the State. The estimated cost to remove and replace the concrete shoreline protection is unknown, but significant.

There was little interest in the Subject Property until staff received an application from the City of Burlingame to develop a local park in 2013. Staff has since received six applications for various proposed uses of the Subject Property ranging from wetland and open space, to hotel development, and a combination hotel and park. Three applicants withdrew their applications for business reasons and three others withdrew their applications while the Public Trust Needs

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Assessment was being conducted. None of the applications were brought to the Commission for consideration.

On February 27, 2018, the Commission authorized a temporary moratorium on the acceptance and consideration of lease applications for the Subject Property for no longer than 12 months, unless the Commission directs otherwise, and directed staff to conduct a Public Trust Needs Assessment (PTNA) of the Subject Property and report back to the Commission on Public Trust needs in the area ([Item 93, February 27, 2018](#)).

### **PUBLIC TRUST NEEDS ASSESSMENT:**

On March 22, 2018, staff, in coordination with the City, held a public outreach meeting in Burlingame attended by more than 100 people. Attendees included staff from the offices of Senator Jerry Hill, Assemblymember Kevin Mullin, San Mateo County Supervisor Dave Pine, and the City, as well as current and former city council members, former lease applicants, current lessees, neighboring property owners, hotel labor union members, various advocacy organizations, and residents from the region.

Staff organized the comments received at the public outreach meeting, through phone conversations, email, and reported in person, based on the following general categories: Bay and Water Access; Parks (Active and Passive); Open Space, Preservation, and Restoration; Commercial Visitor Serving; and Miscellaneous. A draft of the PTNA was posted on the Commission's website on June 21, 2018, with a 30-day comment period that ended on July 23, 2018. The Final PTNA is attached as Exhibit B.

This PTNA is one of the tools used by the Commission to determine which uses for the Subject Property meet the needs of the statewide and regional public, are in the State's best interests, and align with the Public Trust Doctrine and the Commission's Vision, Mission, and Strategic Plan.

The public needs, as expressed in the public outreach meeting and other forms of input, are primarily focused on passive and recreational uses, such as open space, preservation, and restoration, Bay and water access, and park space. The public expressed a strong desire to keep and improve the existing Bay Trail as well as create a San Francisco Bay Area Water Trail access point for water-related activities. Numerous commenters observed that the location is uniquely suited for windsurfing and kiteboarding access due to wind conditions that are relatively rare in the rest of the county. These uses would support the regional and statewide effort to facilitate public access to and use of the State's waterways.

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Members of the public highlighted immediate needs for the site that should be addressed as soon as possible regardless of the long-term vision. Those short-term needs are to remove existing debris, fill voids in the Bay Trail, remove hazards along the shoreline, and provide basic site maintenance such as preventing vegetative overgrowth and providing trash service.

Most of the recommendations made by the public are consistent with the Public Trust Doctrine. Because Public Trust lands are held in trust for all citizens of California, they must be used to serve statewide and regional goals, as opposed to purely local benefit. Statewide public goals include increasing access to Public Trust lands for all members of the public regardless of race, gender, or socioeconomic status.

A hotel or other visitor-serving commercial use would also be consistent with the Public Trust Doctrine as a statewide or regional use that facilitates the public's enjoyment of the waterfront. While these commercial uses are not free for the public, they do offer access to all citizens statewide, and the rent generated from these facilities is deposited in the State's General Fund. With public recreational access to the Bay being the primary intended use of the Subject Property, visitor-serving commercial uses could function as ancillary, supportive facilities that provide overnight accommodations to travelers seeking Bay access and recreation. Bay Water Trail users, including long-distance paddlers, would also have additional access and overnight accommodations while traveling around the Bay. A visitor-serving commercial use would also provide the opportunity to include lease conditions for maintaining the entire Subject Property, including maintaining the shoreline protection, clearing trash and other site maintenance.

Environmental justice issues and concerns relevant to uses at this site include low-cost access to public lands and resources, climate change, and sea-level rise preparedness and adaptation. In addition, staff received comments that if the site is developed as a hotel or restaurant, the Commission should include a labor peace requirement in any lease.<sup>1</sup>

### **CLIMATE CHANGE:**

Climate change impacts, including sea-level rise, will directly affect the entire San Francisco Bay region. Given that the parameters of project proposals are unknown at this time, staff considered the high emissions scenario that models the energy sector throughout the 21<sup>st</sup> century using the most recent scientific findings. The high emissions scenario closely adheres to present-day emission levels and provides a conservative approach to planning and minimizing risk.

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<sup>1</sup> A labor peace agreement allows for union organizing efforts to take place at a worksite.

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These impacts could have potentially devastating economic, environmental, and social consequences in coastal areas due to their wide-ranging scope and scale. To protect Public Trust lands, resources, and values in the face of these threats, the Commission is committed to using the best available sea-level rise and climate change science and policy guidance from the State to inform its decision making on all projects on tidally influenced lands. In addition, adaptation strategies should be implemented that maximize public safety, environmental quality, economic sustainability, and hazard avoidance. The Commission has the responsibility to carefully evaluate all project proposals in coastal areas with climate resiliency and the protection of Public Trust lands and resources from sea-level rise and other climate change impacts in mind.

The site itself is approximately 11 feet above sea level. Under present sea-level conditions, the site and surrounding parcels are at low risk of flooding. The risk increases slightly when a 100-year storm or King Tide are layered on top. Generally, the models show the site relatively safe from flooding through 2060. By the end of the century, the high emissions scenario could result in 6.9 feet of sea-level rise. With a 20-year or 100-year storm layered on top, the model shows the shoreline completely flooded, as well as the majority of the site and the road into the site.

### **PROPOSED REQUEST FOR PROPOSAL PROCESS:**

Staff proposes a Request for Proposal process to solicit bids from qualified applicants for the development of the Subject Property. Generally, a Request for Proposal (RFP) is a document that a business, non-profit, or government agency creates to outline the requirements for a specific project. The RFP process will solicit bids from qualified entities and help identify which entity may be the best-qualified to complete the project. Staff proposes that the RFP would include, but may not be limited to, the following requirements:

- detail the Public Trust-consistent use(s) proposed
- demonstrate how public access to the Bay will be developed as a primary use of the property, including
  - recreational open space with restrooms and parking
  - Bay Trail access
  - water access, including access for water-based recreation
- discuss how the project will provide long-term maintenance for the site and submit a long-term maintenance plan
- detail how the project will rehabilitate or replace the existing shoreline protective structure and Bay Trail segment to minimize State liability risk and facilitate climate change resiliency and public trail access

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- detail how the project will adapt to climate change and sea-level rise based on the projections detailed in the attached PTNA (Exhibit B) through the year 2100
- detail how the full project will be funded, including site maintenance and shoreline/Bay Trail rehabilitation
- prepare and submit basic architectural features, including site plans and floor plans (if applicable)
- discuss how the project will avoid delays and disruptions in construction, operation and maintenance of facilities due to labor disruptions
- provide resumé of project team experience
- provide pro-forma financial package

Proposals would be evaluated by a review panel consisting of Commission staff (and third-party consultants if the Executive Officer deems it necessary) and ranked numerically on a number of factors, including a scoring incentive for providing access to all sectors of the public for the widest range of recreational uses. Staff would then negotiate a short-term lease agreement with the top ranked applicant. The purpose of the proposed short-term lease agreement is for the applicant with the highest score to have control of the lease premises to begin the CEQA review process and obtain other regulatory entitlements. This short-term lease agreement would be brought to the Commission at a properly noticed, public meeting for approval. Subject to approval by the Commission of the short-term lease, staff would then begin the CEQA process analyzing the proposed project. If agreement on a short-term lease cannot be reached with the first applicant, the second ranked, qualified applicant would be considered, continuing down the list until an agreement is reached. Staff plans to work closely with the City throughout this process to ensure that our collective objectives are being met. After the completion of the CEQA process, staff anticipates engaging in a longer-term lease negotiation with the applicant. The CEQA document and the proposed lease would be brought before the Commission at a properly noticed, public meeting for approval.

### **STAFF ANALYSIS AND RECOMMENDATION:**

#### **Authority:**

Public Resources Code sections 6005, 6009, 6102, 6210.4, 6210.5, 6301, and 6501.1; California Code of Regulations, title 2, sections 2000 and 2003.

#### **Public Trust and State's Best Interests Analysis:**

The PTNA provides insight on existing Public Trust needs in addition to other related considerations, such as sea level rise, environmental justice, and existing liability concerns.

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Approximately three quarters of the site is fenced off, experiences dumping of trash, and is not accessible by the public. The remainder of the site is available to the public but all improvements, including the Bay Trail, are deteriorating and in need of rehabilitation or replacement. Development of the site to improve public access and utilize the site to its fullest potential is in the State's best interest and would be more consistent with Public Trust principles than the current use.

The PTNA has helped guide staff's analysis for general uses, however specific creative and innovative design concepts should be fostered. Staff recommends soliciting proposals to develop the site to expand public access to the Bay waters and shoreline, improve the shoreline protection and Bay Trail, and create a waterfront destination that includes a diverse mix of Public Trust consistent uses.

The Request for Proposal (RFP) process is a competitive process regularly used by the public sector to obtain very complex and/or unique services in which professional expertise and methods may vary greatly and creative or innovative approaches are needed. The RFP process is generally used to solicit services, but in this case the RFP process will solicit creative and innovative development proposals.

The preference for using competitive methods of procurement is that they tend to promote transparency, efficiency, and minimize the perception of favoritism or bias. This will afford project proponents a commonly understood, fair, and equitable process in applying to develop the property. In line with the standard RFP process, applicants will be aware of the requirements, goals, and expectations for their proposal. Applicants will also be aware of how applications will be scored and what to expect long-term.

The selected project will need to be consistent with the information received from the PTNA and that meet the State's need associated with safe and equitable public access, including site maintenance, addressing the shoreline protective structure repair and maintenance needs.

### **Conclusion:**

For all the reasons above, staff believes that pursuing a Request for Proposal process for development of the site with Public Trust-consistent uses is in the best interests of the State and is consistent with the common law Public Trust Doctrine.

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**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 and Strategy 1.3 to protect, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
  
2. Authorization for the Executive Officer to solicit proposals for development of the subject Public Trust property is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action that will not result in direct or indirect physical changes in the environment. Any future development proposed for the Subject Property will be subject to subsequent CEQA review and evaluation.

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

**EXHIBITS:**

- A. Site and Location Map
- B. Final Public Trust Needs Assessment

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that the solicitation of proposals for development, operation and maintenance of the Subject Property will not substantially impair the public rights to navigation, recreation, and fishing or substantially interfere with the Public Trust needs and values at this location, at this time; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

**AUTHORIZATION:**

1. Authorize the Executive Officer or her designee to issue a Request for Proposals for development, operation, and maintenance of the Subject Property that includes, but is not limited to, the following requirements:
  - detail the Public Trust-consistent use(s) proposed
  - demonstrate how public access to the Bay will be developed as a primary use of the property, including

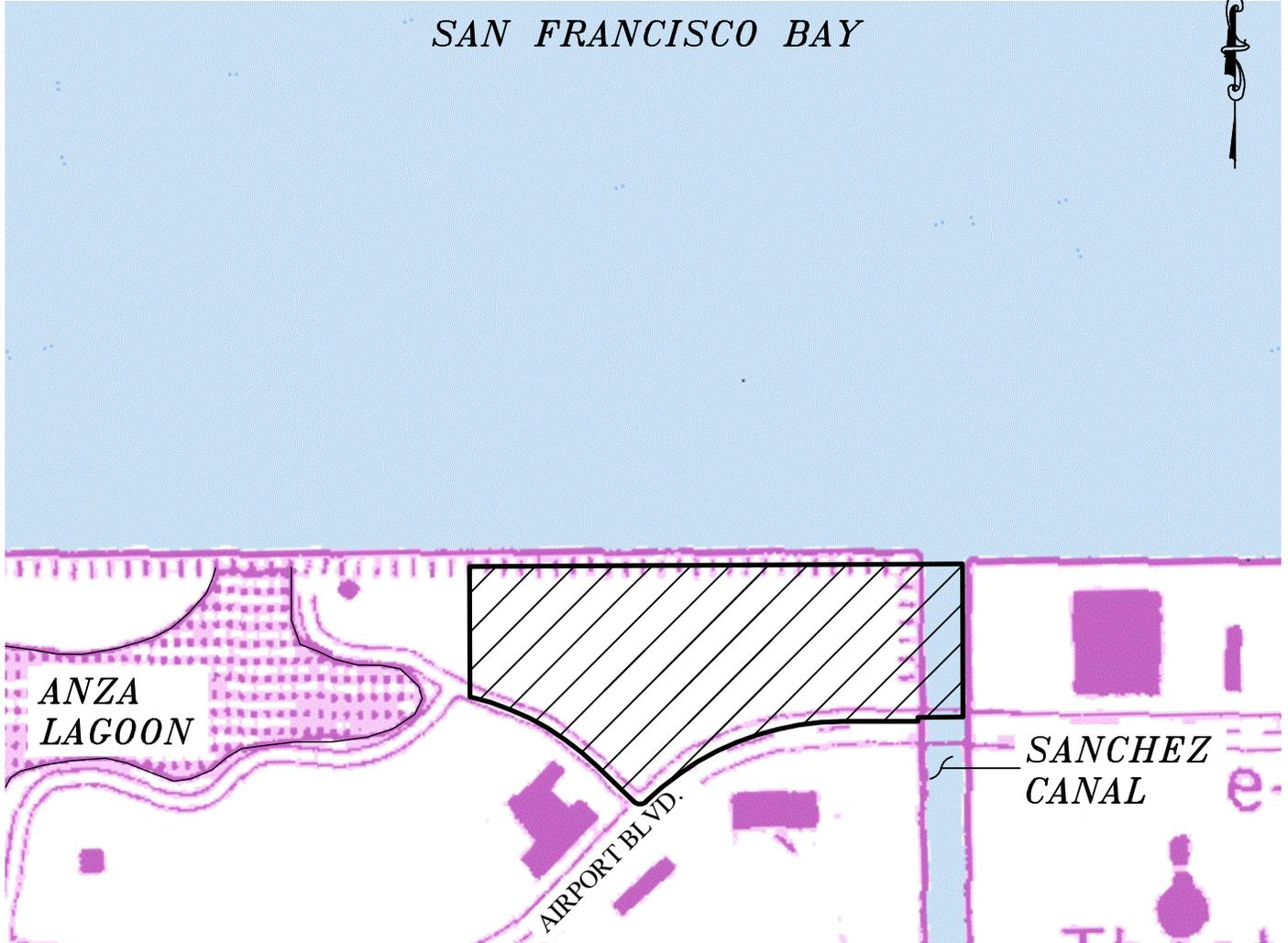
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- recreational open space with restrooms and parking
  - Bay Trail access
  - water access, including access for water-based recreation
  - discuss how the project will provide long-term maintenance for the site and submit a long-term maintenance plan
  - detail how the project will rehabilitate or replace the existing shoreline protective structure and Bay Trail segment to minimize State liability risk and facilitate climate change resiliency and public trail access
  - detail how the project will adapt to climate change and sea-level rise based on the projections detailed in the attached Public Trust Needs Assessment (Exhibit B) through the year 2100
  - detail how the full project will be funded, including site maintenance and shoreline/Bay Trail rehabilitation
  - prepare and submit basic architectural features, including site plans and floor plans (if applicable)
  - discuss how the project will avoid delays and disruptions in construction, operation and maintenance of facilities due to labor disruptions
  - provide resumé of project team experience
  - provide pro-forma financial package
2. Authorize the Executive Officer or her designee to evaluate the proposals by a review panel consisting of Commission staff (and third-party consultants if the Executive Officer deems necessary) and ranked numerically on a number of factors, including a scoring incentive for providing access for the widest range of recreational use and to all sectors of the public.
3. Authorize the Executive Officer or her designee to negotiate a proposed lease agreement with the highest-scoring applicant. If agreement on a lease cannot be reached with the first applicant, the second ranked qualified applicant would be considered, continuing down the list until an agreement is reached. Upon the conclusion of negotiations, a proposed short-term lease with the potential lessee for the purposes of beginning the CEQA process would be brought to the Commission for consideration at a regularly scheduled public meeting.

NO SCALE

# SITE

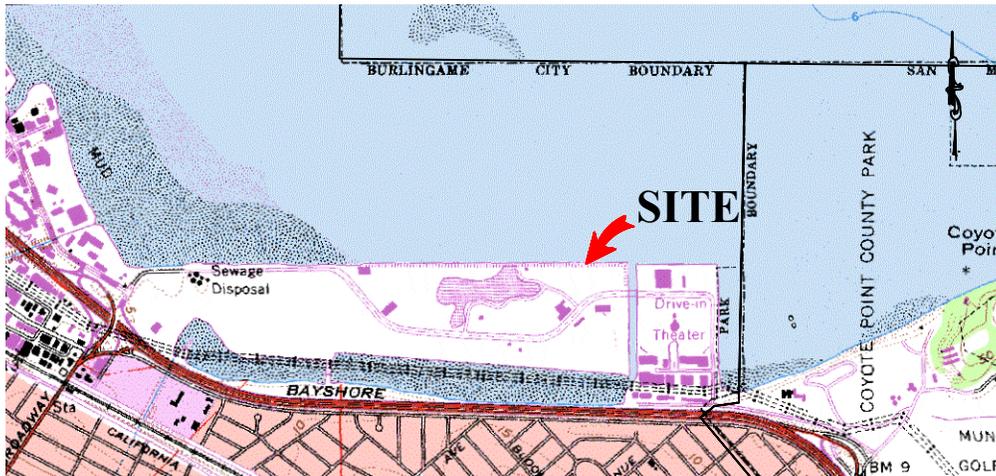
## SAN FRANCISCO BAY



410 AIRPORT BLVD., BURLINGAME

NO SCALE

# LOCATION



MAP SOURCE: USGS QUAD

# Exhibit A

APN 026-363-600 & 610  
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.

# Exhibit B

# PUBLIC TRUST NEEDS ASSESSMENT

410 AIRPORT BLVD.  
BURLINGAME  
SAN MATEO COUNTY



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## I. Background/Introduction

This Public Trust Needs Assessment evaluates the property located at 410 Airport Boulevard in Burlingame, San Mateo County (**Property**). As the 1956 aerial photograph above illustrates, the Property shown outlined in red was once underwater in San Francisco Bay (**Bay**). This Public Trust Needs Assessment will be one of the tools the Commission uses to determine which uses for the Property meet the needs of the statewide public, are in the state's best interests, and align with the Public Trust Doctrine and the Commission's Vision, Mission, and Strategic Plan<sup>1</sup>.

### A. History of the site

In the early 1960s, the Anza-Pacific Corporation (**Anza-Pacific**) began filling the Bay to develop the Anza Point Area. Concrete rubble and monolithic concrete slabs from the original San Mateo Bridge were used to form a perimeter protective barrier on

<sup>1</sup> Strategic Plan (<http://www.slc.ca.gov/About/StrategicPlan.html>)

approximately 146 acres of tide and submerged land as shown in the 1965 aerial photograph below.



This fill was performed without the knowledge or approval of the State Lands Commission (**Commission**). By the time Commission staff discovered the Bay being filled for development, a Reclamation District had already formed and millions of dollars in improvement bonds and loans had been issued to construct public infrastructure including sewer, water, storm drains, curb, gutters, sidewalks, and streets. Although Anza-Pacific claimed ownership of the areas it had filled, Commission staff objected, asserting that the development extended onto State-owned land under the Commission's jurisdiction.

In 1968, recognizing that the future of San Francisco Bay was a matter of national, State, and local concern, the Commission authorized staff and the Office of the Attorney General to jointly study the extent and nature of State ownership in San Francisco Bay. This study revealed title and boundary problems in the now-filled area in Burlingame.

The following year, Commission staff and Office of the Attorney General began negotiations with Anza-Pacific and its title insurer, Transamerica Title Insurance

Company, to resolve State ownership within the filled 146-acre area, known as the Anza Airport Park subdivision.

In recognition of the conflicting title evidence and the massive construction already under way, the State agreed to pursue a settlement rather than litigate to force removal of the fill. Following extended negotiations, an agreement to resolve the title and boundary disputes was reached providing that Anza-Pacific convey to the State all of its right, title and interest in 46 acres located within the 146-acre development. This agreement was formalized in July 1972, when the Commission authorized a Boundary Settlement and Exchange Agreement (**BLA 131**) with Anza-Pacific and Transamerica Title Company under Public Resources Code section 6307, securing title to 13 developing parcels, including one with a pre-existing lease, Lease No. 4562.1, and issuing 12 leases with 66-year terms to Anza-Pacific in the Anza and Anza Point Areas ([Item 26, July 6, 1972](#))<sup>2</sup>. The lands conveyed to the Commission were transferred in the character of sovereign land and impressed with the common law Public Trust.

The State-owned parcels under lease include both commercial and non-commercial uses. Commercial uses include a portion of an airport parking lot, an Embassy Suites Hotel, and Kincaid's Restaurant and parking lot (the hotel and restaurant leases also include a landscaped lagoon with walking path). Non-commercial uses include roads, access easements, Bay Trail segments, Robert E. Woolley Park, and Fisherman's Park.

The Property under evaluation, outlined in red in the photograph below, consists of approximately 9.4 acres. The filled portion is adjacent to Airport Boulevard on the south, Bay View Place on the west, San Francisco Bay on the north, and the Sanchez Channel on the east. The Property is predominantly unimproved with utility services available.

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<sup>2</sup> Commission Lease Numbers: PRC 4680.9, PRC 4681.9, PRC 4682.9, PRC 4683.1, PRC 4684.1, PRC 4685.1, PRC 4686.1, PRC 4687.7, PRC 4688.1, PRC 4689.1, PRC 4690.1, and PRC 4691.1.



## B. Previous development efforts and recent proposals

The Property is one of the last large undeveloped sites in the Anza Airport Park area. Over the years, the Commission authorized leases and subleases for various land uses on the Property ranging from restaurants and entertainment centers to hotels and convention centers in alignment with City of Burlingame (**City**) zoning and land use ordinances. For a variety of reasons, these authorizations were either rescinded or the leases were terminated or quitclaimed to the State and the Property was never developed.

In February 1998, the Commission authorized staff to conduct market studies and land use analysis for development of the Property, as well as housekeeping activities such as trash and debris removal and installation of a perimeter security fence ([Item C83, February 27, 1998](#)). In April 2001, based on the studies and analysis, the Commission authorized the Executive Officer to solicit proposals for the development and operation of a hotel ([Item C94, April 24, 2001](#)). In November 2001, following market exposure to 1,100 prospective developers, the Commission received only one proposal. The Commission rejected the proposal because it did not meet the requirements of the Request for Proposals, and it directed the Executive Officer to explore other avenues for

development of the Property consistent with the Request for Proposals ([Item C68, November 26, 2001](#)).

There was little interest in the Property until 2013. Since then, Staff has received multiple applications for uses including a city park, hotel development, combination hotel and park, and wetland/open space. During the last 5 years, staff has worked proactively with the City to clean up and maintain the Property, spending over \$100,000 to remove abandoned storage buildings; install fencing and barricades to prevent unauthorized use of the parking lot; use goats to reduce vegetation overgrowth; and visually inspect the conditions of the Property. Of particular concern is the condition of the unimproved Bay Trail segment and the shoreline concrete protection. The Bay Trail segment was built atop the perimeter concrete slabs from the old San Mateo Bridge that were used as fill in the area and is showing signs of erosion and the development of hazardous voids opening to rusted rebar, presenting a potential liability to the State.

Given the recent interest and diverse proposed uses for the Property, the Commission determined that a Public Trust Needs Assessment was needed to support decisionmaking on the future use of the Property. Applicants were asked to withdraw their applications without prejudice to give staff time to evaluate Public Trust needs at this location.

On February 27, 2018, the Commission placed a temporary moratorium on lease applications for the Property and directed staff to conduct a Public Trust Needs Assessment for the Property ([Item C93, February 27, 2018](#)). The applications pending at that time were withdrawn while staff prepared this Assessment.

