

Staff Report 35

Amendment of Lease

LESSEE:

The SPHERE Institute

PROPOSED ACTION:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the historic bed of the San Francisco Bay, at 410 Airport Boulevard, Burlingame, San Mateo County.

AUTHORIZED USE:

Maintenance of public access to and functionality of the San Francisco Bay Trail, including installing protective railing and/or fencing along the edge of the bay, removing exposed rebar, filling sinkholes, improving the trail surface, installing and repairing signage; maintaining cyclone fencing, K-rail barricade, and pedestrian gate; removal of any fencing and/or the installation of any other security or safety improvements reasonably necessary to secure the property and minimize risk to the general public; removal of all trash, rubbish, and debris; reducing potential fire hazards including regularly removing weeds and brush; maintaining clear access to fire hydrants; monitoring shoreline protective structures; and ability to access the site and to conduct all required studies needed for the detailed design, preparation of a California Environmental Quality Act (CEQA) document, and regulatory permit applications required for a long-term lease in the future.

TERM:

3 years, beginning October 24, 2019.

CONSIDERATION:

\$40,537 per year, with an annual Consumer Price Index adjustment.

SPECIFIC PROVISIONS:

Amend the lease to:

- Extend the lease term and all associated submittal deadlines identified in the lease by 1 year due to the shelter-in-place orders related to COVID-19.

All other terms and conditions of the lease shall remain in effect without amendment.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On October 24, 2019, the Commission authorized the issuance of Lease 9596, a 3-year General Lease – Other, to the Lessee for the maintenance of public access to and functionality of the San Francisco Bay Trail, including installing protective railing and/or fencing along the edge of the bay, removing exposed rebar, filling sinkholes, improving the trail surface, installing and repairing signage; maintaining cyclone fencing, K-rail barricade, and pedestrian gate; removal of any fencing and/or the installation of any other security or safety improvements reasonably necessary to secure the property and minimize risk to the general public; removal of all trash, rubbish, and debris; reducing potential fire hazards including regularly removing weeds and brush; maintaining clear access to fire hydrants; monitoring shoreline protective structures; and ability to access the site and to conduct all required studies needed for the detailed design, preparation of an environmental CEQA document, and regulatory permit applications required for a long-term lease in the future in the historic bed of San Francisco Bay ([Item 80, October 24, 2019](#)). The lease will expire on October 23, 2022. The Lessee is now applying to amend the lease to extend the lease term and all associated submittal deadlines by 1 year.

The Lessee intends to develop and implement a tidal wetland park on the lease premises but must first conduct studies to refine designs and gather necessary environmental data. The required studies were scheduled to begin in March 2020. These studies included geotechnical borings, soil sampling, and bathymetric surveys among others. The scheduled work was delayed indefinitely due to COVID-19 related restrictions on non-essential services. Without the ability to complete the required studies, the Lessee has been unable to develop project design or advance the permit application and CEQA approval process.

Staff believes that the proposed lease amendment to extend the lease term and all associated submittal deadlines due to the shelter-in-place orders related to COVID-19

will not substantially interfere with the Public Trust needs and values at this location because the extension of submittal dates will not have an impact on the recreational use of the San Francisco Bay. The lease, as amended, will continue to provide for public access, appearance, and safety to the Bay Trail, uses consistent with the common law Public Trust Doctrine.

CLIMATE CHANGE:

Climate change impacts, including sea-level rise, more frequent and intense storm events, and increased flooding and erosion, affect both open coastal areas and inland waterways in California. The lease area is located in San Francisco Bay, which is a tidally influenced site vulnerable to flooding at current sea levels; therefore, this area will likely be at a higher risk of flood exposure given future projection scenarios of sea-level rise. More specifically, the lease premises are also included in an area designated as a Special Flood Hazard Zone by the Federal Emergency Management Agency and may experience increased frequency of flooding throughout the lease term. The San Francisco tide gauge was used for the projected sea-level rise scenario for the lease area as listed in Table 1.