## II. Understanding the Public Trust

### A. The Public Trust Doctrine and Public Trust lands

The Public Trust Doctrine originated in Roman law concepts of common property. Under Roman law, the air, the rivers, the sea, and the seashore were incapable of private ownership; they were dedicated to the use of the public (Institutes of Justinian 2.1.1). Under English Common Law, this principle evolved into the Public Trust Doctrine, through which the sovereign held the navigable waterways and submerged lands, not in a proprietary capacity, but as a “trustee of a public trust for the

benefit of the people” (*Colberg, Inc. v. State of California ex rel. Dept. Pub. Works* (1967), 67 Cal.2d 408, 416; *Martin v. Waddell* (1842) 41 U.S. 367, 410).

Upon admission to the Union in 1850, California, as a sovereign state, received title to these tide and submerged lands and navigable waterways under the Equal Footing Doctrine (*Pollard’s Lessee v. Hagan* (1845) 44 U.S. 212, 222-224; *State of Oregon v. Corvallis Sand & Gravel Co.* (1977) 429 U.S. 363, 370.). Under the Public Trust Doctrine, tide and submerged lands, including lands under navigable waterways (collectively referred to as “Public Trust lands” or “sovereign land”) are owned by the states and held in trust for the benefit of the public. Public Trust lands are not alienable in that the public’s interest in them cannot be extinguished (*People v. California Fish Co.* (1913) 166 Cal. 576 597-99; *Illinois Central v. Illinois* (1892) 146 U.S. 387; Cal. Const., art. X, § 4; Pub. Resources Code, § 7991). Public Trust lands cannot be bought and sold; only in rare cases may the Public Trust be terminated, and only where consistent with the purposes and needs of the trust (*City of Long Beach v. Mansell* (1970) 3 Cal. 3d 462). On tidal waterways, the State’s sovereign fee ownership extends landward to the ordinary high-water mark, as measured by the mean high-tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court decision. Public Trust lands may be used to promote water-dependent or water-oriented activities including, but not limited to, water-related commerce, navigation, fisheries, environmental preservation, and recreation. The Public Trust Doctrine and California’s Constitution establish the right of the public to access, use, and fish on Public Trust lands (Cal. Const., art. X, § 4; Cal. Const., art. I, § 25).

The California Legislature, representing the people of California, is the ultimate trustee of California’s Public Trust lands and resources and exercises its authority and responsibility to enact laws to protect and promote their prudent use. *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 425 states that the core of the Public Trust Doctrine is the State’s authority as sovereign to exercise a continuous supervision and control over the waters of the state and the lands underlying them. The Legislature has delegated to the Commission exclusive control and jurisdiction over ungranted Public Trust lands. (Pub. Resources Code, §§ 6216, 6301). The Commission

implements the Public Trust Doctrine through careful consideration of its principles within the specific context and location of proposed uses. In administering its trust responsibilities, the Commission exercises its discretionary authority in the best interests of the State, accommodating the changing needs of the public while preserving the public's interest in Public Trust lands for the purposes to which they are uniquely suited.

### B. Generally accepted Public Trust uses

Use of Public Trust lands is generally limited to water-dependent or water-related uses, including commerce, fisheries, and navigation, environmental preservation, and recreation. Recognized Public Trust uses include, among others, public access, ports, marinas, docks and wharves, buoys, hunting, fishing, bathing, swimming, and boating. Ancillary or incidental uses—uses that are not independently Public Trust-consistent but that are supportive and necessary for trust use, or that accommodate the enjoyment of Public Trust lands—are also permitted; examples include facilities to serve visitors, such as hotels and restaurants, shops, parking, and restrooms. Other examples of acceptable ancillary uses are commercial or industrial facilities that provide support to water-dependent uses that must be located on or directly adjacent to the water, such as warehouses, container cargo storage, and facilities for the transfer of oil and gas products through marine oil terminals.<sup>3</sup> Public Trust lands may also be kept in their natural state for habitat, wildlife refuges, scientific study, or use as open space (*Marks v. Whitney* (1971) 6 Cal.3d 251, 260).

### C. Uses inconsistent with the Public Trust

Uses that are generally not permitted on Public Trust lands are those that are not water-dependent or related, do not serve a regional or statewide public purpose, and can be located on non-waterfront property. Examples include residential and non-maritime related industrial, commercial, and office uses, as well as municipal uses like

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<sup>3</sup> See, e.g., *People v. City of Long Beach* (1959) 51 Cal.2d 875, 879-880 [proposed facility providing lodging and recreation for naval personnel and merchant seamen was consistent with and supported Public Trust use of harbor for commerce and navigation]; *Haggerty v. City of Oakland* (1958) 161 Cal.App.2d 407, 413-414 [proposed convention, banquet, and exposition facilities in City's port area found to be incidental to Public Trust use, as facilities would encourage associations and interested persons to learn about the port and exchange ideas about maritime commerce].)

schools and hospitals. Because Public Trust lands are held in trust for all citizens of California, they must be used to serve statewide goals, not purposes that are purely of local benefit (*Mallon v. City of Long Beach* (1955) 44 Cal.2d 199; Pub. Resources Code, § 6009).

#### D. Management of Public Trust lands

The Commission is committed to safeguarding and promoting public access to waterways and the coastline. Its core purpose is to protect the lands and resources entrusted to its care through balanced management, marine protection and pollution prevention, adaptation to climate change, and ensuring public access to these lands and waters for current and future generations of Californians.

Conflicts can arise over what uses are appropriate for lands, both filled and water-covered, subject to the Public Trust. Uses that do not protect or promote Public Trust values, are not water-dependent or oriented and exclude rather than facilitate public access and use are not consistent with the trust. As trustee, the Commission is responsible for managing California's sovereign land on behalf of the public. That trusteeship obligates the Commission to act as a fiduciary in protecting the public's rights and needs associated with its sovereign land. The Commission determines what uses are consistent with the Public Trust on a case-by-case basis, based upon the factual and legal circumstances involving a particular location and proposed use.

When use of sovereign land is sought by private parties or public agencies, the Commission not only determines whether the use is consistent with the Public Trust but also whether the use is in the State's best interests. Through lease agreements,<sup>4</sup> the Commission negotiates lease terms including: *consideration* to ensure the State and its people are fairly compensated for use of sovereign land; *length of the lease* to respond to changing physical, economic, and legal conditions relevant to use of the Property and to ensure the Commission can reevaluate and balance the previously authorized use with future Public Trust needs; *liability protection* to ensure the State is not liable for the lessee's use of public land and to protect public financial resources; and other specific

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<sup>4</sup> In addition to lease agreements, the Commission also issues permits for activities on State Lands, such as salvage permits and geothermal and mineral prospecting permits.

provisions that ensure performance under the lease and that any improvements are properly maintained and managed.

Waterways and waterfronts are highly prized both as private and public resources. The Public Trust Doctrine protects the public's right to and interests in these valuable lands and resources.

### III. State sovereignty with local collaboration:

State law vests the Commission with “exclusive jurisdiction over all ungranted tidelands and submerged lands owned by the State,” and provides that the Commission “shall exclusively administer and control all such lands, and may lease or otherwise dispose of such lands, as provided by law, upon such terms and for such consideration, if any, as are determined by it” (Pub. Resources Code, § 6301). The sovereign Public Trust status of these lands and the State's role as trustee means that the common law Public Trust Doctrine is often the key land use control exercised, rather than local land use regulation. However, the Commission often coordinates with local entities and planning agencies to help ensure that shoreline uses align with the Public Trust Doctrine, as well as adjacent local development, where such coordination is in the best interests of the State and its people. The Commission is coordinating with the City to help ensure that shoreline uses align with adjacent local land use requirements. This Public Trust Needs Assessment is intended to align the needs of the City, its residents, and other stakeholders with the Public Trust. The Commission also seeks to rely on the expertise of the City to ensure public safety through the application of local building codes, ordinances, and inspections.

#### A. City of Burlingame – 2006 Bayfront Specific Plan

The Bayfront Specific Plan includes the Anza Specific Plan.<sup>5</sup> Staff reviewed the local zoning to identify how Public Trust principles governing the Property fit with local planning laws, regulations and policies. Local zoning of the Property anticipates uses

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<sup>5</sup> City of Burlingame, 2006 Bayfront Specific Plan  
([https://www.burlingame.org/document\\_center/Planning/General%20and%20Specific%20Plans/Bayfront%20Specific%20Plan.pdf](https://www.burlingame.org/document_center/Planning/General%20and%20Specific%20Plans/Bayfront%20Specific%20Plan.pdf))

such as restaurants, motels and hotels, offices, accessory retail sales and personal service uses, and publicly owned recreation facilities.

## B. General Plan Update<sup>6</sup>

The City's current General Plan was adopted in October 1969. The General Plan Community Goals and Policy Plan for the Bayfront, including the Property, called for reserving sites closest to the shoreline for land uses that draw many visitors (i.e., hotels and restaurants); provide a continuous network of attractive and safe pedestrian and bicycle access along the shoreline and through the interior of the Anza Area; reserve prime hotel and restaurant sites and preserve them from early development for other land uses through the Specific Area as referenced in the 2006 Bayfront Specific Plan. The Bayfront Specific Plan identifies the Property, stating: "There are several vacant and underused parcels suitable for development in the Anza Area, one of which is owned by the State of California and is designated [by the City's General Plan] for hotels, destination restaurants and commercial recreation uses."<sup>7</sup>

In March 2015, the City initiated a General Plan Update (Update) and formed a Community Advisory Committee made up of local Burlingame communities and stakeholders to advise and make recommendations to the Planning Commission and City Council. To prepare for the Update, the City prepared an Existing Conditions Report that took a snapshot of current (2015) characteristics, trends, and conditions and provided a detailed description of a wide range of topics. Chapter 7 of the report (Open Space, Parks and Recreation) shows that the City has 21 parks encompassing 106.6 acres, including open space facilities for an estimated 2017 population of 30,301 people or 3.5 acres of park per 1,000 people.<sup>8</sup> The Committee held 18 meetings between July 2015 and August 2017. The Update articulates the shared community vision that will define the future and provide direction through 2040.

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<sup>6</sup> See City of Burlingame, 2017 General Plan Update-Envision Burlingame ([http://www.envisionburlingame.org/app\\_pages/view/17](http://www.envisionburlingame.org/app_pages/view/17))

<sup>7</sup> City of Burlingame, 2006 Bayfront Specific Plan, at p. III-8.

<sup>8</sup> See City of Burlingame, Existing Conditions, Chapter 7

([http://www.envisionburlingame.org/files/managed/Document/131/Ch%207%20Burlingame%20ECR%20Final%20Draft%20PARKS\\_updated.pdf](http://www.envisionburlingame.org/files/managed/Document/131/Ch%207%20Burlingame%20ECR%20Final%20Draft%20PARKS_updated.pdf))

The Update land use element for the Bayfront, including the Property, is Bayfront Commercial (BFC). The BFC designation provides opportunities for both local and tourist commercial uses, as well as public open space and shoreline access. Permissible uses include entertainment establishments, restaurants, hotels and motels, retail, and higher-intensity office uses. “Development in this area should prioritize public access to the waterfront; thus, the designation allows public open space and includes open space easements to implement local and regional trail plans, recreation, and habitat preservation objectives. The goal of the BFC designation is to provide a mix of uses, creating a welcoming environment for Burlingame residents and tourists alike to visit, shop, eat, bike and walk, and enjoy nature.”<sup>9</sup> Policy and Plan goals for the Bayfront include:

Goal CC-5: Maintain and promote the Bayfront Area as a premier destination along San Francisco Bay for land- and water-based recreation, hospitality uses, creative industries, logistics support, water-based transit service, and local businesses that benefit from proximity to San Francisco International Airport.

Goal CC-6: Establish a cohesive design character for the Bayfront Area that protects views to the waterfront, encourages walking.

The Update is expected to be considered by the City Council in the fall of 2018, the draft EIR is was released in June 2018, and the Bayfront Specific Plan will be changed to conform with the Update at a date to be determined.

### C. San Francisco Bay Trail<sup>10</sup>

The San Francisco Bay Conservation and Development Commission (**BCDC**) is a planning and regulatory agency with regional authority over the San Francisco Bay and the Bay’s shoreline band. BCDC partners with the California State Coastal

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<sup>9</sup> See City of Burlingame, Envision Burlingame, General Plan Update, Chapter IV, CC-8 ([http://www.envisionburlingame.org/files/managed/Document/333/Burlingame\\_Public\\_Draft\\_August2017\\_Chapter4\\_SEARCHABLE2.pdf](http://www.envisionburlingame.org/files/managed/Document/333/Burlingame_Public_Draft_August2017_Chapter4_SEARCHABLE2.pdf))

<sup>10</sup> See [San Francisco Bay Trail](#) , [Building the Trail](#), [Bay Trail FAQs](#) (<http://baytrail.org/>)

Conservancy (**Coastal Conservancy**) in development of the Bay Trail by requiring projects within their jurisdiction to provide public access.

The Bay Trail includes more than 350 miles of trail along the Bay, connecting communities to open spaces, schools, transit, and to each other, and provides an alternative commute corridor. Nearly 227 miles of the Bay Trail are paved, and 127 miles are natural surface trails of varying widths. In some locations, the Bay Trail consists of bike lanes and sidewalks. In addition to walkers and cyclists, the trail is used by joggers, skaters, birdwatchers, photographers, kite-flyers, and picnickers. The trail is 70 percent complete, and the ultimate goal is a continuous, 500-mile walking and cycling path around San Francisco Bay running through all nine Counties, 47 cities, and across seven toll bridges.<sup>11</sup> When completed, the Bay Trail will create connections between more than 130 parks and publicly accessible open space areas around San Francisco and San Pablo Bays. A 900-foot-long portion of the Bay Trail traverses the shoreline of the 410 Airport Boulevard property; it is only partially improved and needs repair. The potential exists for Bay Trail public access to be enhanced at this location.

#### D. San Francisco Bay Area Water Trail<sup>12</sup>

The San Francisco Bay Area Water Trail is a regional, nine-county program established in 2005 and led by the Coastal Conservancy in collaboration with the Association of Bay Area Governments, BCDC, and California State Parks Division of Boating and Waterways. The San Francisco Bay Area Water Trail (**Water Trail**) is a voluntary, planned network of access sites, or “trailheads,” designed to help people using non-motorized small boats or boards (collectively referred to as NMSBs) safely enjoy the historic, scenic, cultural, and environmental richness of San Francisco Bay through single and multiple-day trips. The program focuses principally on the following kinds of non-motorized boating: kayaking, windsurfing, stand-up paddling, kite boarding, canoeing, outrigger canoeing, whale boating, dragon boating, rowing, and sculling.

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<sup>11</sup> See The [Bay Trail Plan \(http://baytrail.org/plans-publications/\)](http://baytrail.org/plans-publications/) for development of the trail prepared by the Association of Bay Area Governments pursuant to Senate Bill 100 (Lockyer, 1987).

<sup>12</sup> See [San Francisco Bay Water Trail \(http://sfbaywatertrail.org/\)](http://sfbaywatertrail.org/). The program was established by Assembly Bill 1296 (2005) which added Gov. Code, § 66690 and amended Pub. Resources Code, §§ 31161, 31162, and 31163.

The Water Trail joins the ranks of other regional trail systems: the Bay Trail discussed above; the Bay Area Ridge Trail, a 550-plus mile trail for hikers, mountain bicyclists, and equestrians along the ridgelines overlooking San Francisco Bay, and the Great California Delta Trail. The Water Trail is different from these other trails in two notable ways: it is non-linear, and it is on the water. It does, however, include a network of land-based trailheads, which open the door to single-day trips with one or more stops, and multiple-day trips with overnight stays at campsites, hotels, hostels, and even historic ships.

The Property could provide another trailhead access point and launching platform for NMSBs. In San Mateo County, the nearest existing trailhead is at Bay Winds Park in Foster City, approximately 4 miles away.

#### IV. Public outreach

In its role as trustee of Public Trust lands, the Commission must weigh many factors to determine the state's best interests and the most appropriate potential Public Trust-compatible uses for the Property. Public input and needs, in conjunction with statewide priorities, are critical factors to be considered.

##### A. Timeline and details of public outreach efforts

Staff coordinated with the City in planning a public outreach meeting in Burlingame to ensure broad outreach and gather public comment on the development of this Public Trust Needs Assessment. A Public Meeting Notice was posted at multiple locations on the fence surrounding the Property, the City's website, the Commission website, Facebook, Twitter, Instagram, and the *San Mateo Daily Journal* newspaper.

The public outreach meeting was held on March 22, 2018, at the City's Park and Recreation meeting room. More than 100 people attended, including staff to Senator Jerry Hill, Assemblymember Kevin Mullin, and San Mateo County Supervisor Dave Pine; City staff and current and former city council members; former lease applicants; current lessees; neighboring property owners; hotel labor union members; advocacy organizations; and Burlingame and San Mateo residents. After staff presented an overview and answered questions, the group was broken into smaller groups, each with a facilitator to record the public's input.

## B. Summary of public comments

After the conclusion of the breakout sessions, the facilitators provided their notes to Commission staff. The following is a summary of potential uses for the Property suggested by people attending the public outreach meeting, as well as comments received through phone conversations and email. Staff has organized the comments into general categories:<sup>13</sup>

**BAY AND WATER ACCESS:** Bay Trail, Bay access, water sports, canoes, boating, water train, fishing, wind surfing, dragon boats, outrigger canoes, rowing sculls, sailboats, kayaking, kite surfing and boarding, and paddle boarding

**PARKS (ACTIVE/PASSIVE):** recreation, benches, dog park, baseball field, mixed use Bayside park, barbeques, bicycling, bocce ball, community gathering, jogging trails, large grass area, soccer, soccer field, sports fields, walking trails, water access

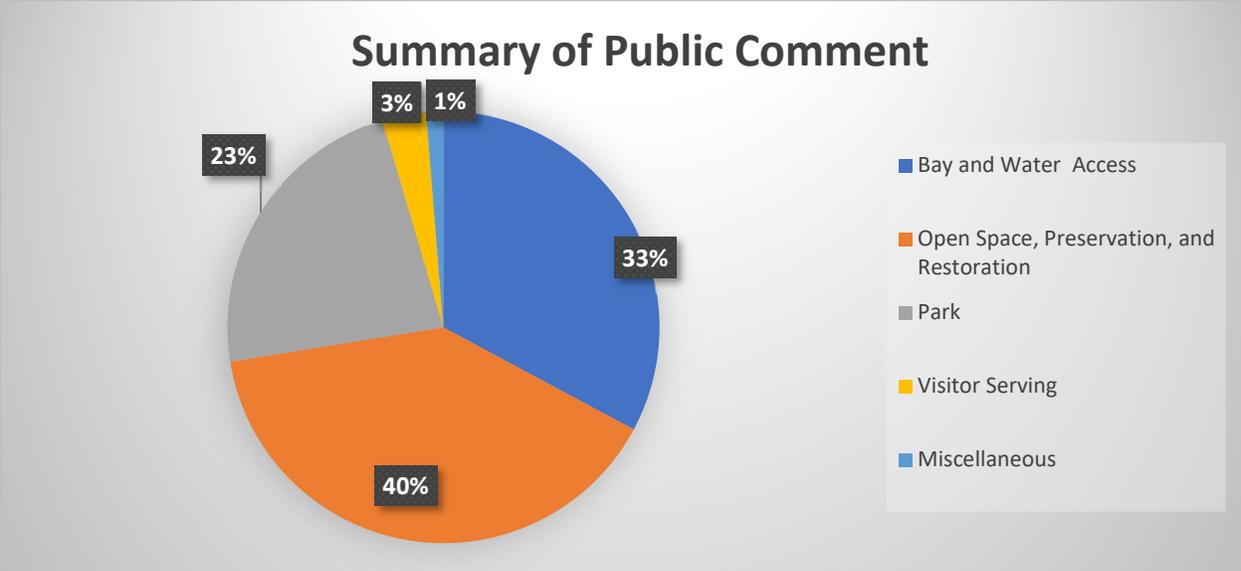
**OPEN SPACE, PRESERVATION, AND RESTORATION:** keep open, preserve, wildlife, habitat, wetlands, Bay view, sea-level rise modeling, nature, restoration, bird watching, rejuvenate shoreline

**COMMERCIAL VISITOR SERVING:** hotel, retail space, ferry terminal, outdoor stage, entertainment, restaurant

**MISCELLANEOUS:** housing, museums, observatories, outdoor stage, entertainment

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<sup>13</sup> Many specific uses were repeated under different categories in public comments. For simplicity, specific uses are shown only once under category groupings, although uses like Bay Trail and Bay access were mentioned by public commenters as priorities under all categories.



### V. Public Trust needs assessment

While staff was focused on collecting public comments for the long-term use of the Property, many people conveyed concerns about the Property being underused and inaccessible to the public for over 40 years. Concern was also expressed over its current condition and about immediate concerns for the site that should be addressed as soon as possible regardless of the long-term vision. Those short-term priorities are to clean up trash, fill voids in the Bay Trail, remove hazards along the shoreline, and provide site maintenance such as preventing vegetative overgrowth and providing trash service.

The public’s preferences for long-term use were primarily focused on passive recreational uses, such as open space, preservation, and restoration, Bay and water access, and park space. In conjunction with park and open space, the public expressed a strong consensus to keep and improve the Bay Trail, with the potential creation of a Bay Water Trail access point, and more access to the Bay for water-related activities. These potential uses align with the regional and statewide effort to keep public access and use of the State’s waterways open and available to the public. Numerous commenters (both verbal and written) observed that the location is uniquely suited to provide access for windsurfing and kiteboarding due to wind conditions that are relatively rare in the rest of the country. While windsurfers and kiteboarders currently

have access at nearby Coyote Point, planned high-rise development at 300 Airport Boulevard, upwind of the point, will negatively impact wind conditions there.

This region also has several public parks and recreational facilities. The Anza Point area is home to Fisherman’s Park, Robert E. Woolley Peninsula Park, Bayside Fields, and Burlingame Golf Center. Immediately east of the Anza Point area is the 670-acre Coyote Point Visitor Area. While San Mateo County is well situated with 42 percent of its lands dedicated to parks and open space, most of those lands are located inland. Most development in the county is along its northern border with San Francisco County and along the eastern shoreline along the San Francisco Bay.

While there was some interest in commercial visitor-serving uses, many commenters stated that those uses were already well represented in the area. The Anza Airport Park subdivision area has six hotels (Embassy Suites by Hilton San Francisco Airport Waterfront, Double Tree by Hilton San Francisco Airport, Red Roof Plus San Francisco Airport, Hilton Garden Inn San Francisco Airport, and the San Francisco Airport Bayfront Hilton) and nine restaurants (Gabriel & Daniel's Mexican Grill, 37 North Restaurant and Bar, Leann Café, Tap & Tavern, Kincaid’s, Fire-Vine Grill, Waterfront Café, Gi-Gi’s Café, and YAY Café). Many San Mateo County hotel workers commented that, if the Commission decides to allow hotel use of the Property, it should include a labor peace requirement.<sup>14</sup> In written comments, UNITE HERE Local 2 commented that such a requirement would help to protect the State by reducing the risk of disruptions such as strikes, pickets, or boycotts that might impact the State’s return on its land lease for a hotel project, and is consistent with the Commission’s role as a fiduciary protecting public rights associated with sovereign lands.

#### A. Uses consistent with the Public Trust

As previously discussed, many Public Trust uses are water-related in nature. However, because the Property is no longer submerged, non-water-related uses are more heavily considered than they typically would be for a submerged piece of Public Trust land. Public sentiment was overwhelmingly tied to Bay and water access, open space, preservation and restoration, and park, all of which are generally Public Trust-

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<sup>14</sup> A labor peace agreement allows for union organizing efforts to take place at a worksite.

consistent uses. While not as well represented through public comment, other uses were proposed that could be Public Trust-consistent, or ancillary uses that would not conflict with the Public Trust (more detail would be needed for each of these to ensure Public Trust consistency): hotel, retail space, ferry terminal, outdoor stage, entertainment, restaurant, and museum.

#### B. Uses inconsistent with the Public Trust

Residential use is not consistent with the Public Trust, and although affordable housing is a recognized need in the Bay Area and throughout California, it is not a Trust-consistent use. Private, residential occupancy of sovereign land confers a purely local benefit and does not provide a benefit to people of California statewide. Houses, condominiums, apartments, and timeshares exclude the general public, are not visitor serving, are not water-dependent, and can be located on non-waterfront property. Residential use is also not incidental to any Public Trust use: it does not further or encourage recognized Public Trust uses and instead deprives the public of access to the tidelands for recreational, navigation, and similar Public Trust Purposes.

An observatory might attract visitors to the area; however, an observatory does not directly promote enjoyment of the Bay and is a non-water dependent use that could be located somewhere else. Neither the observatory or the Bay enhance the experience of the other. Similarly, a museum generally does not need to be located adjacent to the Bay, but a museum that promotes and is related to the waterfront, such as a maritime history museum, may be appropriate.

An entertainment venue or outdoor stage could be acceptable if it were open to the public most of the time and ancillary to other uses of the Property that are Public Trust-consistent. However, a stage or entertainment venue that does not appropriately interplay with the Bay and excludes public use would be unacceptable.

While a park may be consistent with the Public Trust, it is important to note that a park used for local programmed uses may not be Public Trust-consistent. A programmed use, such as regular use by organized sports clubs and leagues, will reserve use of a park on evenings, weekends, and over holiday weekends for tournaments. In the case of many organized sports clubs (for example: soccer, baseball, shooting, etc.), the use is not Public Trust-consistent because it is not water-

dependent or related, is not maritime related or visitor serving, and can be located on non-waterfront property. When local individuals and families attend a local sporting event, they might enjoy being near the water, but the purpose of going to the park is to be involved with or watch the event. While these kinds of municipal uses might be successful at attracting a high number of local visitors, care must be taken so local uses do not deter use by the statewide public. Sovereign land is a limited resource that should be prioritized for water-dependent or water-related uses.

### C. Statewide benefits and local preferences: identifying the overlap

Most of the recommendations made by the public are consistent with both the Public Trust and local planning. Because Public Trust lands are held in trust for all the people of California, they must be used to serve statewide goals, as opposed to purposes that are of purely local benefit. Statewide public goals are to increase access and availability of Public Trust lands.

Open space, preservation, and restoration had the highest level of interest among public commenters. This use may also align with the City's current planning for the area provided it includes land- and water-based recreation, encourages pedestrian access, and protects views of and access to the waterfront.<sup>15</sup>

Commercial visitor-serving uses were some of the least-mentioned by public commenters, but that use type is consistent with both the Public Trust and local planning. In addition, commercial visitor-serving uses are generally uses with a statewide benefit and perhaps less of a local benefit. Hotels, restaurants, and other visitor-serving commercial uses might serve local residents, but they focus heavily on travelers from all over the State. While these commercial uses are not free for the public, they do offer access and complement enjoyment of the shoreline and provide income to the State's General Fund through rent payments, benefiting all residents. For example, the Embassy Suites Hotel located on sovereign land near the Property provides an average annual rental of approximately \$1,265,000 to the State.

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<sup>15</sup> See, e.g., City of Burlingame, 2006 Bayfront Specific Plan, at p. III-8 and City of Burlingame, Envision Burlingame, General Plan Update, Chapter IV, p. CC-8.

Overall, the Public Trust-consistent uses recommended by the public have both regional and statewide benefits and are generally allowed under local planning through the appropriate permitting process.

## VI. Related considerations

### A. Sea-level rise and climate change

#### 1. State and Commission policies and guidance

Climate change impacts, including sea-level rise, more frequent and intense storm events, and increased flooding and erosion, will directly affect the entire San Francisco Bay region. These impacts could have potentially devastating economic, environmental, and social consequences in coastal areas due to their wide-ranging scope and scale. To protect Public Trust lands, resources, and values in the face of these threats, the Commission is committed to using the best available sea-level rise and climate change science and policy guidance from the State to inform its decision making on all projects on tidally-influenced lands. The State has adopted climate change policies that emphasize, in addition to rigorous efforts to stem greenhouse gas emissions, the importance of adaptation planning to minimize the risks posed to communities and the State's resources. The State has directed statewide agencies and local jurisdictions to engage in proactive adaptation planning through legislation, such as SB 379<sup>16</sup>, and Executive Orders like EO B-30-15<sup>17</sup>, and major policy directives and guidance, like the newly updated 2018 *Safeguarding California Implementation Plan*. Planning guidance has been issued to local jurisdictions by the State's main coastal regulatory agencies, the California Coastal Commission and BCDC.<sup>18</sup>

The Commission must use the best available science for scenario-based planning that assesses vulnerability as a function of risk exposure and adaptive capacity. In addition, adaptation strategies should be implemented that maximize public safety, environmental quality, economic sustainability, and hazard avoidance. Therefore, the Commission has the responsibility to carefully consider all project

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<sup>16</sup> SB 379, (Year) requires General Plans to include climate change considerations and planning.

<sup>17</sup> EO B-30-15 requires all state agencies to include climate adaptation planning in their decision-making processes.

<sup>18</sup> E.g. The Coastal Commission's 2015 Sea Level Rise Policy Guidance, and BCDC's Adapting to Rising Tides Project.

proposals in coastal areas through the lens of climate resiliency and the protection of Public Trust lands and resources from sea-level rise and other climate change impacts.

## 2. Sea-level rise projections for vicinity

The Commission will consider sea-level rise projections through 2100 to analyze the Property using the most recent scientific findings. Over the last decade, sea-level rise and climate change science has significantly improved with the expansion of new research and technological capabilities that allow for more accurate predictions of future conditions. Last year, the state issued the report *Rising Seas in California: An Update to Sea-Level Rise Science* (Ocean Protection Council (**OPC**), 2017), which included a more robust accounting of ice melt than previous climate change projection studies. The new models now integrate projected rates and volumes of ice sheet melt with other changes to atmospheric and oceanic geophysical processes like precipitation patterns and ocean currents that are affected by the concentration of greenhouse gasses. Though there is still a degree of uncertainty associated with these models, some clear trends have emerged. The rate of overall global sea-level rise has more than doubled from the 20<sup>th</sup> century to the 21<sup>st</sup> century, and ice loss from the Greenland and Antarctic sheets is more significant than previously realized and will soon be the leading contributor to sea-level rise (OPC, 2017). It is possible, if those rates continue to accelerate in response to steadily climbing greenhouse gas emissions and temperatures, that there will be extreme sea-level rise after 2050 as a result of rapid and irreversible ice loss<sup>19</sup>.

Another feature of the new science report and subsequent guidance is that projections of future sea-level rise are expressed as a range corresponding to different greenhouse gas emissions scenarios and different amounts of risk tolerance. The low emissions scenario is based on a future global energy sector that pivots sharply away from fossil fuels to widespread renewable energy sources, while the high emissions scenario models an energy sector throughout the 21<sup>st</sup> century that closely adheres to present-day emissions levels. The probability of either of these emissions scenarios

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<sup>19</sup> This scenario is called the H<sup>++</sup> scenario, and it would essentially double the amount of currently anticipated sea-level rise between 2050 and 2100 (and beyond). However, scientists do not have enough information yet to predict the probability or likelihood of the scenario occurring.

occurring informs the amount of risk tolerance a given project, or geographic area, may possess. According to the *State of California Sea-Level Rise Guidance: 2018 Update*, a project or geographic area with low risk aversion will be one that tolerates higher total water levels (therefore ‘low risk aversion’ signals ‘high risk tolerance’) because of attributes such as open space, minimal development, and the presence of few sensitive species and habitat. Conversely, a project or geographic area with high risk aversion will be one that cannot tolerate higher total water levels (indicating ‘low risk tolerance’) due to the presence of critical infrastructure or development, or highly sensitive species and habitats, or a combination of both.

For this site, in accordance with the updated State guidance, it is important to consider different scenarios of sea-level rise to adequately evaluate the various project options that could be implemented. The following table details the projected amounts of sea-level rise relative to risk capacity for the nearest tidal gauge to the Property (National Oceanic and Atmospheric Administration - Golden Gate Tidal Gauge):<sup>20</sup>

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<sup>20</sup> OPC, 2018. P. 18. Table 1: Projected Sea Level Rise (in feet) for San Francisco.

		Probabilistic Projections (in feet) (based on Kopp et al. 2014)				H++ scenario (Sweet et al. 2017) *Single scenario
		MEDIAN	LIKELY RANGE	1-IN-20 CHANCE	1-IN-200 CHANCE	
		50% probability sea-level rise meets or exceeds...	66% probability sea-level rise is between...	5% probability sea-level rise meets or exceeds...	0.5% probability sea-level rise meets or exceeds...	
				Low Risk Aversion	Medium - High Risk Aversion	Extreme Risk Aversion
High emissions	2030	0.4	0.3 - 0.5	0.6	0.8	1.0
	2040	0.6	0.5 - 0.8	1.0	1.3	1.8
	2050	0.9	0.6 - 1.1	1.4	1.9	2.7
Low emissions	2060	1.0	0.6 - 1.3	1.6	2.4	
High emissions	2060	1.1	0.8 - 1.5	1.8	2.6	3.9
Low emissions	2070	1.1	0.8 - 1.5	1.9	3.1	
High emissions	2070	1.4	1.0 - 1.9	2.4	3.5	5.2
Low emissions	2080	1.3	0.9 - 1.8	2.3	3.9	
High emissions	2080	1.7	1.2 - 2.4	3.0	4.5	6.6
Low emissions	2090	1.4	1.0 - 2.1	2.8	4.7	
High emissions	2090	2.1	1.4 - 2.9	3.6	5.6	8.3
Low emissions	2100	1.6	1.0 - 2.4	3.2	5.7	
High emissions	2100	2.5	1.6 - 3.4	4.4	6.9	10.2
Low emissions	2110*	1.7	1.2 - 2.5	3.4	6.3	
High emissions	2110*	2.6	1.9 - 3.5	4.5	7.3	11.9
Low emissions	2120	1.9	1.2 - 2.8	3.9	7.4	
High emissions	2120	3	2.2 - 4.1	5.2	8.6	14.2
Low emissions	2130	2.1	1.3 - 3.1	4.4	8.5	
High emissions	2130	3.3	2.4 - 4.6	6.0	10.0	16.6
Low emissions	2140	2.2	1.3 - 3.4	4.9	9.7	
High emissions	2140	3.7	2.6 - 5.2	6.8	11.4	19.1
Low emissions	2150	2.4	1.3 - 3.8	5.5	11.0	
High emissions	2150	4.1	2.8 - 5.8	5.7	13.0	21.9

To understand how the Property will be affected by different amounts of sea-level rise, Commission staff used the free, public online Flood Map viewer from Our Coast Our Future to visualize different sea-level rise and flooding scenarios.<sup>21</sup> The Flood Map can simulate both rising total sea levels and various storm and tidal conditions, including annual, 20-year, and 100-year storms and King Tides.<sup>22</sup> For this assessment, staff considered the ‘high emissions’ scenario in order to apply a conservative approach to planning and minimize the most amount of risk, given that the parameters of the specific

<sup>21</sup> <http://data.pointblue.org/apps/ocof/cms/index.php?page=flood-map>. Accessed April 29, 2018.

<sup>22</sup> An ‘annual’ storm is a typical storm in strength and duration that is likely to occur at least once per year. A 20-year storm has a likelihood of occurrence once every 20 years. A 100-year storm has a likelihood of occurrence once every 100 years. A King Tide is an exceptionally high tide that occurs when the gravitational pull of the moon and sun are in alignment.

project proposal are unknown at this time. Staff looked at potential sea-level rise scenarios through the end of the century to anticipate short-term and long-term impacts to the Property.

Under present sea level conditions, the Property and surrounding parcels are at low risk of flooding. The risk increases slightly when a 100-year storm or King Tide are layered on top, particularly in the adjacent Anza Lagoon and low-lying parking areas of the adjacent lots south of the Property. Looking ahead to 2040, using the low risk aversion projection of 0.8 feet, there is little change from present day conditions, which is to be expected, as the Property itself is currently approximately 11 feet above sea level. It is worth noting, however, at this level, there is extensive flooding inundation projected for the rest of the southeastern part of San Francisco Bay, from Foster City all the way east to Alameda. Parts of Millbrae and San Bruno, including the northwestern part of the San Francisco International Airport, are also predicted to be inundated at 0.8 feet of sea-level rise.

At 2060, the low risk aversion model shows slightly more extensive flooding overtopping the adjacent Anza Lagoon, and greater potential for the Bay Front Channel south of the Property and the eastern side channel to flood, which could lead to temporary disruptions to the transportation routes that lead to the Property. If considering the medium-high risk aversion scenario for 2060, at 2.6 feet, the model shows flooding risks on all sides of the Property. If a 20-year storm, 100-year storm, or King Tide also occur on top of that sea level, the flood potential increases and the Bay front shoreline of the Property begins to be exposed to flood waters. By the end of the century, at 3.4 feet of sea-level rise (low risk aversion), there is still some flooding adjacent to the Property on the western side (from Anza Lagoon) and greater flood potential on all other sides of the Property. However, if viewed with a 20-year or 100-year storm layered on top, the Property itself then appears to be partially inundated with flood waters, as are the transportation routes into the Property. The medium-high risk aversion scenario, 6.9 feet, shows the shoreline completely flooded, as well as the majority of the Property and the road into the Property. When an annual storm is

layered on top of that scenario, all but the highest point in the center of the Property is shown to be under water.

Using the above table as a guide, Commission staff recommends the use of the Low Risk Aversion projections for all low-impact development projects such as the Bay coastal trail or a park and general recreation area. Those assets have characteristics (few structures, open space, no critical hard shoreline protective devices) that would make them more tolerant of greater frequencies and extents of temporary flooding events. The risk tolerance for those types of development would also be less dependent on the lifetime of the project because they are not constrained by many permanently fixed structural elements and could be adapted more rapidly and less expensively than certain projects with more structural elements, infrastructure requirements, and critical water-dependent functions.

### 3. Local Sea-Level Rise Planning

Local and regional planning efforts are also critically important to understanding site specific vulnerabilities and preferred and feasible adaptation approaches that can contribute to shoreline and asset resiliency in the face of flooding events and rising seas. San Mateo County developed a comprehensive sea-level rise planning project, entitled [Sea Change San Mateo County](#). As part of this project, the County completed a [Sea Level Rise Vulnerability Assessment](#) that identifies the most vulnerable areas and assets within the City of Burlingame. The County looked at a “baseline” scenario, detailing risk exposure from a 100-year storm occurring at mean higher high water, a “mid-level” scenario of 3.3 feet of sea-level rise with a 100-year storm, and a “high-level” scenario of 6.6 feet of sea-level rise with a 100-year storm. The assets that are most vulnerable include communication towers, transportation routes, emergency services, and critical energy infrastructure, such as transmission lines and towers, and natural gas pipelines. These assets are located along various points of the City’s shorelines, and though they are not all directly adjacent to the parcel, some use types may be impacted if flooding events and/or sea-level rise result in a failure of function or disruption of service that these vulnerable assets currently support or provide. For example, in the mid-level scenario portions of Highway 101 would be flooded to the east and west of the parcel, which would prevent access to and from the Property, and could

have implications for the provision of emergency services, as well as economic and public safety impacts from storm and flood damages. Any project that is developed on the parcel should reference the detailed [Sea Level Rise Vulnerability Assessment](#) to identify vulnerabilities with the potential to impact project elements. Additionally, there will be further local planning efforts that could influence use type selection and project designs. The County has recently formed a [Climate Change Preparedness Action Plan](#) to bring together the cities and local planning divisions within the County to assess, plan, and implement adaptation strategies for sea-level rise, a process intended for completion by 2020.

## B. Environmental justice

State law defines “Environmental Justice” as “the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.”<sup>23</sup>

### 1. Commission Environmental Justice Draft Policy

The Commission is in the process of developing a comprehensive and meaningful environmental justice policy and Implementation Plan. An initial draft was released in May 2018, and a revised policy reflecting public comment will be released soon. Commission staff is holding community outreach meetings throughout the State to share information about the draft policy and to learn more about how the Commission can better identify and address environmental justice concerns impacting communities. The existing draft policy prioritizes certain concepts. Chief among them are promoting equity and public access, building trust, public engagement, analyzing and reducing impacts, honoring the importance of tribes and ancestral homelands, and accountability.

The draft policy is guided by the vision that all Californians have access to and enjoy the benefits of public lands and public resources, regardless of socioeconomic status, race, religion, culture, national origin, gender, or sexual orientation. It is intended to promote Commission decisions that are informed and equitable considering the values, needs, and concerns of all communities, including many vulnerable groups like

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<sup>23</sup> Gov. Code, § 65040.12, subd. (e).

marginalized communities, disadvantaged communities, California Native American Tribes, and Indigenous Peoples.

The Commission staff embraces the principle that the environmental injustices of the past will not define California's future, and supports the ideal that all communities equitably share in the environmental benefits and burdens resulting from decisions.

2. *Environmental justice conditions – regional and local*

Environmental justice issues and concerns relevant to uses at this site include low-cost access to public lands and resources, climate change resiliency, particularly for vulnerable communities, and sea-level rise preparedness and adaptation. Two tools were used to help identify nearby disadvantaged communities.

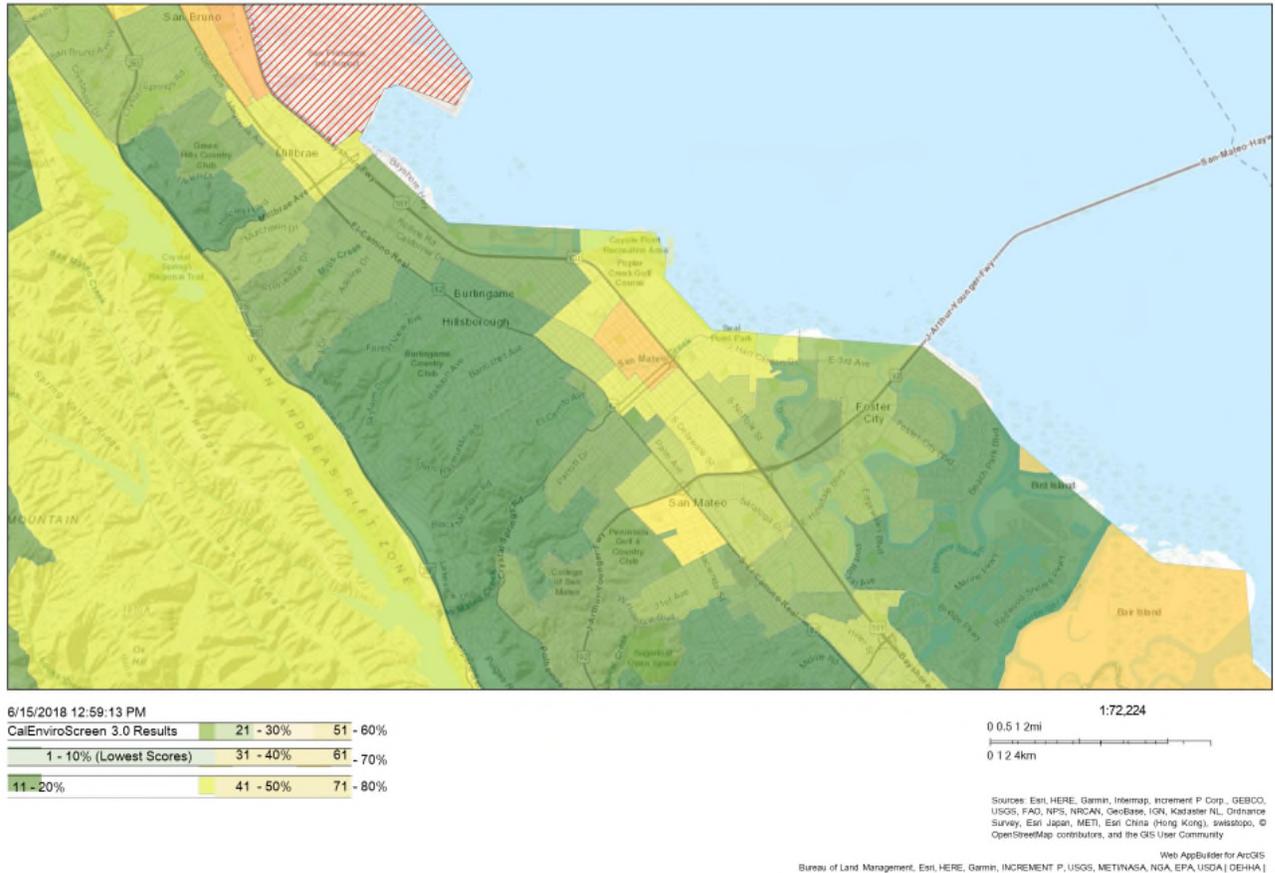
a) *CalEnviro Screen 3.0*

The first tool, CalEnviro Screen 3.0 (**CalEnviro Screen**), was developed by the California Environmental Protection Agency's Office of Environmental Health Hazard Assessment. This tool uses environmental, health, and socioeconomic information to identify California communities that are most affected by many sources of pollution.<sup>24</sup>

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<sup>24</sup> See CalEnviroScreen (<https://oehha.ca.gov/calenviroscreen>)

## CalEnviroScreen 3.0 Results

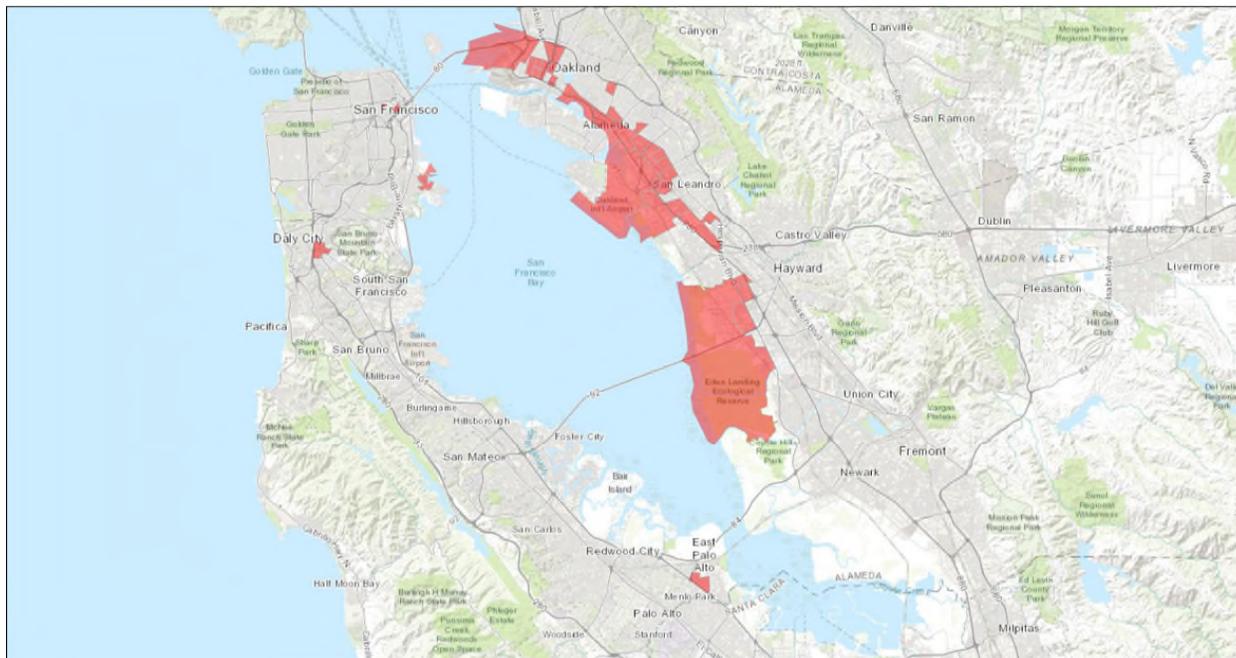


Results indicate that within a 5-mile radius of the site (4,416 people per square mile), the neighborhoods south and southwest have low (1 to 20 percent) vulnerability scores. This score suggests that communities closest to the site are not heavily impacted or disproportionately burdened by multiple sources of pollution, and therefore, from an Environmental Justice perspective, are not of immediate concern. Neighborhoods directly north of the site have higher scores ranging from 31 to 71 percent, indicating higher vulnerability (90 percent is the highest score on the scale). The highest scoring neighborhoods (81-90 percent) are northwest (San Bruno) and north (South San Francisco) of the site.