Table 1. Projected Sea-Level Rise for San Francisco¹

Year	Projection (feet)
2030	0.8
2040	1.3
2050	1.9
2100	6.9

Source: Table 13, State of California Sea-Level Rise Guidance: 2018 Update

Note: ¹ Projections are with respect to a 1991 to 2009 baseline.

Rising sea levels can lead to more frequent flood inundation in low-lying areas and larger tidal events. In addition, as stated in *Safeguarding California Plan: 2018 Update* (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, fire, drought, extreme heat, and storms (especially when coupled with sea-level rise). This increase in sea level combined with more frequent and stronger storm events will likely expose the lease area structures to higher flood risks, comprised of greater total water levels for longer periods of time.

The property is primarily vacant and will be maintained with minor public safety improvements. The shoreline protective structure, as a fixed feature, may need some level of maintenance and repair work during the limited term of the lease. Through a future lease application, the property is proposed to be restored to open space and tidal wetlands, and designed to adapt and protect against future sea-level rise.

Pursuant to the lease, the Applicant acknowledges that the lease premises are located in an area that may be subject to the effects of climate change, including sea-level rise.

CONCLUSION:

For all the reasons above, staff believes that approval of the proposed amendment will not substantially interfere with the public rights to navigation, fishing and commerce; or substantially interfere with Public Trust needs and values at this location; is consistent with the common law Public Trust Doctrine; and is in the State's best interests.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the proposed amendment is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as a trustee of the State's Public Trust lands as authorized by law. Upon expiration or prior termination of the lease, the lessee has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction; Strategy 1.2 to provide that the current and future management of ungranted sovereign lands and resources and granted lands, including through strategic partnerships with trustee ports and harbor districts, is consistent with evolving Public Trust principles and values, particularly amid challenges relating to climate change, sea-level rise, public access, and complex land use planning and marine freight transportation systems; and Strategy 1.3 to promote, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
3. **Conduct Environmental Studies:** Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 6, Information Collection; California Code of Regulations, title 2, section 2905, subdivision (e)(3).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

4. **Maintenance of Existing Facilities:** Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 14, section 15301.
5. **Vegetation Management and Minor Land Alterations:** Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300.

EXHIBIT:

A. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Conduct Environmental Studies: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 6, Information Collection; California Code of Regulations, title 2, section 2905, subdivision (e)(3).

Maintenance of Existing Facilities: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 14, section 15301.

Vegetation Management and Minor Land Alterations: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the approval of the proposed amendment will not substantially impair the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the

lease as amended; is consistent with the common law Public Trust Doctrine; and is in the State's best interests.

AUTHORIZATION:

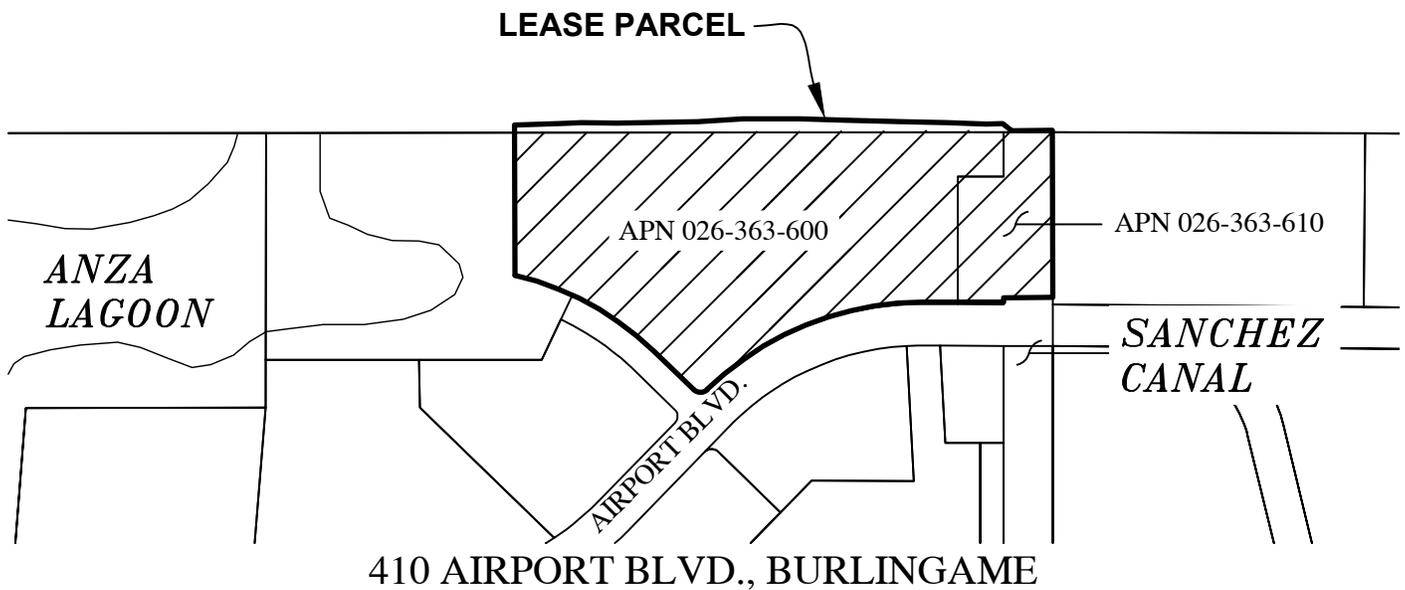
Authorize amendment of Lease 9596, a General Lease – Other, effective August 20, 2020; to extend the lease term and all associated submittal deadlines identified in the lease by 1 year due to the shelter-in-place orders related to COVID-19; all other terms and conditions of the lease will remain in effect without amendment.

NO SCALE

SITE

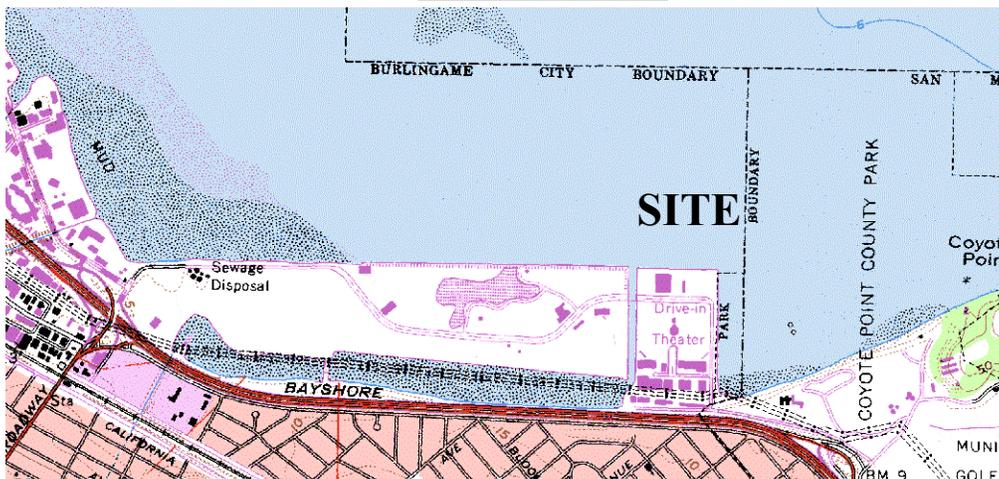


SAN FRANCISCO BAY



NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit A

LEASE 9596
 THE SPHERE INSTITUTE
 APN 026-363-600 & 610
 GENERAL LEASE - OTHER
 SAN MATEO COUNTY



DJF 7/9/2020

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.