### *b) EJScreen*

The second tool, EJ Screen, was developed by the U.S. Environmental Protection Agency and is “based on nationally consistent data and an approach that

combines environmental and demographic indicators in maps and reports.”<sup>25</sup> EJ Screen incorporates the top 25% scoring areas from CalEnviroScreen along with other areas with high levels of pollution and low populations.<sup>26</sup>



 SB535 Disadvantaged Communities

Results from the EJScreen Standard Report (Appendix EJ-1) suggest that within a 5-mile radius of the Property, pollutant exposures are lower than state and national averages. The minority population in the vicinity (54 percent) is lower than the state average (61 percent) but higher than the national average (38 percent). The low-income population in the vicinity is 18 percent, compared to a state average of 36 percent and a national average of 34 percent. The linguistically isolated population is 9 percent, which is slightly lower than the state average of 10 percent, but higher than the national average of 5 percent. However, a large portion of the population (44 percent) speak languages other than English at home, while 56 percent live in English-only households. Forty-four percent of the population live in rental housing and 56 percent live in owner-occupied housing. For additional information, see Appendix EJ-1: EJScreen Standard

<sup>25</sup> See EJSCREEN: Environmental Justice Screening and Mapping Tool (<https://www.epa.gov/ejscreen>)

<sup>26</sup> <https://www.epa.gov/ejscreen>

Report 5-Mile Radius, Appendix EJ-2: EJScreen Standard Report 1-Mile Radius, and Appendix EJ-3: EJScreen American Community Survey (demographic) Summary Report.

### 3. Environmental justice groups and input

Commission staff emailed a public outreach meeting notice, frequently asked questions, and map of the Property to the following organizations and public agencies that work on Environmental Justice advocacy issues.

Asian Pacific Environmental Network, Azul Project, Bay Area Healthy 880 Communities, Bay Localize/Rooted in Resilience, Biosafety Alliance, Boyle Heights Stakeholders Association, Breakthrough Communities, CA Air Resources Board, CA EJ Alliance, CA Environmental Justice Alliance, CalEPA, California Communities Against Toxics, California Environmental Justice Coalition, California Indian Environmental Alliance, California Natural Resources Agency, California Safe Schools, CAUSE, Center on Race, Poverty, and Environment, Central California EJ Network, City of Bakersfield, City of San Diego, City Project, Climate Action Campaign, Climate Justice Alliance, Coalition for a Safe Environment, Coalition for Clean Air, Communities for a Better Environment, Community Agency Response to Disaster, Community Food and Justice Coalition, Del Amo Action Committee, Department of Toxic Substances Control East Yard Communities for EJ, Environmental Center of San Diego, Environmental Health Coalition, Environmental Justice Coalition for Water, Environmental Justice Initiative, Environmental Justice Project, Fort Ord EJ Network, Fresno Council of Governments, Greenaction for Health and EJ, Greenlining Institute, LA Area Environmental Enforcement Collaborative, LA Community Environmental Enforcement Network, LA Water Keeper, Latino Environmental Advancement & Policy Project, Leadership Council for Justice and Accountability, League of Women Voters, Literacy for Environmental Justice, Mujeres de la Tierra, North Richmond Open Space Alliance, Oxnard Chamber of Commerce, People Organizing to Demand Environmental and Economic Rights (**PODER**), PolicyLink, Resources Legacy Fund, Restore the Delta, Sacred Places Institute for Indigenous People, San Diego Coastkeeper, San Joaquin Council of Governments, Sierra Club San Francisco Bay Chapter, Society for Positive Action, Stanislaus Council of Governments, Surfrider, UEPI Occidental College, Urban Habitat,

Valley Improvement Projects, Ventura County Local Government Commission, Volunteer, West Berkeley Alliance for Clean Air and Safe Jobs, Wild Coast, and Youth United for Community Action.

Staff received a written comment letter from a collaborative group that included Committee for Green Foothills, Loma Prieta Chapter-Sierra Club, San Francisco Baykeeper, and Citizens Committee to Complete the Refuges advocating for improved public access, shoreline restoration, and recreational opportunities along the Bay that will offer environmental justice opportunities by increasing access for all. Staff also received a verbal comment from PODER.

## VII. Public Trust needs assessment – weighing uses

The Public Trust-compatible uses most frequently mentioned by the public include: park (active/passive), open space, restoration, and preservation, and Bay and water access. Together these uses represented over 95 percent of the feedback received. Through the public outreach, staff found the top priority among those commenting was that the Property be developed and maintained properly. These public input preferences for this location for the most part align with the Public Trust Doctrine and the Commission's Vision, Mission, and [Strategic Plan](#).

The Public Trust-compatible uses with the lowest public support included commercial visitor-serving (hotel, restaurant, retail, ferry terminal, stage/entertainment) and miscellaneous uses (maritime museum).

With the Property site over 9 acres, it is possible that many uses could be achieved, to some degree, in one project. For example, open space, restoration, and preservation, and Bay and water access could be incorporated in a single potential project. The potential benefits would be the creation of habitat, increase of public access to the Property and the Bay, low overall cost, a destination for the public to the Property and waterfront, and long-term adaptability to climate change and sea-level rise. The potential downside would be lower revenue production (compared to commercial uses), limited liability and indemnification protection for the State, and

challenges associated with maintaining the existing protective structure or improving the existing protective structure.

Development of commercial visitor-serving uses (hotel, restaurant, retail, ferry terminal, stage/entertainment) and miscellaneous uses (maritime museum) would involve the construction of more significant improvements with a larger capital investment. The potential benefits associated with projects of this nature include increased public access, a destination to bring significantly more people to the Property and waterfront, revenue to the State, liability coverage, indemnification, and the capital that could be needed to maintain or improve the existing protective structure. The potential downside could include negative environmental impacts, loss of habitat, increased traffic, low climate change and sea-level rise resiliency in the long-term, high capital investment, and once improvements have been built, the expense associated with future removal and reuse of the Property.

Shoreline repairs and Bay Trail improvement are a use that would be compatible with a number of other uses (open space, park, commercial, etc.), was frequently suggested in public input, would be consistent with the State's interests in increasing public shoreline access and reducing liability risk, and would be Public Trust consistent. This use should be seriously considered as a component of any development proposal for the Property.

The Commission uses many management tools to ensure a sustainable, balanced, deliberative approach to protect and enhance the State's resources while allowing the use of those lands and resources for the benefit of all Californians. Any future use must consider operational and maintenance requirements, liability and indemnification protections for the State, repair and maintenance of the shoreline protective structure, short-term hazard mitigation, and long-term climate change and sea-level rise adaptation strategies.

This Property has been underutilized for decades, and it is in the State's best interests to use the information available to set a framework for the future use of the Property. It is also important to understand that the Property is large enough to accommodate more than one of the Public Trust uses identified by the public.

All the Public Trust-consistent uses identified in this document have the potential to meet the following Key Actions identified in the Commission's Strategic Plan:

1.1.4 Identify and abate hazards and associated liability on sovereign and school lands.

1.2.3 Promote public trust consistent waterfront development and revitalization, addressing sea-level rise and climate change in the planning process.

1.3.1 Ensure public access to coastal and inland waterways through private and public agency leases.

1.4.2 Coordinate with lessees, grantees and agency partners to implement actions, and where appropriate require lessees, to address impacts of climate change, adapt to sea-level rise, promote and incentivize water conservation, reduce greenhouse gas emissions, and reduce generation of marine debris and litter.

**List of Appendices**

**Appendix A: Public Comments**

**Appendix B: Recently Submitted Proposed Conceptual Plans**

**Appendix B-1: City of Burlingame's Proposal**

**Appendix B-2: Burlingame Bay Park Hotel, LLC's Proposal**

**Appendix B-3: The SPHERE Institute's Proposal**

**Appendix B-4: Zibasara, LLC's Proposal**

**Appendix EJ-1: EJScreen Standard Report 5-Mile Radius**

**Appendix EJ-2: EJScreen Standard Report 1-Mile Radius**

**Appendix EJ-3: EJScreen American Community Survey (demographic) Summary Report**

**Appendix A:**  
Public Comments

## I. Notes from oral comments as taken at public meeting:

1. Boating and water sports.
2. Whoever is chosen to develop the site is financially able to pay for it. Others nodded their heads.
3. Would like to see a model of the site and an environmental tool that supports solutions to sea level rise.
4. San Mateo County' Office of Sustainability is working with the Stanford Woods Institute for the Environment to model the effects of different barriers to sea level rise in the county and might be persuaded to model options for this parcel.
5. No development: open space and wetlands and a recreational area.
6. Burlingame shoreline is highly developed and favors wetlands on the site. Walkways spanning wetlands at Facebook and Google that improved public access.
7. Hotels sometimes talk of access for everybody, but later access gets "muddled" and the public does not benefit much. Hire workers who live nearby because of the detrimental environmental impact of workers driving long distances to work.
8. Worried about providing secure jobs for hotel workers.
9. "I think you can have all of it." There could be a hotel, a bay trail, a park and recreation area "and the hotel would pay for it."
10. City will be a part of the decision process because it is responsible for the infrastructure and safety of the property, and the land use will definitely impact city operations.
11. Bay Trail Development
12. Kite surfing
13. Natural Habitat to be preserved!
14. Sea-Level rise mitigation
15. No Hotels-too many already
16. Trail to Foster City would be a good model
17. Also include a dog park as a possible use
18. Perfect spot to reconnect people to the Bay
19. Habitat and Bay Trail – education for sea-level rise
20. No labor dispute for hotel use; union wages-have an agreement in place as part of development of hotel.
21. Burlingame should work with hotel developer
22. Baseball field/soccer field and natural habitat
23. Educational use/museum or observatory
24. Park, Extend Bay, benches, BBQ's
25. Housing for hotel workers or no hotel & beautiful
26. Park nice-if hotel: union neutrality

27. Wants union at Marriott
28. Open space, take fence down, rehab wildlife, trails
29. Park, bay access
30. Dog Park, Bay Trail, Kayaks
31. Ferry terminal
32. Sports fields, park, open space
33. Not large building or hotel to eat up space
34. Fishing access
35. Concerned about traffic
36. Birds
37. Park Space
38. Shoreline adaptation, engaging, draw people to water, habitat restoration
39. Open space, park, Bay Trail access
40. Cut through traffic, open space, park, connect Coyote Point
41. No building on the land
42. Last parcel for wetland/wildlife out there. Birds need shore less parking, limited water access to protect birds
43. Sustain wetlands replenishment of sediments (not happening here), biking, jogging
44. Fields for soccer, baseball, fishing, Bay Trail
45. Residential use is good
46. Bay Trail
47. Open Space, wind surfing, kayaking, restoration
48. Small hotel with large grass area, restoration of rip rap, Bay Trail safely fish, 80% park 20% hotel, money for city to help support park
49. Open space, mixed use bayside park, kayak launch, remove existing cement slabs, no hotel
50. Opportunity for recreating habitat/open space, Bay Trail as recreational opportunity
51. Natural habitat-Is Federal government a potential partner
52. Recreational-something to attract people and families, passive recreation
53. Worried about traffic from 300 Airport Blvd., limited ingress and egress, park type uses where families could come, would be complement to office uses in area
54. Hotels would benefit from open space use in area, other properties are available for hotel use.
55. Don't have to put many improvements into area to attract people.
56. Maintain trail and greenspace.
57. Natural interpretive are similar to area near Facebook near salt marsh and entry to Dumbarton.
58. Generate information about how passive recreation areas fund themselves
59. Lease term only 49-years, longer?
60. Small craft launch-for kayaks, canoes, wind surfing etc.

61. Bocce ball courts
62. Improved Bay trail
63. Informal open area
64. Active park-such as outdoor exercise equipment
65. Level the levee and make it a gradual slope to the bay. Push back the recreational area to restore the shore land habitat.
66. Add engaging signs about the bay and he habitat such as they have in San Mateo out at the end of 3rd Avenue.
67. 300 room hotel on 2 acres, leaving 6.8 acres for park, retail on first floor
68. Underground parking for hotel only
69. Add out door theater and bocce ball courts
70. Would pay for park
71. Wanted assurance that whoever develops the site, would use Union workers. If a hotel, they wanted to get confirmation that the hotel would be required to have a union Labor force.
72. Need cheap housing more than hotels or parks. Build affordable below market price there.
73. Model and Environmental Educational tool for sea level rise
74. Water access for kayaks & people to “touch” the bay
75. A place for community gathering & events along the Bay, such as small concerts and Farmer’s Markets
76. Don’t need buildings such as hotels, warehouses, etc.
77. Open space
78. Educational Opportunities (interpretive elements)
79. Habitat Restoration
80. Don’t need a hotel.
81. Open Space
82. Public Park
83. Walking trails
84. Don’t need high rise hotel
85. Green space
86. Don’t need another office complex or hotel
87. Nicely landscaped open space
88. Improved Bay Trail connectivity
89. Habitat
90. Don’t need hotel or office, commercial parking lots
91. Park/Open space/Bay Trail/Bicycling
92. Recreation/Entertain @ night/day
93. Small retail business to support the residential
94. Don’t need hotels-too many in the area
95. Make sure the building & maintenance is financially certain
96. Need more open space & recreational use

97. City needs to be part of decision process since City is responsible for surrounding infrastructure, safety, etc.
98. Don't need a site that isn't maintained
99. Parks
100. Don't need hotels and traffic
101. Open space
102. Restoration
103. Improved access to the bay for all-not just for people who can afford to stay in hotels
104. Don't need another hotel, there are too many already in the area
105. I enjoy open space-keep it open.
106. Keep open space for us to enjoy.
107. As an environmental studies major, I support open space.
108. Keep beautiful open space for us to enjoy.
109. I enjoy taking walks around the lagoon and would be very disappointed if this space got converted into a hotel. People come here to fish and see planes take-off and land at SFO. It really should be converted to a park.
110. Keep open space for us to enjoy.
111. We do not need more hotels here, we need open space for outdoor recreation and enjoyment of nature.
112. We do not want a hotel in place of the wetlands! Save our natural wetlands!
113. Please don't build a hotel on the open space. It's a space for managing wildlife and it would be sad to see them losing their habitat!!
114. I love the Bay Trail and all it offers there is a little disconnect right where this empty lot is so it would be awesome to have that turned into a public park/more trails to wander through!
115. We don't need another hotel in the area! A park or open space would be great.
116. Please preserve one of the few undeveloped bayside spaces left.
117. These seasonal wetlands are one of the last untouched parcels along the water here-it's a great open space/educational opportunity!
118. Please keep it and don't build hotel.
119. I believe more land should be preserved in the bay area. Too many buildings are built taking way from the beauty of the land.
120. Please build something to attract more people to visit the shoreline. Not another office building or hotel. Retail space, open space, or anything exciting.
121. There are so many buildings around here! It's be lovely to have some open outdoor space as a break from all the industrial space.
122. Please do not build another hotel.
123. Please do not build on the open space, we do not need more hotels in this area!!! We appreciate the little bit of nature left as well as the animals that call it home. Please help us save and preserve it!

124. If a hotel is built, then wants labor peace and a fair and neutral process for workers on unionization
125. Requests same, and also environmentally friendly habitat
126. Public access, Bay Trail, Bay Water Trail, restoration, and shoreline structure improvement
127. Highest & best use would be development with a fantastic park with fields, playground, parking and a 4-5 star hotel with 400-plus rooms to bring outside visitors and economic growth.
128. If a hotel is built, then wants hotel labor representation.
129. Site has unique water access and world-class wind; commenter had his first kiteboarding lesson there. There are limited places to get wet in the area.
130. Water-related retail with outside seating to attract people.
131. She has lived in area for 45 years and site has been an eyesore since 1972. Wants commercial development with entertainment, nighttime activity. Area is closed up at night and there are crime issues. She objects to the leasing moratorium and wants a park now.
132. Wants more action and an economically feasible plan. Where would money come from to maintain it? Does not want to see another 40 years of status quo.
133. If a hotel is built, then support a fair process for workers to decide whether to unionize.
134. Wants open space preservation and water access. Semi-passive park with opportunities for interaction, kite surfing, and enjoyment of waterfront, but not athletic fields – it's too windy. There's already a boatload of hotels in area.
135. Suggests multi-faceted recreational facility with ancillary retail. This would be a park with visitor-related retail, restaurants, some nightlife, some habitat/wetland area, greenspace with ancillary facilities.
136. More natural environmental emphasis and "reclaiming the bay." She would like to restore as many wetlands as possible. She pointed out that wetlands help with sea level rise.
137. Wetlands can act as a natural barrier to sea level rise.
138. She would like to see the land returned to a natural state, with someone maintaining it. She does not want a hotel ("There are already so many hotels") or restaurant and suggested wetlands, jogging trails, a recreational park and kayaking as uses for the land.
139. Suggested boating and water sports, too. She said she was not advocating for a hotel but, in the event that one is chosen, she wants to make sure the developers don't interfere with having a neutral agreement with the hotel workers. She warned that a developer promising to limit ground-level parking by providing underground parking would find it impossible because the area is so close to the water.
140. Would State pay for maintaining the site? Others said they didn't think so. It was her understanding that if the State Lands Commission approved a

- project, other state agencies might be persuaded to help pay for maintenance.
141. Whoever is chosen to develop the site is financially able to pay for it. Others nodded their heads.
  142. Would like to see a model of the site and an environmental tool that supports solutions to sea level rise.
  143. San Mateo County' Office of Sustainability is working with the Stanford Woods Institute for the Environment to model the effects of different barriers to sea level rise in the county and might be persuaded to model options for this parcel.
  144. The Burlingame City Council meeting on Monday at which the council discussed the project. It was his impression that the council liked the hotel idea to help pay for improvements and that nonprofits wanted more open space. He would prefer no development: open space and wetlands and a recreational area. However, he said he would rather not have a "not too good recreational area and pitiful wetlands." It would be better to do one thing well.
  145. The Burlingame shoreline is highly developed and she favors wetlands on the site. She said she has seen walkways spanning wetlands at Facebook and Google that improved public access.
  146. She said hotels sometimes talk of access for everybody but later access gets "muddled" and the public does not benefit much. She argued for hiring workers who live nearby because of the detrimental environmental impact of workers driving long distances to work.
  147. Worried about providing secure jobs for hotel workers.
  148. I think you can have all of it. He argued that there could be a hotel, a bay trail, a park and recreation area "and the hotel would pay for it." His one concern is a putting a park there because it gets very windy by the bay. He said there used to be an amusement park there long ago but it failed because of the wind. The project presents "a very rare opportunity for the city to earn revenue from land it doesn't own," he added.
  149. She hopes the city will be a part of the decision process because it is responsible for the infrastructure and safety of the property, and the land use will definitely impact city operations.

## II. Comments received via email

1. Here in the Bay Area, our Parks for People program carries this call forward to provide parks and access to nature in areas where they can serve and benefit as many people as possible. The Burlingame bay front is densely developed with very few locations to enjoy the unique habitats and experiences of the San Francisco Bay. As such, we strongly support conserving this parcel as open space and creating a park experience appropriate to its unique context – a park that connects people to the bay,

provides shoreline access, increases sea level rise resiliency, and includes educational and interpretive elements. Burlingame has very limited Bay Front access and none where people can come as groups and enjoy the sounds, smells and views. The State Lands property on S. Airport Boulevard offers a unique opportunity to create such access. This space could be converted into a natural open space, like Crissy Field. As far as I know, we don't have anything like that on the Bay Front in San Mateo County, which would make it a special place for the region. In addition to regional and community visitors, such a park would be a fantastic way to share this special place with the visitors who frequent the local hotels.

2. I understand that there is pressure to release this space for development. It would be a great loss for us all if the entire space were taken up with a property. A small, boutique hotel with a park on part of the space would be better than that. Please consider preserving even part of this space for a natural park. Natural environment and reclaiming the bay, restore wetlands
3. There are enough hotels and industrial space in that area. I would like to see green space with a playground, picnic area, paved walking/bike path and sculpture garden (alternatively, outdoor sculptures could be integrated with the landscaping throughout the area). The area could highlight native plants/trees/shrubs (with plaques identifying the vegetation for educational purposes). Wetlands can act as a natural barrier to sea level rise.
4. The best use of the land would be to enhance its features as an open space and park, especially in the light of what we know about sea level rise. The site's wild qualities can be enhanced and it could provide needed respite and connection with nature for the people who live and work nearby. I see a lovely site with a small boat launch, and habitat for Bayland wildlife. Marshlands are important to the health of the Bay, and here we have an opportunity to enhance that.
5. I desire accommodation made for recreational water access, this includes a beach or wide ramp for non-powered vessels to get to the water. I mean windsurfing, kite-boarding, Kayak, Standup Paddle boards. We also require a rigging/ Launching area land side for launching and landing kite- boarders kites. You may not be aware that 300 Airport Blvd. has 7 high-rise building in construction just down wind of 450 Airport Blvd. This will impact wind sailing at Coyote point park downwind of these new high rises. To repurpose this 8.8 acres with water access in mind would be very helpful to mitigate the impact of loss of recreational water wind powered water sports from the 300 airport Blvd. buildings.

6. As a Burlingame resident I'm happy for a chance to suggest a use for this 9 acre site along SF Bay. My choice is a public park that is ecologically sound, for everyone to enjoy. It could be planted with native plants and have some lawn areas, walking paths, and picnic facilities while affording views of the bay. I opposed the development of a hotel, or other major structures. Land returned to a natural state, with someone maintaining it. No hotels or restaurant and suggested wetlands, jogging trails, a recreational park and kayaking as uses for the land.
7. The SCL property at 410 Airport Blvd in Burlingame, which would be Bay marsh had it not been filled over in the 1960s, should not be developed but restored to a natural state. None of the permitted uses listed by the City of Burlingame should be allowed. Has the City heard about sea level rise? Without new levees and dikes, this property will be inundated and without public funding, those levees and dikes will not be increasingly raised or maintained, which would be a direct subsidy to whatever private concerns have built on this property that is part of California's Public Trust. San Francisco Bay should be restored, not lined with more at-risk development. I'm not very comfortable with more high-rise buildings next to the SFO Airport runways either, this is too close. The SCL should act to the benefit of the people of California and use this property to increase public access to and use of the Bay margins and to restore native flora and fauna.
8. The post reads "This is a site where there could be a large open space area for community use with picnic tables and a restroom. This is one of the last areas in the City where there is an opportunity for a good-sized park." As a local resident, I agree with that view and I believe it would be great to consider use of this area for a park. I believe it would also provide a unique opportunity (only available once) for recreational water access.
9. Water access includes a beach or ramp allowing non-powered small personal craft to get to the water. Examples include windsurfing, kite-boarding, kayaks, standup paddle boards and other recreational craft that allow people to enjoy our precious natural resource, the Bay. Such water access facilities require almost no extra space. A simple area to park, unload and assemble or rig recreational craft is all that is needed to provide access. For various reasons, mostly large building development, we are slowly losing other viable water access sites (including nearby locations such as Coyote Point).
10. This is a beautiful area that people enjoy from the local residents, to visitors "getting out and about" from near-by hotels. Great walking and biking trails along the water that could be connected to existing trail and make a continuous path for a wonderful site! Water access includes a beach or ramp

allowing non-powered small personal craft to get to the water. Examples include windsurfing, kite-boarding, kayaks, standup paddle boards and other recreational craft that allow people to enjoy our precious natural resource, the Bay. Such water access facilities require almost no extra space. A simple area to park, unload and assemble or rig recreational craft is all that is needed to provide access. For various reasons, mostly large building development, we are slowly losing other viable water access sites (including nearby locations such as Coyote Point).

11. I desire accommodation made for recreational water access, this includes a beach or wide ramp for non-powered vessels to get to the water. I mean windsurfing, kite-boarding, Kayak, Standup Paddle boards. We also require a rigging/ Launching area land side for launching and landing kite- boarders kites. You may not be aware that 300 Airport Blvd. has 7 high-rise building in construction just down wind of 450 Airport Blvd. This will impact wind sailing at Coyote point park downwind of these new high rises. To repurpose this 8.8 acres with water access in mind would be very helpful to mitigate the impact of loss of recreational water wind powered water sports from the 300 airport Blvd. buildings.
12. I am writing in response to the request for public input for the restoration and use of 450 Airport Blvd Burlingame CA. I desire accommodation made for recreational water access, this includes a beach or wide ramp for non-powered vessels to get to the water. I mean windsurfing, kite-boarding, Kayak, Standup Paddle boards. We also require a rigging/ Launching area land side for launching and landing kite- boarders kites. You may not be aware that 300 Airport Blvd. has 7 high-rise building in construction just down wind of 450 Airport Blvd. This will impact wind sailing at Coyote point park downwind of these new high rises. To repurpose this 8.8 acres with water access in mind would be very helpful to mitigate the impact of loss of recreational water wind powered water sports from the 300 airport Blvd. buildings. Please see the mandated water access codified in the California constitution, Federal Coastal Zone Management Act and the Macteer-Petris act.
13. I desire accommodation made for recreational water access, this includes a beach or wide ramp for non-powered vessels to get to the water. I mean windsurfing, kite-boarding, Kayak, Standup Paddle boards. We also require a rigging/ Launching area land side for launching and landing kite- boarders kites. You may not be aware that 300 Airport Blvd. has 7 high-rise building in construction just down wind of 450 Airport Blvd. This will impact wind sailing at Coyote point park downwind of these new high rises. To repurpose this 8.8 acres with water access in mind would be very helpful to mitigate the impact

- of loss of recreational water wind powered water sports from the 300 airport Blvd. buildings.
14. Please see the mandated water access codified in the California constitution, Federal Coastal Zone Management Act and the Macteer-Petris act.
  15. I'd like to support the provision of water sports access in the plan for 450 Airport Blvd. Kitesurfers and windsurfers use Coyote Point quite extensively now, but that site will be degraded by the new wind-blocking buildings going up at 300 Airport. Kayaks and stand-up paddleboards also use Coyote Point when it is not windy. We know 450 Airport is a good location because we often kite and sail right up to the that shoreline. What is needed are several wide ramps into the water, some grassy space for rigging and launching next to the water and nearby parking. The grass and parking would be shared with other uses, of course.
  16. I did want to express my preference for the development of the vacant bay front lot. I think it would be in Burlingame's interest to have a hotel built on that prime real estate together with a portion of that property set aside as open space that would be integrated into the bay front trail. This would provide some additional transient occupancy tax for our city while providing some open space that all of our citizens can enjoy.
  17. I believe it would be great to consider use of this area for a park. I believe it would also provide a unique opportunity for recreational water access, allowing non-powered small personal craft to get to the water. Examples include windsurfing, kite-boarding, kayaks, standup paddle boards and other recreational craft that allow people to enjoy our precious natural resource, the Bay. Such water access facilities require almost no extra space. A simple area to park, unload and assemble or rig recreational crafts and a small ramp (e.g. 12 feet wide) is all that is needed to provide access. For various reasons, mostly large building development, we are slowly losing other viable water access sites throughout the Bay Area (including nearby locations such as San Mateo Coyote Point Park). It would be great to recover such a prime location for recreational water access!
  18. I agree with that view and I believe it would be great to consider use of this area for a park. I believe it would also provide a unique opportunity (only available once) for recreational water access.
  19. I am writing this to add my voice to those wishing to comment on the public lands along the bay front near Burlingame and what purposes would best suit the location. I have had a number of interactions with Burlingame Park and Rec regarding facilities for youth and adult sports over the years. Clearly

there is far more demand than supply of these facilities. Recently the parcel used as a driving range was up for consideration as to its future use. The decision was to make it an adult-oriented golf entertainment center, catering mostly to hotel visitors. I am hoping this new review of bay front public lands will look to support our youth and address a significant need for recreational facilities. A few years ago, Burlingame Park and Rec came close to using the bay front area for sports fields. Apparently, there were environmental issues associated with the property becoming temporary wetlands during rainy seasons that prevented that proposal going forward. May I suggest that this parcel be reconsidered for use as sports fields.

20. As lifelong residents of the Peninsula, my husband and I are writing to strongly support habitat restoration and access to the undeveloped 9-acre property along the Burlingame Bayfront. We are not available to attend the public outreach meeting tonight, but believe the goals of the Commission, as a matter of environmental justice and access for all, should be improved public access, habitat restoration, and resilient design in the face of sea level rise.
21. I desire accommodation made for recreational water access, this includes a beach or wide ramp for non-powered vessels to get to the water. I mean windsurfing, kite-boarding, Kayak, Standup Paddle boards. We also require a rigging/ Launching area land side for launching and landing kite- boarders kites. You may not be aware that 300 Airport Blvd. has 7 high-rise building in construction just down wind of 450 Airport Blvd. This will impact wind sailing at Coyote point park downwind of these new high rises. To repurpose this 8.8 acres with water access in mind would be very helpful to mitigate the impact of loss of recreational water wind powered water sports from the 300 airport Blvd. buildings.
22. I urge the Commission to consider including a kayak launch in any plan for future use of the property.
23. I urge you to preserve the bay shoreline in Burlingame for public water access. With time, the bay shore is becoming increasingly privatized, and the public is being excluded. I would like to see a site design that will include everything from wading to kayaks to canoes to standup paddle boards (and more, but you get the idea). I suggest coordinating with the Bay Water Trail (<http://sfbaywatertrail.org/>) for design ideas that will enhance safety and ease of use. I am a member of BASK (Bay Area Sea Kayakers), a club with about 700 members. Though the site should also include many other user groups, we would be delighted to evaluate any proposed kayak-related design features.

24. Public access to the Bay is critical for education about the natural world, and there is no better way to become informed than to become immersed (literally and figuratively) in nature. There are many environmental issues, and we need an informed public to make decisions that will have long-term impacts on society and on the environment. Properly designed, the site would attract users at all income levels, contribute to wildlife habitat, and serve as a shining example of appropriate use of public lands for the public.

### III. Comment letters



101 Montgomery St.  
Suite 1100  
San Francisco, CA  
94104

[tpl.org](http://tpl.org)

March 8, 2018

Al Franzoia  
Public Land Management Specialist  
California State Lands Commission  
100 Howe Avenue, Suite 100 South  
Sacramento, CA 95825  
[al.franzoia@slc.ca.gov](mailto:al.franzoia@slc.ca.gov)

RE: 430-450 Airport Boulevard Parcel, Burlingame

Dear Honorable Commissioners:

Thank you for the opportunity to submit comments on the undeveloped parcel located at 430 – 450 Airport Boulevard in Burlingame, California, in advance of the State Lands Commission's Public Trust Needs Assessment community meeting scheduled for March 22<sup>nd</sup> at the Burlingame Rec Center.

The Trust for Public Land is a national organization whose mission is to protect the places people care about and to create close-to-home parks—particularly in and near cities, where 80 percent of Americans live. Our goal is to ensure that every child has easy access to a safe place to play in nature. We also conserve working farms, ranches, and forests; lands of historical and cultural importance; rivers, streams, coasts, and watersheds; and other special places where people can experience nature close at hand.

Here in the Bay Area, our Parks for People program carries this call forward to provide parks and access to nature in areas where they can serve and benefit as many people as possible. The Burlingame bayfront is densely developed with very few locations to enjoy the unique habitats and experiences of the San Francisco Bay. As such, we strongly support conserving this parcel as open space and creating a park experience appropriate to its unique context – a park that connects people to the bay, provides shoreline access, increases sea level rise resiliency, and includes educational and interpretive elements.

Thank you in advance for your consideration of our comments, and please feel free to contact me at (415) 800-5303 or [alejandra.chiesa@tpl.org](mailto:alejandra.chiesa@tpl.org).

Sincerely,

Alejandra Chiesa  
Bay Area Program Director  
The Trust for Public Land

Al Franzoia  
Public Land Management Specialist  
California State Lands Commission  
100 Howe Avenue, Suite 100 South  
Sacramento, CA 95825  
[al.franzoia@slc.ca.gov](mailto:al.franzoia@slc.ca.gov)

Dear Al: I read the post at [https://www.burlingame.org/news\\_detail\\_T19\\_R44.php](https://www.burlingame.org/news_detail_T19_R44.php) with great interest. This post included a request for public input for the restoration and use of 450 Airport Blvd Burlingame CA.

The post reads "This is a site where there could be a large open space area for community use with picnic tables and a restroom. This is one of the last areas in the City where there is an opportunity for a good sized park."

As a local resident, I agree with that view and I believe it would be great to consider use of this area for a park. I believe it would also provide a unique opportunity (only available once) for recreational water access.

Water access includes a beach or ramp allowing non powered small personal craft to get to the water. Examples include windsurfing, kite-boarding, kayaks, standup paddle boards and other recreational craft that allow people to enjoy our precious natural resource, the Bay.

Such water access facilities require almost no extra space. A simple area to park, unload and assemble or rig recreational craft is all that is needed to provide access. For various reasons, mostly large building development, we are slowly losing other viable water access sites (including nearby locations such as Coyote Point).

I know you will be aware of the mandated water access requirements that are codified in the California constitution, Federal Coastal Zone Management Act and the Mcateer-Petris Act.

Thank you,  
Timothy Hickey

March 23, 2018

Mr. Al Franzoia  
Public Land Management Specialist  
California State Lands Commission  
100 Howe Ave. Suite 100 South  
Sacramento, CA 95825

**RE: 8.8 Acres of State Land along the shoreline of San Francisco Bay in Burlingame**

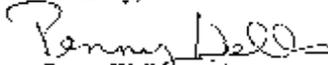
Dear Mr. Franzoia:

I wish to lend my support to the idea that this property become a publicly owned recreation facility—specifically a shoreline park providing public access to the water of San Francisco Bay.

As you well know the Bay Area has abundant motels, hotels, office buildings, shopping centers and restaurants. What we have in very limited supply are public shoreline parks providing access to the Bay. The Bay is our largest open space and is increasingly used by our growing population for recreation. Kayaks, canoes, stand up paddle boards, dragon boats, outrigger canoes, windsurfers, kiteboarders, cat-topped sailboats and rowing sculls all need shoreline access of various types. A park at this site could accommodate both land users of the Bay Trail and water users of the San Francisco Water Trail as well as providing a venue for fisherpeople.

Please give serious consideration to designation of this land for a shoreline park.

Sincerely,



Penny Wells  
50 El Pavo Real Circle  
San Rafael, CA 94903

April 6, 2018

The Honorable State Lands Commission  
100 Howe Avenue, Suite 100 South  
Sacramento, CA 95825  
Via e-mail

Re: Public Trust Needs Assessment for State Sovereign Land at 410 Airport Boulevard, Burlingame

Dear Honorable Commissioners:

Thank you for initiating a Public Trust Needs Assessment for the property at 410 Airport Boulevard, Burlingame. Special thanks also to the SLC staff and the City of Burlingame for hosting the public input meeting on March 22 regarding Public Trust Needs for this site.

The Committee for Green Foothills is a regional organization that advocates for the protection of open space, farmlands, and natural resources in Santa Clara and San Mateo Counties. Loma Prieta Chapter, Sierra Club is the regional branch of Sierra Club that represents thousands of residents in the Bay Area who support open space. San Francisco Baykeeper and the Citizens Committee to Complete the Refuge both work to keep the San Francisco Bay ecologically sound, sustainable and vibrant with many members. Together we all recognize the importance of keeping the San Francisco Bay accessible for all as mandated by the California Constitution.

On behalf of our members, we write concerning 410 Airport Boulevard, Burlingame, as the parcel has unique environmental potential due to its proximity to the San Francisco Bay. Accordingly, we believe that the best uses for this site that fit the Public Trust Doctrine include improved public access to the water, shoreline restoration, and recreational opportunities along the Bay. Furthermore, we believe that such improvements will offer environmental justice opportunities by increasing access for all.

As you know, the California Constitution, Sec. 4, Article X states, “access to the navigable waters of this State shall be always attainable for the people....” The sustenance of public spaces celebrates the expressions and the rights of its citizenry; increasing access would not only uphold Californians’ rights, but would provide access to all residents – not just those who can afford a night at a Bayfront hotel. A hotel at this site would be enjoyed by a much smaller, more privileged constituency than an open space area would.

As for what makes sense at the site, we strongly support removing the sea wall, and excavating part of the site to enable creation of a new, natural “living levee” that would include transition-zone native habitats. This “living levee” would provide greater resilience in the face of sea level rise, restore habitat for multiple types of wildlife, and create the basis for an improved and attractive segment of the Bay Trail. A small non-motorized boat launch area could also provide increased public access for sea kayakers, kite boarders, and windsurfers using the Bay Water Trail.

Restoration of shoreline habitat on this 8.8 acre parcel could be a signature project for Burlingame and the SLC. As 90% of the Bay’s historic wetlands have been lost to development, this is a remarkable opportunity to reclaim shoreline. We do hope that the SLC recognizes this chance to create a long term difference along the Bay that counters development pressures as there is there is not enough quality, natural open space in this part of the Bay waterfront; it is essential that we preserve this site as open space for generations to come.

Thank you for the public input meeting, for the opportunity to further comment, and for your consideration of these possibilities. We look forward to the next steps in this exciting project.

Sincerely,

Helen Wolter  
Legislative Advocate, Committee for Green Foothills  
Katja Irvin  
Co-Chair, Conservation Committee  
Loma Prieta Chapter, Sierra Club  
Ian Wren  
Staff Scientist, San Francisco Baykeeper  
Gail Raabe  
Co-Chair  
Citizens Committee to Complete the Refuge



San Mateo  
County Chapter

Al Franzoia,  
Public Land Management Specialist  
California State Lands Commission  
100 Howe Avenue, Suite 100 South  
Sacramento, CA 95825  
[al.franzoia@slc.ca.gov](mailto:al.franzoia@slc.ca.gov)

Dear Mr. Franzoia

Thank you for holding a Public Trust Needs Assessment for the property at 410 Airport Boulevard. We appreciate this opportunity to provide input.

The Surfrider Foundation is dedicated to the protection and enjoyment of the world's ocean, waves and beaches including San Francisco Bay through a powerful activist network.

San Francisco Bay has few wetland areas along its north western shoreline. This site offers an opportunity to restore a small but important section of San Francisco bay lands while providing improving public access. It is also an area surrounded by Hotels and is near the San Francisco airport. We strongly object commercial development on this property.

We support the creation of a natural levee with a transition zone of native habitats. It is the preferred approach to sea level rise protection. We also support inclusion of this area as a segment of the Bay Trail and the Bay Water Trail and the addition of a small boat launch. This area is already a popular destination for kayakers, windsurfers and kite boarders.

This concept is entirely consistent with mandate of the State Lands Commission and with the Public Trust Doctrine it serves. It will provide a benefit not only to the residents of the City of Burlingame but to visitors from all over the state who come to recreate and enjoy the natural beauty of San Francisco Bay.

Respectfully,

Edmundo Larenas  
Surfrider Foundation  
San Mateo County Chapter.

650.302.3131 Mobile



April 5, 2018

Jennifer Lucchesi, Executive Officer  
California State Lands Commission  
100 Howe Avenue, Suite 100 South  
Sacramento, CA 95825

Dear Jennifer:

I am writing to provide public input to the Commission for its consideration as it determines appropriate uses for state sovereign land at 410 Airport Boulevard in the City of Burlingame, approximately 8.8 acres fronting San Francisco Bay. I was not able to attend your meeting on March 22, 2018, in Burlingame.

Save The Bay is the largest regional organization working to protect and restore San Francisco Bay for people and wildlife, with more than 50,000 supporters. We protect the Bay from pollution and climate change, and restore crucial shoreline habitat for endangered species and flood protection. Since 1961, our effective advocacy has stopped massive landfill from destroying the Bay, expanded the nation's largest urban wildlife refuge, reduced trash flowing to the Bay, created \$500 million public fund to accelerate marsh restoration, and much more. We annually enlist 5,000 volunteers in hands-on habitat restoration, educate thousands of students about Bay science and stewardship, and lead the region's annual celebration of Bay Day.

Save The Bay has a long history of advocating for the State Lands Commission to protect and promote appropriate public trust uses of Bay and its shoreline, dating back to shoreline development proposed in the early 1960s by the City of Berkeley. We have also participated in Commission consideration of proposed development in San Francisco Bay salt ponds, proposals to fill in two square miles of the Bay for reconfigured runways at San Francisco International Airport, renewal of sand mining leases, and proposed uses for piers on the San Francisco Bay waterfront.

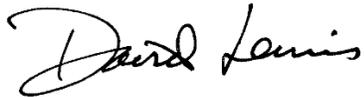
The Commission should view very favorably proposals for establishment of a public park on the 410 Airport Boulevard site, as such uses are in the public interest and consistent with the public trust that the Commission works to promote. In particular, a park on this site would ensure that precious remaining open space along the bay remains open to the public and attractive to public use, with public education opportunities for learning about the bay's ecology, habitat and sea level rise.

Appropriate improvements of the site would include completion of the San Francisco Bay Trail where there is currently a gap, and adaptation of the site for resilience against

rising seas. This could be accomplished through modification of a degraded sea wall and upgrade of current vegetation to more productive seasonal and tidal wetlands featuring native species. These improvements would provide even greater value in this part of the Bay because the immediate area is dominated by development, including office buildings that do not offer public trust benefits.

Thank you very much for consideration of these comments.

Sincerely,

A handwritten signature in black ink that reads "David Lewis". The signature is written in a cursive, flowing style.

David Lewis  
Executive Director

Cc: Michael Brownrigg, Mayor of Burlingame  
San Francisco Bay Conservation and Development Commission  
San Francisco Bay Trail

SHUTE MIHALY  
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102  
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WILLIAM J. WHITE  
Attorney  
white@smwlaw.com

March 21, 2018

**Via E-Mail**

Jennifer Lucchesi  
Executive Officer  
California State Lands Commission  
100 Howe Avenue, Suite 100 South  
Sacramento CA 95825

Re: Public Trust Needs Assessment for State Sovereign Land at 430-450  
Airport Blvd, Burlingame

Dear Jennifer,

I am writing to express SPHERE's continuing support for the State Lands Commission's ("SLC") thoughtful response to the public's interest in the use of this 8.8-acre property ("Parcel"), by conducting a Public Trust Needs Assessment for the site. SPHERE looks forward to actively participating in the ongoing discussions.

As this process gets underway, we would like to address an issue raised by certain statements made in materials posted on SLC's and the City's websites (see attached), to ensure that the scope of the needs assessment is not unduly constrained. SLC's notice for the upcoming community outreach meeting states that, in addition to being consistent with the public trust, the use of the Parcel "must . . . align with the City of Burlingame's land use policies." Similarly, a FAQ document posted by the City states that the needs assessment will consider what uses "fit within the City's General and Specific Plan designations." Another posted document summarizes the City's "allowed" uses on the Parcel.

These statements could suggest, incorrectly, that state sovereign land within the City is subject to the City's zoning and other land-use regulations. As a matter of law, such regulations do not apply to state sovereign land. *Hall v. City of Taft* (1956) 47 Cal.2d 177, 183; *Del Norte Disposal, Inc. v. Department of Corrections* (1994) 26 Cal.App.4th 1009, 1012–1013. The state's sovereign immunity from local regulations extends to its lessees. *Bame v. City of Del Mar* (2001) 86 Cal.App.4th 1346, 1358.

March 21, 2018

Page 2

Thus, while SLC may certainly consider the City's land use regulations and policies in its needs assessment, it is in no way bound by them. The overriding duty of SLC is to determine what uses of the Parcel would best serve the public trust and the people of California.

As we have previously stated, we believe that once all of the pertinent information is considered, it will become clear that the compelling public trust need for the Parcel is open space, public access and environmental preservation – not hotel. The area already has an abundance of hotels, but the Parcel is one of the last undeveloped bayfront properties left in the area that contains natural habitat. Sacrificing this rare oasis of undeveloped land for yet another hotel would not serve any unmet trust need, and in fact would be highly detrimental to the trust.

Of course, open space is perfectly compatible with the City's current commercial zoning for the Parcel, and we are confident that the City's residents and their elected representatives will agree that a hotel, while perhaps permitted under existing zoning, is not an appropriate use for the Parcel. But we want to emphasize that to the extent there is any perceived conflict between City land use policies and the open space needs of the public trust, the trust needs must prevail.

Thank you again for your tireless work on behalf of the public trust. SPHERE looks forward to the outreach meeting on March 22 and providing SLC and City staff with its input as SLC considers the public trust needs for the Parcel.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

A handwritten signature in black ink, appearing to read 'W. White', with a horizontal line extending to the right.

William J. White

cc: Al Franzoia  
Grace Kato

March 30, 2018

Via Email and  
US Mail (w/attachment)

Al Franzoia  
Public Land Management Specialist  
California State Lands Commission  
100 Howe Avenue, Suite 100  
South Sacramento, CA 95825

**Re: Public Trust Needs Assessment for State Sovereign Land at 410 Airport  
Boulevard, Burlingame**

Dear Al,

Thank you and the State Lands Commission ("SLC") for initiating a Public Trust Needs Assessment for the above-referenced property. Special thanks also to the SLC staff and the City of Burlingame for hosting the public input meeting on March 22 regarding Public Trust needs and values for this important Bayfront site.

As a former board member and current Legislative Advocate for Committee for Green Foothills ("CGF"), a regional organization that has worked for over 55 years to protect open space and wildlife habitat, I am writing as an individual in support of Open Space and associated Public Trust uses for this site. I strongly support CGF's letter that is being submitted separately, and also wanted to provide some historic perspective and include the original brochure regarding the Public Trust that I mentioned to you at the meeting.

Based on my experience with the Public Trust in other areas of San Francisco Bay as well as along the San Mateo Coast (most recently at Martins Beach, I believe that the most appropriate Public Trust uses of this site are: open space, habitat restoration, nature-based park uses/passive recreational opportunities, and improved public access.

More specifically, I strongly support removing the old rubble from the San Mateo-Hayward Bridge that forms the deteriorating sea wall, and excavating part of the site to enable creation of a new, natural "living levee" that should include tidal marsh and transition-zone native habitats. This "living levee" would provide greater resilience for Sea Level Rise, and would also be the foundation for an improved and attractive segment of the Bay Trail. The area landward of the Bay Trail should include additional habitat restoration, including fresh water wetlands, if necessary to replace any lost wetlands on the site. A Small Boat Launch area could also provide new public access for kayaks and windsurfers, etc. to the Bay Water Trail.

Restoration of shoreline habitat on this small 8.8-acre parcel could be a signature project for Burlingame and the SLC, and would help rectify the gross and tragic loss of open water and shoreline habitat that occurred when the Anza Corporation filled some 160 acres of the Bay in this area back in the 1960's.

As detailed in Alan Hynding's history of the San Mateo Peninsula, From Frontier to Suburb, George Keyston, former president of the San Francisco stock exchange, and his two sons, "...started buying submerged real estate just south of the airport and east of the freeway and in 1964 the Keystons formed the Anza Pacific Corporation to fill and grade the property. With aid from Burlingame, which formed a municipal improvement district...to help finish the work, more than 150 acres were eventually reclaimed. For many Peninsulans, the Keyston bay fill scheme was carrying development too far. Burlingame residents protested against the work on aesthetic and environmental grounds, while thousands of freeway commuters who passed the project each day began to wonder about the merits of progress.... Despite mounting resistance, Anza Pacific began leasing its first properties in the mid-1960's and finished the undertaking several years later. The result was a jumble of high rise hotels, restaurants, offices, and airport parking lots resting on millions of yards of fill, including garbage, soil from nearby hills, and huge chunks of pavement from renovation of the San Mateo-Hayward Bridge."

I heartily agree with the above cited public concerns expressed about the egregious Bay fill by Anza Pacific, and note that it is even more urgent today that we do everything we can to reverse the damage from past filling of Public Trust lands. Regarding previous proposals for a hotel on this site, Burlingame already has 14 hotels, with over 4,000 rooms, and none of them are likely to be lower cost visitor accommodations that would address SLC's environmental justice considerations. Construction of one more hotel on this site, given the stringent and costly requirements of building on unengineered Bay fill underlain by Bay mud, and accounting for Sea Level Rise, would only be able serve the most affluent travelers, and would additionally exacerbate the need for hotel worker housing.

Over the past 150 years, 90% of the Bay's historic wetlands have been lost to Bay fill. We now have a wonderful opportunity to restore this small but nonetheless highly valuable and rare oasis, and to open up new, improved public access to the Bay for all to enjoy.

As noted above, I've included a copy of the original brochure that the SLC produced regarding the Public Trust - probably in the early 1980's. I believe that Kent Dedrick, who worked tirelessly as a volunteer with Committee for Green Foothills, and Sierra Club Loma Prieta Chapter, and eventually as a full time volunteer with the State Lands Commission, was a key author of this brochure. It is interesting to see that the basic messages of the original version are still relevant and it's heartening to see that your beautiful current color brochure continues to educate the public.

Thanks again for the public input meeting, and for the opportunity to comment. I look forward to the next steps in this exciting project.

Sincerely,

*Lennie Roberts*

Lennie Roberts 339 La Cuesta, Portola Valley, CA 94028

April 3, 2018

Mr. Al Franzoia, Public Land Management Specialist  
California State Lands Commission  
Sacramento, California 95825



**Re: Recreational Water Access in Burlingame**

Dear Mr. Franzoia:

The San Francisco Bay Area Water Trail (Water Trail) is a growing network of designated launching and landing sites, or “trailheads,” around San Francisco Bay. The Water Trail’s network of sites encourages people to experience the Bay in non-motorized small boats (such as kayaks, stand up paddleboards, and kiteboards) and in a variety of settings through single- and multi-day trips. The San Francisco Bay Trail is a planned 500-mile walking and cycling path around the entire San Francisco Bay running through all nine Bay Area Counties. Over 350 miles of trail are currently in place, connecting communities to open spaces, schools, transit, and to each other.

On behalf of the Water Trail and Bay Trail programs, I am supportive of efforts to incorporate development of a small boat launch and segment of Bay Trail on the 8.8 acres of state sovereign land in the City of Burlingame. We believe that trails and a small boat launch and/or beach in this area would significantly enhance shoreline access and water-based recreation in a region that currently has limited water access to the Bay. If designed properly, this site could be a draw for boardsailors and help to reduce crowding at Baywinds Park in Foster City, which attracts boardsailors from across the state. This launch could also connect paddlers to existing Water Trail sites at Eden Landing Ecological Reserve, Palo Alto Sail Station, Redwood City Municipal Marina, and beyond. The potential Bay Trail would also close an important gap and connect to existing segments located around Anza Lagoon and the Burlingame Recreation Lagoon to Coyote Point.

The safety, maintenance, and environmental sensitivity of Bay Trail and Water Trailheads are some of our primary concerns, and we have a variety of resources and materials that can assist in planning, design, and site development. Please feel free to contact me with any questions at (415) 820-7936 or [bbotkin@bayareametro.gov](mailto:bbotkin@bayareametro.gov).

Sincerely,

A handwritten signature in black ink that reads 'Ben Botkin'.

Ben Botkin  
Water Trail / Bay Trail Planner  
[sfbaywatertrail.org](http://sfbaywatertrail.org)  
[baytrail.org](http://baytrail.org)



# SEQUOIA AUDUBON SOCIETY

May 3, 2018

The Honorable State Lands Commission  
100 Howe Avenue, Suite 100 South  
Sacramento, CA 95825  
Via e-mail

Attn: Al Franzoia  
Public Land Management Specialist  
California State Lands Commission  
100 Howe Avenue, Suite 100 South  
Sacramento, CA 95825  
[al.franzoia@slc.ca.gov](mailto:al.franzoia@slc.ca.gov)

Re: Public Trust Needs Assessment for State Sovereign Land at 410 Airport  
Boulevard, Burlingame

Dear Honorable Commissioners:

Thank you for initiating a Public Trust Needs Assessment for the property at 410 Airport Boulevard, Burlingame. Special thanks also to the SLC staff and the City of Burlingame for hosting the public input meeting on March 22 regarding Public Trust Needs for this site.

The Sequoia Audubon Society, a chapter of the National Audubon Society that is based in San Mateo County, advocates for the protection of birds and other wildlife, and natural resources in San Mateo Counties.

On behalf of our members, we write concerning this site, which has unique environmental potential as part of the overall ecology of the San Francisco Bay. Accordingly, we believe that the best uses for this site that fit the Public Trust Doctrine include improved public access to the water and shoreline restoration.

We do not believe that a hotel at this site would be in the best interest of furthering the goals of the Public Trust for this parcel.

We strongly support removing the sea wall, and excavating part of the site to enable creation of a new, natural “living levee” that would include transition-zone native habitats

that will provide greater resilience in the face of sea level rise, restore habitat for multiple types of wildlife, and create the basis for an improved and attractive segment of the Bay Trail.

We do not believe that including areas such as a small boat launch, kayak, kite boarder and windsurf access in this small parcel would further the goal of providing optimal habitat for the myriad birds, other wildlife, and fauna that are continuously experiencing habitat loss and disturbance in this area. We therefore oppose inclusion of these types of areas. There are several nearby areas that more than adequately provide access for such activities.

More than 90% of the Bay's historic wetlands have been lost to development, making this area is one of the last opportunities in Burlingame and this area of the San Francisco Bay to reclaim shoreline. We encourage the SLC to use this opportunity to create a valuable improvement along The Bay that alleviates some of the development pressures that continue to reduce natural habitats that are so important to the health of The Bay and its citizens.

Thank you for the public input meeting and for the opportunity to further comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Rycenga". The signature is fluid and cursive, with the first name being more prominent than the last.

Jennifer Rycenga  
President, Sequoia Audubon Society

To: Al Franzoia or [al.franzoia@slc.ca.gov](mailto:al.franzoia@slc.ca.gov)

Public Land Management Specialist  
California State Lands Commission  
100 Howe Avenue, Suite 100  
South Sacramento, CA 95825

RE: 410 Airport Boulevard in Burlingame

Dear Mr. Franzoia,

I am a longtime San Mateo County resident and currently live in Burlingame. I strongly encourage the land available for a long term lease to be used for an open space park for the ENTIRE parcel. This should include habitat restoration, educational elements, extension of the Bay Trail and sustainability for future generations.

This open space proposal would provide the greatest benefit to all Californians and visitors as well as to those who live locally

Thank you for your support of the entirely open space proposal,

A handwritten signature in cursive script that reads "Elizabeth Sennett". The signature is written in black ink and is positioned above the printed name.

Elizabeth Sennett  
Burlingame, CA

Cell: (415) 725-0610



COMMITTEE FOR  
GREEN FOOTHILLS



July 19, 2018

California State Lands Commission  
c/o Al Franzoia  
Public Land Management Specialist  
100 Howe Avenue, Suite 100 South  
Sacramento, CA 95825

**Re: Public Trust Needs Assessment for 410 Airport Blvd., Burlingame**

Dear Mr. Franzoia:

Thank you for the opportunity to comment on the Draft Public Trust Needs Assessment for 410 Airport Blvd., Burlingame. This site is unique for many reasons, and we appreciate the thorough study of the issues at hand. That said, we believe that the value of open space, restoration, and wetlands adjacent to the San Francisco Bay outweigh other suggested benefits under the Public Trust Doctrine for the following reasons:

**1) Public support - 96% cited open space and access to the Bay**

96% of the public outreach comments received mentioned parklike open space and access to the water. Such prodigious support demonstrates the public's interest in keeping this parcel as open space with improved access to the water. The public recognizes the need given its proximity to the water and in a heavily developed area - and voiced the need for open space and improved access overwhelmingly, which is unusual in its uniformity. Please recognize how uncommon singular support for one action is in public discourse; the community wants open space with water access at this site.

**2) Environmental Benefits - Equity**

By keeping the site as an open space that is fully accessible to every single person, the site would meet the Commission's Environmental Justice Policy and Goals of protecting and preserving its lands and natural resources for all regardless of race, culture, income or socio-economic status. The CalEnviro Screen 3.0 indicates that nearby populations are environmentally disadvantaged, and have higher risks; therefore, any decision that would restrict access would be counter to the equitable allocation of resources. For example, if a hotel were built at the parcel, many people of lower income levels would not be able to access the site. This privatization of public lands flies in the face of the Commission's efforts at equity and are counter to the State's law to treat each person fairly, irrespective of their financial status.

The planning area where this site sits is known for its highly urbanized development pattern along the San Francisco Bay; there are limited natural resources nearby. With 79% of the Bay edge habitats lost to development, rarely does an opportunity occur along the shore to restore marshes, wildlife habitat and the potential for adaption to climate change. The opportunity to create a park-like open space with water

access in an area devoid of environmental resources is a rare chance; it needs to be recognized and seized before it is too late.

**3) Sea Level Rise – Open space serves the public’s interest**

As noted in the Public Trust Needs Assessment, the science on sea level rise has changed over time; the projections have become more significant and potentially more extreme. As cited in the Draft Public Trust Needs Assessment, the risk for inundation due to sea level rise at 410 Airport Boulevard is sizable.

In the current *California Sea-Level Rise Guidance 2018 Update* and the *County of San Mateo Sea Level Rise Vulnerability Assessment*, both reports include in their vulnerability analysis the risks from cascading impacts and recommend developing site specific adaptation pathways to increase resiliency, while also preparing for contingency plans.

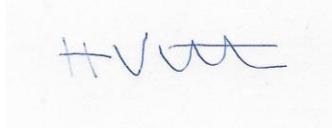
As the site under discussion is expected to be mostly inundated under the County of San Mateo’s Mid-Level Scenario (1% annual chance storm + 6.9 feet SLR), we believe that the most resilient use of the land would be to create a landscape that can act as a sponge to assist with the expected flood. Such planning would be beneficial for both the public and the Bay’s health and well-being.

Another aspect that has not been considered is the economic liability in the face of sea level rise. Sea level rise is expected to damage property, cause a loss of value to properties, cause public health issues, and potentially cause an inability to obtain insurance. In these cases, it remains to be seen who is monetarily liable; the state potentially carries some liability if the public’s well-being is at risk.

In closing, we recognize the work that State Lands Commission has put into this assessment, and appreciate the analysis. We are confident that dedicating the entire site to public open space will positively serve the community, the state, and the environment for years to come.

Thank you for your consideration.

Sincerely,



Helen Wolter, Legislative Advocate  
Committee for Green Foothills



Gail Raabe, Co-Chair  
Citizens Committee to Complete the Refuge



Gladwyn Souza, Conservation Chair  
Sierra Club, Loma Prieta Chapter



Ian Wren, Scientist  
Baykeeper



David Lewis, Executive Director  
Save the Bay



# UNITE HERE!

July 20, 2018

Mr. Al Franzoia, Public Land Management Specialist  
State Lands Commission  
100 Howe Avenue, Suite 100 South  
Sacramento CA 95825

RE: 410 Airport Boulevard, Draft Public Trust Needs Assessment

Dear Mr. Franzoia:

Our union, UNITE HERE Local 2, represents approximately 13,000 members who work in hotels and food service in San Francisco and San Mateo counties. We are closely following the decision-making process regarding the state-owned property at 410 Airport Boulevard in Burlingame. This letter is written in response to the draft Public Trust Needs Assessment (DPTNA) for that property.

We applaud the Commission's decision to engage in a robust public process as it seeks input and guidance on the future of the site at 410 Airport Blvd. We also share the Commission's caution in noting that, since sites such as this one come up for public discussion and possible utilization so rarely, it is important to engage in a process that is thorough and mindful and as publicly transparent as possible. In that vein, we have several specific comments.

First, our union is asking that, if a hotel use remains an active option for this parcel, the Commission adopt a labor peace policy/requirement which would apply to any hotel development on the site, and that the Commission include that requirement in any RFP or similar bid requirements. Specifically, a labor peace policy would require a bidder to enter into an agreement with an appropriate labor union which might seek to represent the employees of the future hotel. This agreement would help to protect the State -- by reducing the risk of disruptions such as strikes, pickets, or boycotts that might jeopardize the State's financial interest in the project. We believe that a labor peace requirement is critical to safeguarding the State's return on its land lease for a hotel project, and is consistent with the Commission's role to "act as a fiduciary protecting the public's rights and needs associated with its sovereign lands" and to "ensure performance under the lease." (pages 10-11 of the DPTNA)

At the March 22 meeting at the Burlingame Recreation Center, our union brought more than 20 hotel workers and allies. Among the many comments they contributed was a consistent theme: If there is to be a hotel at 410 Airport Boulevard, there should be a labor peace requirement in place to guarantee for the State labor peace on the site. We ask that the final version of the PTNA document be amended to include this sentiment -- and that any other summary materials provided to commissioners and senior SLC staff incorporate this labor peace recommendation.

Anand Singh  
President

Chito Cuéllar  
Vice-President

Tina Chen  
Secretary-Treasurer

209 Golden Gate Ave., San Francisco, CA 94102 • phone: 415.864.8770 • fax: 415.864.4158  
209 Highland Ave., Burlingame, CA, 94010 • phone: 650.344.6827 • fax: 650.344.9406



One specific place where this point could be added to the DPTNA is in the public comment section on page 18, where the public reaction to possible visitor serving uses of the site is discussed. We will follow up with you with some thoughts on this.

With respect to the preferred use of the 410 Airport Blvd parcel(s), please note that our union does *not* have a position on the relative merits of a hotel use vs. some other use there. We should note, however, that the DPTNA reports a hotel use as having received little support from attendees at the March 22 meeting. Other uses, such as open space, preservation, and wetlands restoration, received a much higher level of interest.

Regarding the notion expressed in Section V(C) that commercial uses such as hotels offer “equal access to all citizens,” we want to caution you about relying too heavily on the understanding that this is actually the case. This has sadly not been the experience of many marginalized communities. One example is a cautionary tale from San Francisco: in many neighborhoods, private businesses such as hotels are required to dedicate a certain amount of space for privately operated public open spaces, or POPOS. Nonprofit organizations serving immigrant youth have carried out investigations in which they have found that their constituents were subtly, or not-so-subtly, made to feel unwelcome even in spaces to which had been theoretically constructed for their enjoyment. If a hotel use is contemplated, it should not be done with the assumption that hotels will “offer equal access.”

Finally, we seek clarity on the next steps of the process for this parcel. The DPTNA described a variety of potential uses for 410 Airport Blvd. When different, and mutually exclusive, uses are favored by different sectors of the community, what process will be followed to arrive at a conclusion on the preferred option? If a particular use, such as a park or a hotel, is proposed by more than one applicant, how will the competing applications be evaluated? What is the role played by financial considerations, such as the potential lease payments for different projects? What is the process by which lease and/or rent payments will be determined? How can we ensure that labor peace requirements to protect those lease or rent payments will be put in place soon? What is the anticipated opportunity for public comment and further public participation in these next steps?

Thank you for your attention to our concerns. We welcome the opportunity to read the final PTNA and to engage further with your staff on the next steps for this parcel. We also look forward to engaging further with Commission members and staff at the Commission’s next public meeting on August 23.

Sincerely,

Cynthia Gómez  
Research Analyst  
UNITE HERE, Local 2

Cc: Anand Singh, President, UNITE HERE Local 2  
Lee Strieb, Director, Hotel Development, UNITE HERE International Union

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WILLIAM J. WHITE  
Attorney  
White@smwlaw.com

July 23, 2018

*Via E-Mail and FedEx*

Al Franzoia  
Public Land Management Specialist  
California State Lands Commission  
100 Howe Ave., Suite 100 South  
Sacramento, CA 95825  
E-mail: [al.franzoia@slc.ca.gov](mailto:al.franzoia@slc.ca.gov)

Re: Draft Public Trust Needs Assessment for Airport Boulevard  
Property in Burlingame

Dear Mr. Franzoia:

On behalf of the SPHERE Institute, we submit these comments on the draft Public Trust Needs Assessment (“PTNA”) for the State Lands Commission (“SLC”) parcel at 410 Airport Boulevard in Burlingame (“Property”). SPHERE commends SLC for undertaking the PTNA—the first public-trust needs study of its kind—and for moving away from a reactive approach to using trust lands that is often driven by private lease applications.

We recognize there is little precedent for what the PTNA should contain, and understand that SLC staff has yet to make its recommendations to the Commission based on the PTNA. However, given that the Property is “one of the last large undeveloped sites” in the Anza Airport Park area (see PTNA at p. 6),<sup>1</sup> that the Burlingame waterfront is virtually devoid of natural open space, and that the current waterfront is dominated by parking lots, paved areas, and an over-abundance of hotels, we believe that the PTNA should specifically reject hotels as a trust need for the site, and identify the greatest trust need as high-quality open space providing opportunities for passive recreation, wildlife habitat, and enjoyment of the Bay in its natural setting.

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<sup>1</sup> Unless noted otherwise, all page references are to the draft PTNA.

The PTNA recognizes the benefits of maintaining the Property as publicly accessible open space, but also expresses concerns related to funding, maintenance and liability. As discussed further below, SPHERE is confident that its proposal will eliminate all of these concerns.

### **The PTNA Should Identify the Greatest Trust Need: Passive Open Space**

In our April 6, 2018 comments regarding the PTNA process, we stated that the “overriding purpose of the [PTNA] is to identify those trust uses that are most needed at the [Property] and would provide greatest benefit to the people of the State.” SLC, in a February 2, 2018 letter to Burlingame’s Mayor Brownrigg, similarly stated that the PTNA’s purpose would be to “bring a recommendation on the most appropriate Public Trust uses for the property before the Commission.”

We remain confident that staff will present to the Commission a recommendation for uses of the Property that are most appropriate for the site and would provide the greatest benefit to the people of the State. However, we think the final PTNA should include more discussion of the trust needs for *this particular site*. The draft report describes generally the benefits of the different trust uses (parks and open space; hotel) proposed for the site, but does not discuss the extent to which those benefits would be realized if those uses were brought to the Property.

For example, in discussing hotel uses, the PTNA states that the potential benefits associated with “projects of this nature” include “increased public access” and “a destination to bring significantly more people to the Property and waterfront.” But the report fails to identify why yet another hotel in this location would be a *trust need*, given the Property’s already hotel-saturated surroundings. These surroundings include:

- a 15+ floor Hilton hotel adjacent to the Property;
- three hotels a half-mile from the Property;
- six hotels and nine restaurants on the 150-acre Anza Airport Park property;
- approximately 14 hotels between Highway 101 and the Bay on the stretch between Coyote Point and SFO.<sup>2</sup>

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<sup>2</sup> In addition, other hotels in the area are currently under construction. For example, the Grand Hyatt at SFO, on a 4.7-acre site approximately 1.5 miles from the Property, will

Hotel projects certainly can, in some places, increase public access and bring significantly more people to the waterfront. But there is no evidence that a hotel in *this* location would do anything but attract visitors out of one of the numerous other waterfront hotels nearby.

Similarly, the PTNA correctly states that the benefits of using the Property for an open space park would be “the creation of habitat, increase of public access to the Property and the Bay, low overall cost, a destination for the public to the Property and waterfront, and long-term adaptability to climate change and sea-level rise.” But this does not fully capture the *magnitude* of the need for such open space on the Burlingame waterfront.

As demonstrated at the March 22 public outreach meeting in Burlingame, the public is desperate for opportunities to enjoy Burlingame’s Bayfront in its natural state. The draft PTNA states that *ninety-five percent* of commenters believe that the Property should be kept as public open space (p. 31), and that many commenters observed that hotels are already well-represented in the area (p. 18). The public “overwhelmingly” prioritizes “passive” open space over open space for active recreation, as parks and sports facilities already constitute the majority of the open space in the City. See pp. 17-18.

This public vision of open space for the Property reflects an acute need, as it lies in stark contrast to existing conditions in not only the Anza area but the entire Burlingame Bayfront, which today is dominated by buildings, parking lots and paved areas. These areas account for 60% of the City’s total Bayfront area—with nearly 40% devoted to surface parking lots alone—severely degrading the experience of the Bay. See April 6, 2018 comments at p. 2, attached as Exhibit A, and exhibits referenced therein.<sup>3</sup> The vast majority of the remaining space is devoted to active recreational uses—sports fields and a golf course that are landward of Airport Boulevard and lack a true connection to the water—with only very small areas (such as the four-acre Robert E. Woolley State Park) serving as passive waterfront open space. The PTNA should be revised to more accurately reflect the overwhelming trust need to preserve, enhance, and open for public access the last remaining open space opportunity on the Burlingame waterfront.

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feature 351 rooms, 15,000 square feet of meeting space, and several restaurants. See <https://www.flysfo.com/media/press-releases/sfo-breaks-ground-new-grand-hyatt-hotel>.

<sup>3</sup> Our April 6, 2018 comments on behalf of SPHERE, which at the time gave the most complete description of SPHERE’s proposal for the Property, were omitted from the draft PTNA’s appendices. The April 6 letter is re-attached hereto and fully incorporated herein.

The draft PTNA should also be revised to eliminate any suggestion that a hotel would somehow be more in line with the City's vision for the Property as expressed in local planning documents. The report makes the remarkable statement that open space, preservation and restoration is the one trust need that "does not seem to fit squarely into the City's planning documents," and goes on to say that if the use included recreation, encouraged walking, and protected views, it "might" then fit with the City's current planning for the area (p. 20). We are not aware of any local planning regulations—in Burlingame or elsewhere—in which parks and open space are deemed inconsistent with a commercial land use designation. On the contrary, parks and open space enhance commercial land uses and are essential to any well-planned commercial neighborhood. The statement in the draft PTNA that SLC should ensure uses of the Property "align with adjacent local development" (p. 11) is inappropriate to the extent it suggests that the uses of the Property should be the same as adjacent hotel uses. If anything, SLC should ensure the use of the Property complements, rather than adds to, the surfeit of hotels in the area.

Indeed, as recognized elsewhere in the PTNA, the Bayfront Commercial ("BFC") designation in the City's own proposed GPU would "prioritize public access to the waterfront," and allow "open space easements to implement local and regional trail plans, recreation, and habitat preservation objectives" in the BFC (p. 13, quoting GPU). The goal of the BFC is to provide "a mix of uses" that include allowing residents and visitors to "bike[,] walk, and enjoy nature" (id.). The PTNA should be revised to state clearly that devoting the Property exclusively to park and open space use is fully consistent with local planning documents.

SLC should also eliminate from the PTNA any suggestion that the assessment of trust needs is limited to those trust uses that "overlap" with "local preferences" (p. 20). It is certainly appropriate for SLC to consider local planning efforts as part of the process of understanding the trust needs of the site. But the Property, as state sovereign land, is not subject to local land use regulations, and the City has not been delegated trustee authority for the Property by the legislature. The preferred uses of City elected officials should never be permitted to override the clear needs of the public trust, even if those preferred uses are "trust consistent." SLC must put the interests of the people of California ahead of any desire by local officials to generate tax dollars or promote development interests. Moreover, the local *public* has clearly made its preferences known, and those preferences

are overwhelmingly for a passive open space park, in line with the needs of the public trust.<sup>4</sup>

The draft PTNA should also include discussion of how a hotel on the site is incompatible with the kind of open space and habitat restoration use that is so desperately needed in this location. The report seems to imply that the site could accommodate a joint use of both hotel and open space. See p. 32 (“the site is large enough to accommodate more than one of the Public Trust uses identified by the public”). Not only is another hotel in the area unnecessary, but allowing both uses on the Property would seriously compromise the Property’s open-space, habitat, and sea level-rise protection values. Construction of a hotel would reduce the amount of land available for open space and drastically reduce the habitat and recreational quality of any open space provided, as is evident from the manicured landscaping that serves as “open space” at other hotel projects in the area. A hotel would also severely curtail views of the Bay.

As demonstrated at the March 22 public outreach meeting, the need to keep 100% of the site as open space is supported by broad consensus in the community. The final PTNA needs to emphasize that any hotel development on the Property would effectively eliminate the City’s last remaining opportunity to create new shoreline open space.

### **Consistency with Strategic Plan Policies**

As discussed in our prior letter, the Commission’s 2016-2020 Strategic Plan contains numerous strategies and key actions to address climate change, sea level rise, and environmental protection that are intended to guide the Commission’s decisionmaking. But the PTNA fails to meaningfully analyze the consistency of open space versus hotel use of the Property with the goals of the Strategic Plan. Instead, the report merely states that “[a]ll of the Public Trust-consistent uses identified in this document have the potential to meet the following Key Actions identified in the Commission’s Strategic Plan,” citing only four Key Actions (abate hazards; promote trust consistent development addressing sea level rise; ensure public access; and coordinate with lessees to address climate change) without any discussion of the degree to which each use would promote or impede the actions’ underlying goals.

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<sup>4</sup> Indeed, the public has not only overwhelmingly endorsed open space as the priority for the site, but has soundly rejected hotel use, which the PTNA acknowledges had “the lowest public support” (p. 31).

Moreover, the report entirely omits any reference to one of the most important Key Actions relevant to the Property, namely Key Action 1.2.4, which provides:

***Prioritize*** the use of sovereign lands where appropriate for ***open space, wetlands, riparian habitat and habitat preservation, restoration, and enhancement.***

This Key Action is particularly urgent for trust lands along the Bay. As described in the Baylands Report cited in the attached April 6 comments, thousands of acres of wetlands must be restored around the Bay to mitigate the effects of sea-level rise. The authors of that report put it succinctly: “Baylands restoration is not a luxury but an urgent necessity as ecological change accelerates.” Baylands Report at p. v. This necessity applies equally to urban waterfronts such as Burlingame’s, which lies within the urbanized San Francisco Area (“Segment J”) studied in the Baylands Report. As the report notes:

[S]egment [J] will remain highly urbanized, with limited opportunities for large scale restoration, but it presents many opportunities to develop ***small-scale restoration and green engineering projects*** toward meeting the co-objectives of improved habitat quality and the protection of existing infrastructure, shorelines, and baylands.

Baylands Report at p. 174. The report urges that these small-scale opportunities be pursued in the near term, including the following recommended actions, all of which apply to the Property:

- Preserve, enhance, and create diverse pocket habitats that are linked in a sub-regional habitat corridor;
- Design and restore complete tidal wetlands systems, even at a small scale;
- Protect land as it may become available to incorporate transition zones into restoration designs.

Id. at p. 176.

In the final PTNA, SLC should include an analysis of the degree to which each of the proposed uses—open space and hotel development—would advance or impede the Strategies and Key Actions set forth in the Strategic Plan, including Key Action 1.2.4. We believe such analysis would show that a hotel project is not capable of providing the kind of high quality open space, pocket habitats, wetlands restoration, Bay views, and public enjoyment of the Bay that an open space park project would.

### **SPHERE's Passive Open Space Proposal Will Address Funding and Liability Issues**

SPHERE's vision is to create a park where people can access the Bay and interact with and learn from nature. Working closely with its consultants, H. T. Harvey & Associates and Terrell Watt Planning Consultants, and having consulted with numerous potential funders, advocacy groups and land conservancies, SPHERE has determined that transforming the Property into a first-class shoreline park is feasible.

Since submitting its draft concept plan on April 6, SPHERE has further refined its concept for a tidal restoration and sea-level rise resiliency demonstration project. Given the Bay's wind/wave forces coming into the site's northern shore, the deteriorating sea wall would be breached, rather than removed, to introduce tidal action and create new tidal wetlands and transition zone habitat. The educational vision (using the site as a demonstration project for small-scale tidal influence restoration) remains unchanged, with an interpretive program focused on sea-level rise and the Bay edge.<sup>5</sup> The park could include various amenities, such as trails, picnic areas, native planting areas, a multi-purpose space, overlooks, restrooms, parking and other supporting facilities. The park would also close an unpaved gap in the Bay Trail that does not meet the Bay Trail's design guidelines, and (if approved by SLC) could include a kayak launch to add another access point for the Bay Water Trail. SPHERE anticipates the final design of the park would be developed in collaboration with SLC, with input from a public engagement process.

SPHERE's proposal would directly address two significant concerns of many members of the public: it would restore, and fill a missing link, in the Bay Trail (see p. 7), and cleanup and maintenance would begin on the site immediately upon issuance of a lease (see p. 17). Moreover, SPHERE's proposal would do all of the things that the PTNA states would bring open-space use of the Property into alignment with the City's planning documents: it would encourage walking (on the Bay Trail and other connecting paths), protect views of the waterfront (by avoiding development of the site), and provide water access (by providing a possible kayak launch). See p. 20.

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<sup>5</sup> The concept is a flexible one that can be adapted to accommodate whatever specific design and improvement plan SLC determines is appropriate for the open space. If SLC prefers to repair the existing seawall, SPHERE's plan could still accommodate a natural, 100% open space park focused on restoring the site's existing seasonal wetlands.

The PTNA states that open-space use would not generate revenue to pay for seawall construction and maintenance, and would provide limited indemnity and liability protection to the State. See pp. 31-32. But these concerns are not warranted.

A hotel is not needed to make the open-space use economically feasible. SPHERE and its consultants have prepared an initial Funding Plan that estimates the cost of the first phase of the project—which will allow the park to open and includes Bay Trail installation, driveway, parking, native landscaping and grading the central marsh (including the sea wall breach) and upland—at approximately \$5 million. SPHERE has already identified more than \$5 million in anticipated funding sources for the first phase, and has begun outreach to numerous additional sources to obtain all the funds needed to implement later phases of its proposal (including park buildings, boardwalk, educational features, central and western lawn, and Sanchez Creek water access). See Funding Plan attached as Exhibit B.<sup>6</sup>

In addition, SPHERE is committed to funding the planning phase of the project, as well as the annual maintenance costs for the park (to the extent outside funding for those costs is not secured). SPHERE believes that it can develop a plan, obtain the required approvals, and secure funding within 2–3 years of lease approval, and would accept a termination clause in the lease if this timeline is not met.

Nor should liability or indemnification be considered a substantial issue for the State. The State already enjoys substantial immunities for recreational trails and for public property in its natural condition<sup>7</sup> (see Gov. Code §§ 831.2; 831.4). But in any case, SPHERE, through the lease, would assume all liabilities for the project, fully indemnify the State, and obtain all insurance coverages required by SLC.<sup>8</sup>

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<sup>6</sup> In developing the Funding Plan, SPHERE has consulted with two well-known organizations, the Trust for Public Land and the Peninsula Open Space Trust. SPHERE will continue to seek these organizations' input as SPHERE's concept and Funding Plan evolve.

<sup>7</sup> Indeed, these immunities are likely to be much stronger with an open space project than a hotel project. Natural condition immunity extends to property whose human-altered condition replicates “a model common to nature.” *Goddard v. Dept. of Fish & Wildlife* (2015) 243 Cal.App.4th 350. Open space connected to a hotel project is far less likely to meet this condition than the restoration project proposed by SPHERE.

<sup>8</sup> The only possible advantage of a hotel project would be the amount of residual rent to SLC. But monetary income to the State should not, by itself, justify selecting a project

Al Franzoia  
July 23, 2018  
Page 9

In light of the above, we believe the final PTNA should conclude that the most critical need for the Property is its preservation for open space, habitat restoration and public access, and that a hotel is neither needed nor desirable at this location. SPHERE's proposal would provide immeasurably greater public benefits with greater certainty and in a shorter time-frame than any hotel-centric open space project could. The Property presents a unique opportunity to recreate the tidal wetland and transition zone habitat that has been lost throughout much of the Bay, and can provide an invaluable demonstration site for innovative sea level-rise resiliency strategies.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



William J. White

cc: Jennifer Lucchesi  
Grace Kato

1018429.6

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that will impede public trust objectives over a project that would advance those objectives.

SHUTE, MIHALY  
& WEINBERGER LLP

# EXHIBIT A

SHUTE MIHALY  
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April 6, 2018

**Via E-Mail**

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California State Lands Commission  
100 Howe Ave., Suite 100 South  
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E-Mail: [al.franzoia@slc.ca.gov](mailto:al.franzoia@slc.ca.gov)

Re: Public Trust Needs Assessment for 8.8-Acre Bayfront Parcel in  
Burlingame

Dear Mr. Franzoia:

On behalf of the SPHERE Institute, we submit these comments for consideration in the Public Trust Needs Assessment for the State's property at 410 Airport Boulevard ("Site") in Burlingame. SPHERE greatly appreciates the Commission's decision to undertake the Needs Assessment and the efforts made by staff to solicit public input on the issue, particularly the March 22, 2018 community outreach meeting.

The overriding purpose of the Needs Assessment is to identify those trust uses that are most needed at the Site and would provide greatest benefit to the people of the State. We believe the evidence overwhelmingly points to a single conclusion: the most urgent public trust need for the Site is public open space that preserves and restores the Site's natural habitat. We also believe that while a wide range of design options and park improvements are compatible with this use, the construction of a hotel on the Site is not. A new hotel is the last thing the trust needs on the Burlingame shoreline, and the construction of a hotel would reduce the amount of land available for desperately needed open space, and drastically reduce the quality of any open space provided.

As the March 22 outreach meeting made clear, the need to keep 100% of the Site in open space is also supported by a broad consensus in the community, which was universally opposed to a new hotel. Nor is a hotel needed to make the open space use economically feasible. As you know, SPHERE has committed to taking on the operation

and management of the Site immediately, and to develop an improvement and funding plan that will deliver a program of park improvements and habitat restoration within a timeframe as good or better than could be achieved with open space that is dependent on development of a hotel project.

This letter and the accompanying presentation prepared by H. T. Harvey & Associates and other materials are submitted for SLC's consideration in connection with the Needs Assessment.

### **The Burlingame Bayfront Needs Natural Open Space**

The San Francisco Bay's perimeter has changed significantly over the last few hundred years. Development has created new land in what was previously open water, filled in tidal wetlands, and removed transition zone habitat (the gentle transition from the Bay into upland grasslands and woodlands). Approximately 80% of tidal marshes and associated transition zone habitats has been lost around the Bay, making restoration of these habitats a regional priority.<sup>1</sup> Tidal marshes and transition zones are important because they have high species richness and diversity, provide refuge for bay wildlife during high tides, help to control flooding during storms, and provide a gentle slope above existing marshes on which they can expand inland as sea level rises.

The Burlingame Bayfront – and the Anza area in particular – provide a dramatic example of these changes to the Bay. The Anza area consists of about 150 acres of former tide and submerged lands that were largely filled in the 1960's without the State's permission. Today, these lands and the entire Burlingame Bayfront are dominated by buildings and paved areas. As shown in the accompanying materials, these areas account for 60% of the City's total Bayfront area – with nearly 40% devoted to surface parking lots alone – severely degrading the experience of the Bay. The vast majority of the remaining space is devoted to active recreational uses – sports fields and a golf course<sup>2</sup> – with only very small areas (such as the 4 acre Robert E. Woolley State Park) serving as passive open space, and virtually none of those lands providing significant habitat value.

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<sup>1</sup> See *The Baylands and Climate Change: What We Can Do. Baylands Ecosystem Habitat Goals Science Update 2015*, prepared for the California State Coastal Conservancy by the San Francisco Bay Area Wetlands Ecosystem Goals Project, submitted herewith (“Baylands Report”).

<sup>2</sup> Notably, of the 30 soccer fields on the Bay Peninsula, 15 are clustered in Burlingame and San Mateo.

The public is desperate for opportunities to enjoy Burlingame's Bay shore in its natural state.

The need for preservation of remaining waterfront open spaces has been greatly magnified in light of climate change. As described in the Baylands Report, *thousands* of acres of wetlands must be restored around the Bay to mitigate the effects of sea level rise.<sup>3</sup> The authors of that report put it succinctly: "Baylands restoration is not a luxury but an urgent necessity as ecological change accelerates." (Baylands Report at p. v.) This necessity applies equally to urban waterfronts such as Burlingame's, which lies within the urbanized San Francisco Area ("Segment J") studied in the Baylands Report. As the report notes:

[S]egment [J] will remain highly urbanized, with limited opportunities for large scale restoration, *but it presents many opportunities to develop small-scale restoration and green engineering projects toward meeting the co-objectives of improved habitat quality and the protection of existing infrastructure, shorelines, and baylands.*

(Baylands Report at p. 174.) The report urges that these small-scale opportunities be pursued in the near term, including the following recommended actions:

- Preserve, enhance, and create diverse pocket habitats that are linked in a sub-regional habitat corridor
- Design and restore complete tidal wetlands systems, even at a small scale
- Protect land as it may become available to incorporate transition zones into restoration designs

(Id. at p. 176.)

In its 2016-2020 Strategic Plan, the SLC has likewise recognized the necessity for managing the State's ungranted sovereign lands in light of the challenges presented by

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<sup>3</sup> A recent report published by Science Advances shows the problem may be even more challenging than expected. (See "Global climate change and local land subsidence exacerbate inundation risk to the San Francisco Bay Area," Shirzaei, M. and Bürgmann, R., *Science Advances*, Vol. 4, No. 3 (March 7, 2008) <http://advances.sciencemag.org/content/4/3/eaap9234>, submitted herewith.)

climate change and sea level rise. (See Strategy 1.2.) In the plan, SLC committed to “[i]ncorporate strategies to address climate change [and] adapt to sea-level rise. . .into all the Commission’s planning processes, project analysis and decisions.” (Strategy 1.4.) The plan sets forth a number of Key Actions to implement the strategies, including Key Action 1.2.4, which provides: “***Prioritize the use of sovereign lands where appropriate for open space, wetlands, riparian habitat and habitat preservation, restoration, and enhancement.***”

In light of the above, there can be little doubt that the entirety of the Site -- as the *last remaining parcel* on the Burlingame waterfront that can provide quality natural open space – must be reserved for open space and habitat restoration. The Site presents a unique opportunity to recreate the tidal wetland and transition zone habitat that has been lost throughout much of the Bay, and can provide an invaluable demonstration site for innovative sea level rise resiliency strategies.

### **There Is No Public Trust Need for Another Hotel**

Few jurisdictions have as dense a concentration of hotels along the Bay as Burlingame. Between Highway 101 and the Bay, there are no fewer than 14 existing hotels – 10 of which are waterward of Airport Boulevard, and 6 of which are within the Anza area. Hotels literally dominate the Burlingame waterfront. It cannot be seriously maintained that the public trust needs another.

But while there are plenty of hotels to accommodate visitors, there are painfully few ways for those visitors to enjoy Burlingame’s Bayfront. There are no real Bayfront destinations in the City today, which undermines the very reason why hotels are permitted on trust lands in the first place – to attract visitors *to the Bay*. Using the Site for public open space will give visitors to the City’s existing hotels a reason to explore the Bay *in Burlingame*, greatly enhancing the hotel experience of those visitors. Building a new hotel at the Site would not only eliminate the City’s only remaining opportunity to create new shoreline open space, but would likely do little more than attract guests away from the City’s existing hotels, providing benefits to the hotel developer but not to the trust.

It has been suggested that another hotel should be considered because current hotel occupancy rates are high. Given that the State is at the height of an historic economic boom, the fact that occupancy rates are also experiencing highs is neither surprising nor a justification to build more hotels on trust lands – as we know from the low occupancy rates experienced in the Bay area during the last recession. But in any case, the fact that

there may be market demand to support development of another hotel does not mean that there is a *public trust need* for one. The test for determining a trust need is not whether a particular use would be financially feasible or lucrative to a developer, but rather, what use is most important for *the trust*. A fifteenth hotel is not the most important trust need for a part of the Bay that is already saturated with hotels, but has a severe lack of quality, natural open space.

### **A Natural, Open Space Park at This Site Is Feasible Use for the Site**

Working closely with its consultant, H. T. Harvey & Associates, SPHERE has determined that transforming the Site into a first-class shoreline park is feasible, and has begun to develop preliminary concepts to illustrate its vision. SPHERE's proposal is to use the entire site as public open space, with ancillary park and public access improvements, but the concept is a flexible one that can be adapted to accommodate whatever specific design and improvement plan SLC determines is appropriate for the open space.

SPHERE's vision is to create a park where people can access the Bay and interact with and learn from nature. One option that SPHERE and H.T. Harvey are investigating would involve using the Site as a demonstration project for small-scale tidal influence restoration. Under this option, the deteriorating seawall could be partially removed to introduce tidal action and create new tidal wetlands and transition zone habitat, with an interpretive program to provide education around sea level rise and the Bay edge. A preliminary design vision for this option is included in the materials submitted with this letter.

However, other options are also available. If SLC prefers to repair the existing seawall, SPHERE's plan could still accommodate a natural, 100% open space park focused on restoring the site's existing seasonal wetlands. In either scenario, the park could include various amenities, such as trails, picnic areas, native planting areas, a multi-purpose space, overlooks, restrooms, parking (on existing paved area) and other supporting facilities. The park would also close an unpaved gap in the Bay Trail that does not meet the Bay Trail's design guidelines, and (if approved by SLC) could include a kayak launch to add another access point for the Bay Water Trail. SPHERE anticipates the final design of the park would be developed in collaboration with SLC, with input from a public engagement process.

SPHERE remains committed to assuming responsibility for the management and operation of the Site, and for designing, obtaining approvals and funding for, and

developing the park improvements. While SPHERE has substantial financial resources to fund the project, it recognizes that collaboration and partnerships are key to a successful project. SPHERE has already begun investigating opportunities for funding and development partners, which could include federal, state and/or local wetlands and science-focused funds, such as the San Francisco Bay Restoration Authority Grant, the U.S. North American Wetlands Conservation Act Grant, the San Francisco Bay Water Quality Improvement Fund. SPHERE believes that it can develop a plan and obtain the required approvals and funding within 2-3 years of lease approval, and would accept a termination clause in the lease if this timeline is not met.

Relying on a hotel project to fund open space at the Site is neither necessary nor in the best interests of the trust. Any open space provided as part of a hotel project would be greatly diminished in terms of quantity and quality, and could not begin to provide the kind of habitat restoration that is possible with a 100% open space project, as is evident from the manicured landscaping that serves as “open space” at other hotel projects in the area. And even the limited benefits that the public would realize from such open space would be subject to the developer’s own development schedule and financial considerations, meaning the timeframe would likely be much greater than that proposed by SPHERE -- if the developer decided to proceed with the project at all. SPHERE’s proposal would provide much greater public benefits with greater certainty and in a shorter time-frame than any hotel open space project could.

Thank you for allowing SPHERE to participate in this process and for considering our comments. We look forward to continued involvement in the process, including participation in upcoming SLC meetings on the topic, and are happy to meet with SLC to discuss these matters in greater detail at any time.

Very truly yours,  
SHUTE, MIHALY & WEINBERGER LLP



William J. White

cc: Jennifer Lucchesi  
Grace Kato  
Sheri Pemberton

The preceding letter from William J. White at SHUTE, MIHALY & WEINBERGER LLP included an attachment entitled, "410 Airport Boulevard – A vision for Burlingame Shoreline Park."

The 37 page attachment is available upon request and is on file at the Sacramento office of the State Lands Commission.

**Appendix B:**

Recently Submitted Proposed Conceptual Plans

**Appendix B-1:**

City of Burlingame's Park Proposal

SAN FRANCISCO BAY



**BAYVIEW PARK**

CONCEPTUAL MASTER PLAN AND PUBLIC ACCESS & OPEN SPACE EXHIBIT

BURLINGAME, CALIFORNIA

DECEMBER 16, 2014



**Appendix B-2:**

Burlingame Bay Park Hotel, LLC's Proposal

BAY AMENITIES  
(SEATING, LOOK-OUTS)

12' BAY TRAIL

SAN FRANCISCO BAY

100' BCDC SHORELINE BAND

EXISTING  
SHORELINE  
RIP-RAP

MITIGATED  
WETLAND  
AREA

LANDSCAPED  
BERMS

BAY TRAIL  
AMENITIES

100' BCDC  
SHORELINE  
BAND

PICNIC  
AREA

BAY TRAIL  
PARKING

EXISTING  
PROTECTED  
WETLANDS

75'  
setback

100'

100'

KINCAID'S  
RESTAURANT  
PARKING LOT

5-STORY HOTEL/  
RETAIL CENTER

LAWN AREA  
FOR ACTIVE AND  
PASSIVE ACTIVITIES

VISITOR  
DROP-OFF AREA

PARK  
PLAZA

REST-  
ROOMS

RAMP TO  
BASEMENT  
PARKING

BAYVIEW PLACE

AIRPORT BOULEVARD

PICNIC AREA

**5-STORY HOTEL/RETAIL CENTER - 150,000 SQ. FT. (65' MAX)**

FIRST AND SECOND FLOOR: RESTAURANTS, SPORT CLUB  
AND RETAIL

THIRD TO FIFTH FLOOR: 150-ROOM HOTEL (50 ROOM/FLR)

**BASEMENT PARKING - 380 CARS**

RETAIL CENTER/PUBLIC USE: 200 CARS

HOTEL: 180 CARS (150 ROOMS AND 30 STAFF)

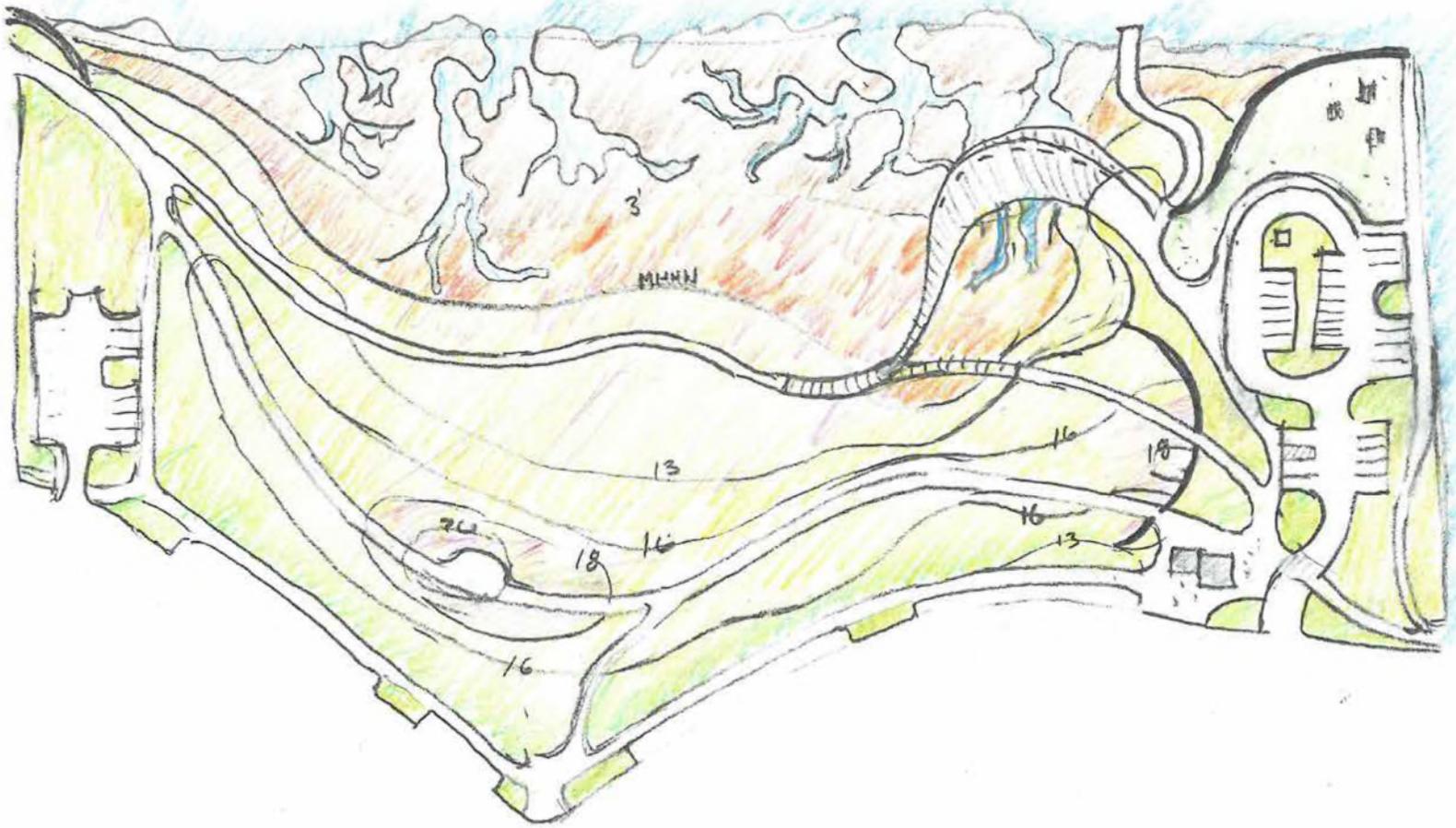
PARK ENTRY PLAZA



0 40 80

**Appendix B-3:**

The SPHERE Institute's Proposal



**Appendix B-4:**

Zibasara, LLC's Proposal



**Appendix EJ-1:**

EJScreen Standard Report 5-Mile Radius

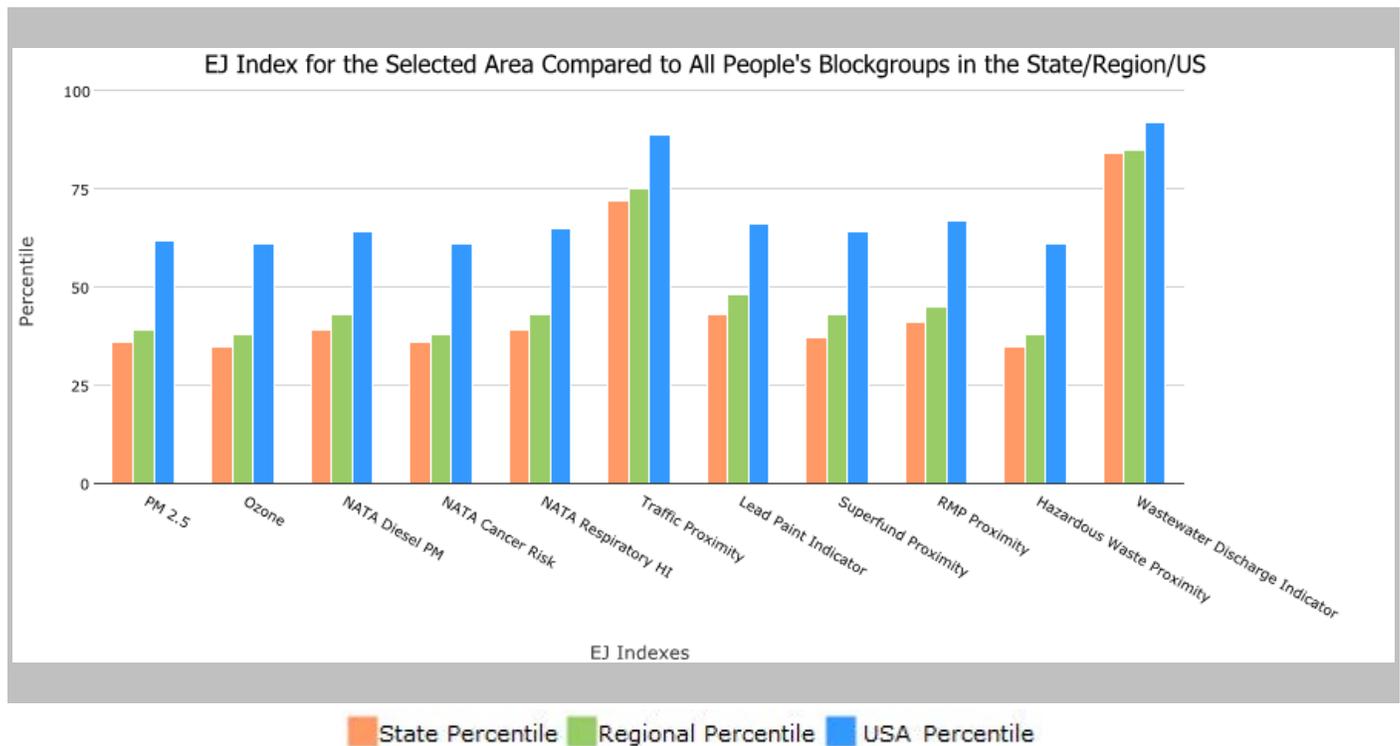
5 mile Ring around the Corridor, CALIFORNIA, EPA Region 9

Approximate Population: 203,504

Input Area (sq. miles): 81.13

410 Airport Blvd + 1 mi (The study area contains 2 blockgroup(s) with zero population.)

Selected Variables	State Percentile	EPA Region Percentile	USA Percentile
<b>EJ Indexes</b>			
EJ Index for PM2.5	36	39	62
EJ Index for Ozone	35	38	61
EJ Index for NATA* Diesel PM	39	43	64
EJ Index for NATA* Air Toxics Cancer Risk	36	38	61
EJ Index for NATA* Respiratory Hazard Index	39	43	65
EJ Index for Traffic Proximity and Volume	72	75	89
EJ Index for Lead Paint Indicator	43	48	66
EJ Index for Superfund Proximity	37	43	64
EJ Index for RMP Proximity	41	45	67
EJ Index for Hazardous Waste Proximity	35	38	61
EJ Index for Wastewater Discharge Indicator	84	85	92



This report shows the values for environmental and demographic indicators and EJSCREEN indexes. It shows environmental and demographic raw data (e.g., the estimated concentration of ozone in the air), and also shows what percentile each raw data value represents. These percentiles provide perspective on how the selected block group or buffer area compares to the entire state, EPA region, or nation. For example, if a given location is at the 95th percentile nationwide, this means that only 5 percent of the US population has a higher block group value than the average person in the location being analyzed. The years for which the data are available, and the methods used, vary across these indicators. Important caveats and uncertainties apply to this screening-level information, so it is essential to understand the limitations on appropriate interpretations and applications of these indicators. Please see EJSCREEN documentation for discussion of these issues before using reports.

5 mile Ring around the Corridor, CALIFORNIA, EPA Region 9

Approximate Population: 203,504

Input Area (sq. miles): 81.13

410 Airport Blvd + 1 mi (The study area contains 2 blockgroup(s) with zero population.)



Sites reporting to EPA	
Superfund NPL	0
Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF)	0

## EJSCREEN Report (Version 2017)



5 mile Ring around the Corridor, CALIFORNIA, EPA Region 9

Approximate Population: 203,504

Input Area (sq. miles): 81.13

410 Airport blvd + 1 mi (The study area contains 2 blockgroup(s) with zero population.)

Selected Variables	Value	State Avg.	%ile in State	EPA Region Avg.	%ile in EPA Region	USA Avg.	%ile in USA
<b>Environmental Indicators</b>							
Particulate Matter (PM 2.5 in $\mu\text{g}/\text{m}^3$ )	10.2	10.6	39	9.9	51	9.14	76
Ozone (ppb)	30.7	40.8	4	41.8	3	38.4	1
NATA* Diesel PM ( $\mu\text{g}/\text{m}^3$ )	0.757	0.973	43	0.978	<50th	0.938	50-60th
NATA* Cancer Risk (lifetime risk per million)	37	44	27	43	<50th	40	<50th
NATA* Respiratory Hazard Index	2.8	2.1	81	2	80-90th	1.8	80-90th
Traffic Proximity and Volume (daily traffic count/distance to road)	2100	1200	84	1100	84	590	93
Lead Paint Indicator (% Pre-1960 Housing)	0.47	0.29	71	0.24	76	0.29	74
Superfund Proximity (site count/km distance)	0.061	0.17	38	0.15	44	0.13	49
RMP Proximity (facility count/km distance)	0.51	1.1	46	0.98	52	0.73	61
Hazardous Waste Proximity (facility count/km distance)	0.036	0.13	27	0.12	29	0.093	37
Wastewater Discharge Indicator (toxicity-weighted concentration/m distance)	0.079	16	82	13	83	30	89
<b>Demographic Indicators</b>							
Demographic Index	36%	49%	33	47%	35	36%	58
Minority Population	54%	61%	40	59%	44	38%	70
Low Income Population	18%	36%	26	36%	25	34%	26
Linguistically Isolated Population	9%	10%	59	9%	63	5%	82
Population With Less Than High School Education	9%	18%	38	17%	40	13%	46
Population Under 5 years of age	6%	7%	51	7%	51	6%	55
Population over 64 years of age	15%	12%	71	13%	70	14%	63

\* The National-Scale Air Toxics Assessment (NATA) is EPA's ongoing, comprehensive evaluation of air toxics in the United States. EPA developed the NATA to prioritize air toxics, emission sources, and locations of interest for further study. It is important to remember that NATA provides broad estimates of health risks over geographic areas of the country, not definitive risks to specific individuals or locations. More information on the NATA analysis can be found at: <https://www.epa.gov/national-air-toxics-assessment>.

For additional information, see: [www.epa.gov/environmentaljustice](http://www.epa.gov/environmentaljustice)

EJSCREEN is a screening tool for pre-decisional use only. It can help identify areas that may warrant additional consideration, analysis, or outreach. It does not provide a basis for decision-making, but it may help identify potential areas of EJ concern. Users should keep in mind that screening tools are subject to substantial uncertainty in their demographic and environmental data, particularly when looking at small geographic areas. Important caveats and uncertainties apply to this screening-level information, so it is essential to understand the limitations on appropriate interpretations and applications of these indicators. Please see EJSCREEN documentation for discussion of these issues before using reports. This screening tool does not provide data on every environmental impact and demographic factor that may be relevant to a particular location. EJSCREEN outputs should be supplemented with additional information and local knowledge before taking any action to address potential EJ concerns.

**Appendix EJ-2:**

EJScreen Standard Report 1-Mile Radius

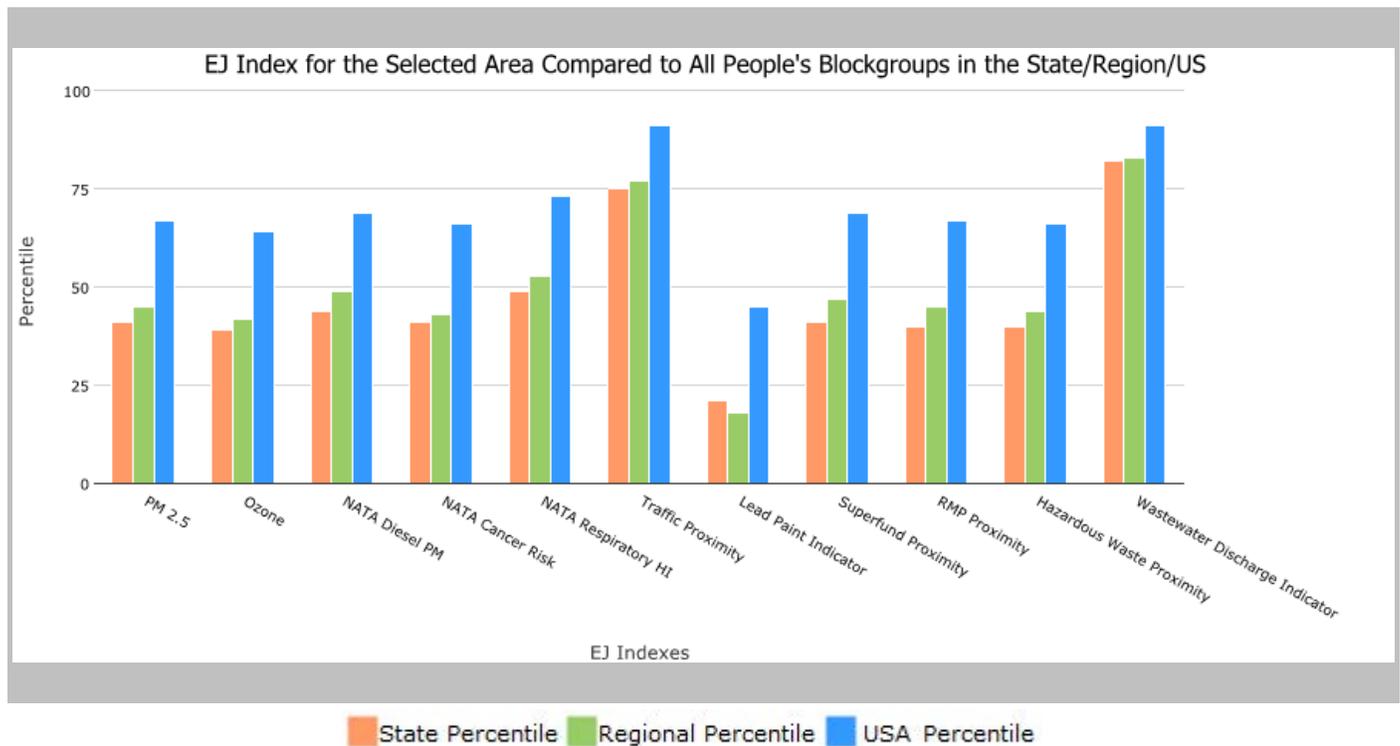
1 mile Ring around the Corridor, CALIFORNIA, EPA Region 9

Approximate Population: 11,739

Input Area (sq. miles): 3.67

410 Airport Blvd + 1 mi (The study area contains 1 blockgroup(s) with zero population.)

Selected Variables	State Percentile	EPA Region Percentile	USA Percentile
<b>EJ Indexes</b>			
EJ Index for PM2.5	41	45	67
EJ Index for Ozone	39	42	64
EJ Index for NATA* Diesel PM	44	49	69
EJ Index for NATA* Air Toxics Cancer Risk	41	43	66
EJ Index for NATA* Respiratory Hazard Index	49	53	73
EJ Index for Traffic Proximity and Volume	75	77	91
EJ Index for Lead Paint Indicator	21	18	45
EJ Index for Superfund Proximity	41	47	69
EJ Index for RMP Proximity	40	45	67
EJ Index for Hazardous Waste Proximity	40	44	66
EJ Index for Wastewater Discharge Indicator	82	83	91



This report shows the values for environmental and demographic indicators and EJSCREEN indexes. It shows environmental and demographic raw data (e.g., the estimated concentration of ozone in the air), and also shows what percentile each raw data value represents. These percentiles provide perspective on how the selected block group or buffer area compares to the entire state, EPA region, or nation. For example, if a given location is at the 95th percentile nationwide, this means that only 5 percent of the US population has a higher block group value than the average person in the location being analyzed. The years for which the data are available, and the methods used, vary across these indicators. Important caveats and uncertainties apply to this screening-level information, so it is essential to understand the limitations on appropriate interpretations and applications of these indicators. Please see EJSCREEN documentation for discussion of these issues before using reports.

1 mile Ring around the Corridor, CALIFORNIA, EPA Region 9

Approximate Population: 11,739

Input Area (sq. miles): 3.67

410 Airport Blvd + 1 mi (The study area contains 1 blockgroup(s) with zero population.)



Sites reporting to EPA	
Superfund NPL	0
Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF)	0

## EJSCREEN Report (Version 2017)



1 mile Ring around the Corridor, CALIFORNIA, EPA Region 9

Approximate Population: 11,739

Input Area (sq. miles): 3.67

**410 Airport blvd + 1 mi (The study area contains 1 blockgroup(s) with zero population.)**

Selected Variables	Value	State Avg.	%ile in State	EPA Region Avg.	%ile in EPA Region	USA Avg.	%ile in USA
<b>Environmental Indicators</b>							
Particulate Matter (PM 2.5 in $\mu\text{g}/\text{m}^3$ )	10.3	10.6	41	9.9	53	9.14	78
Ozone (ppb)	30.3	40.8	2	41.8	2	38.4	1
NATA* Diesel PM ( $\mu\text{g}/\text{m}^3$ )	0.907	0.973	52	0.978	50-60th	0.938	60-70th
NATA* Cancer Risk (lifetime risk per million)	48	44	68	43	60-70th	40	70-80th
NATA* Respiratory Hazard Index	4.5	2.1	97	2	95-100th	1.8	95-100th
Traffic Proximity and Volume (daily traffic count/distance to road)	4100	1200	92	1100	92	590	97
Lead Paint Indicator (% Pre-1960 Housing)	0.46	0.29	70	0.24	75	0.29	73
Superfund Proximity (site count/km distance)	0.063	0.17	40	0.15	46	0.13	51
RMP Proximity (facility count/km distance)	0.22	1.1	27	0.98	32	0.73	42
Hazardous Waste Proximity (facility count/km distance)	0.034	0.13	26	0.12	28	0.093	36
Wastewater Discharge Indicator (toxicity-weighted concentration/m distance)	0.0041	16	74	13	74	30	75
<b>Demographic Indicators</b>							
Demographic Index	37%	49%	33	47%	36	36%	59
Minority Population	49%	61%	35	59%	39	38%	67
Low Income Population	24%	36%	37	36%	36	34%	38
Linguistically Isolated Population	11%	10%	64	9%	68	5%	85
Population With Less Than High School Education	8%	18%	34	17%	36	13%	41
Population Under 5 years of age	6%	7%	48	7%	48	6%	52
Population over 64 years of age	11%	12%	51	13%	50	14%	40

\* The National-Scale Air Toxics Assessment (NATA) is EPA's ongoing, comprehensive evaluation of air toxics in the United States. EPA developed the NATA to prioritize air toxics, emission sources, and locations of interest for further study. It is important to remember that NATA provides broad estimates of health risks over geographic areas of the country, not definitive risks to specific individuals or locations. More information on the NATA analysis can be found at: <https://www.epa.gov/national-air-toxics-assessment>.

For additional information, see: [www.epa.gov/environmentaljustice](http://www.epa.gov/environmentaljustice)

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## **Appendix EJ-3:**

EJScreen American Community Survey (demographic) Summary Report

Location: User-specified linear location  
 Ring (buffer): 5-mile radius  
 Description: 410 Airport blvd + 1 mi

Summary of ACS Estimates		2011 - 2015
Population		203,504
Population Density (per sq. mile)		4,416
Minority Population		110,286
% Minority		54%
Households		75,613
Housing Units		79,681
Housing Units Built Before 1950		20,130
Per Capita Income		55,401
Land Area (sq. miles) (Source: SF1)		46.08
% Land Area		51%
Water Area (sq. miles) (Source: SF1)		43.98
% Water Area		49%

	2011 - 2015 ACS Estimates	Percent	MOE (±)
<b>Population by Race</b>			
Total	203,504	100%	816
Population Reporting One Race	193,081	95%	2,606
White	120,207	59%	797
Black	3,719	2%	257
American Indian	539	0%	67
Asian	54,020	27%	504
Pacific Islander	2,997	1%	422
Some Other Race	11,599	6%	559
Population Reporting Two or More Races	10,424	5%	226
Total Hispanic Population	41,720	21%	792
Total Non-Hispanic Population	161,785		
White Alone	93,218	46%	427
Black Alone	3,482	2%	257
American Indian Alone	279	0%	58
Non-Hispanic Asian Alone	53,416	26%	514
Pacific Islander Alone	2,948	1%	422
Other Race Alone	647	0%	301
Two or More Races Alone	7,794	4%	226
<b>Population by Sex</b>			
Male	100,009	49%	504
Female	103,496	51%	548
<b>Population by Age</b>			
Age 0-4	12,811	6%	182
Age 0-17	43,296	21%	274
Age 18+	160,208	79%	465
Age 65+	30,982	15%	184

**Data Note:** Detail may not sum to totals due to rounding. Hispanic population can be of any race. N/A means not available.

**Source:** U.S. Census Bureau, American Community Survey (ACS) 2011 - 2015.

Location: User-specified linear location  
 Ring (buffer): 5-mile radius  
 Description: 410 Airport blvd + 1 mi

	2011 - 2015 ACS Estimates	Percent	MOE (±)
<b>Population 25+ by Educational Attainment</b>			
Total	146,828	100%	570
Less than 9th Grade	7,652	5%	267
9th - 12th Grade, No Diploma	5,990	4%	152
High School Graduate	21,948	15%	242
Some College, No Degree	37,886	26%	299
Associate Degree	11,056	8%	190
Bachelor's Degree or more	73,352	50%	275
<b>Population Age 5+ Years by Ability to Speak English</b>			
Total	190,694	100%	793
Speak only English	106,654	56%	469
Non-English at Home <sup>1+2+3+4</sup>	84,040	44%	646
<sup>1</sup> Speak English "very well"	50,586	27%	463
<sup>2</sup> Speak English "well"	18,067	9%	274
<sup>3</sup> Speak English "not well"	11,914	6%	384
<sup>4</sup> Speak English "not at all"	3,472	2%	286
<sup>3+4</sup> Speak English "less than well"	15,386	8%	396
<sup>2+3+4</sup> Speak English "less than very well"	33,454	18%	481
<b>Linguistically Isolated Households*</b>			
Total	7,020	100%	150
Speak Spanish	2,445	35%	130
Speak Other Indo-European Languages	1,065	15%	84
Speak Asian-Pacific Island Languages	3,342	48%	119
Speak Other Languages	168	2%	52
<b>Households by Household Income</b>			
Household Income Base	75,613	100%	175
< \$15,000	3,983	5%	98
\$15,000 - \$25,000	3,677	5%	109
\$25,000 - \$50,000	11,046	15%	161
\$50,000 - \$75,000	10,631	14%	133
\$75,000 +	46,276	61%	207
<b>Occupied Housing Units by Tenure</b>			
Total	75,613	100%	175
Owner Occupied	41,997	56%	147
Renter Occupied	33,617	44%	190
<b>Employed Population Age 16+ Years</b>			
Total	164,767	100%	619
In Labor Force	112,669	68%	529
Civilian Unemployed in Labor Force	6,956	4%	189
Not In Labor Force	52,098	32%	327

**Data Note:** Detail may not sum to totals due to rounding. Hispanic population can be of any race. N/A means not available. **Source:** U.S. Census Bureau, American Community Survey (ACS) 2011 - 2015.

\*Households in which no one 14 and over speaks English "very well" or speaks English only.

Location: User-specified linear location  
 Ring (buffer): 5-mile radius  
 Description: 410 Airport blvd + 1 mi

	2011 - 2015 ACS Estimates	Percent	MOE (±)
<b>Population by Language Spoken at Home*</b>			
Total (persons age 5 and above)	190,694	100%	793
English	N/A	N/A	N/A
Spanish	N/A	N/A	N/A
French	N/A	N/A	N/A
French Creole	N/A	N/A	N/A
Italian	N/A	N/A	N/A
Portuguese	N/A	N/A	N/A
German	N/A	N/A	N/A
Yiddish	N/A	N/A	N/A
Other West Germanic	N/A	N/A	N/A
Scandinavian	N/A	N/A	N/A
Greek	N/A	N/A	N/A
Russian	N/A	N/A	N/A
Polish	N/A	N/A	N/A
Serbo-Croatian	N/A	N/A	N/A
Other Slavic	N/A	N/A	N/A
Armenian	N/A	N/A	N/A
Persian	N/A	N/A	N/A
Gujarathi	N/A	N/A	N/A
Hindi	N/A	N/A	N/A
Urdu	N/A	N/A	N/A
Other Indic	N/A	N/A	N/A
Other Indo-European	N/A	N/A	N/A
Chinese	N/A	N/A	N/A
Japanese	N/A	N/A	N/A
Korean	N/A	N/A	N/A
Mon-Khmer, Cambodian	N/A	N/A	N/A
Hmong	N/A	N/A	N/A
Thai	N/A	N/A	N/A
Laotian	N/A	N/A	N/A
Vietnamese	N/A	N/A	N/A
Other Asian	N/A	N/A	N/A
Tagalog	N/A	N/A	N/A
Other Pacific Island	N/A	N/A	N/A
Navajo	N/A	N/A	N/A
Other Native American	N/A	N/A	N/A
Hungarian	N/A	N/A	N/A
Arabic	N/A	N/A	N/A
Hebrew	N/A	N/A	N/A
African	N/A	N/A	N/A
Other and non-specified	N/A	N/A	N/A
Total Non-English	N/A	N/A	N/A

**Data Note:** Detail may not sum to totals due to rounding. Hispanic population can be of any race. N/A means not available. **Source:** U.S. Census Bureau, American Community Survey (ACS) 2011 - 2015.

\*Population by Language Spoken at Home is available at the census tract summary level and up.