

Staff Report 26

LESSEE/TRUSTOR:

Burlingame Point, LLC

SECURED PARTY – MORTGAGE LENDER/BENEFICIARY:

Goldman Sachs Bank USA, a New York state-chartered bank, DBR Investments Co. Limited, a Cayman Islands corporation, and JPMorgan Chase Bank, N.A.

SECURED PARTY – MEZZANINE LENDER/BENEFICIARY:

Athene Annuity and Life Company

PROPOSED ACTION:

Consider termination of an existing agreement and authorization of an agreement and consent to encumbrancing of lease

AREA, LAND TYPE, AND LOCATION:

4.4 acres, more or less, of filled and unfilled sovereign land in San Francisco Bay, Burlingame, San Mateo County.

AUTHORIZED USE:

Parcel A – North/South Parcel (Parcel A): Improvements to and maintenance of the San Francisco Bay Trail including access to Fisherman’s Park, public utilities, shoreline protection, and realigned Airport Boulevard improvements.

Parcel B – East/West Parcel (Parcel B): Improvements to and maintenance of a public roadway with at least 25 public parking spaces for access to the San Francisco Bay Trail (Bay Trail), Fisherman’s Park driveway, realigned Airport Boulevard improvements.

Parcel C – Fisherman's Park Parcel (Parcel C): Right of entry and construction of interim park improvements to Fisherman's Park and a 12-month maintenance warranty.

TERM:

49 years, beginning September 20, 2013.

CONSIDERATION:

Annual rent of \$3,660 to be adjusted by the California Consumer Price Index on the fifth anniversary of the lease and every 5 years thereafter.

BACKGROUND:

In 2012, the Lessee obtained certain land use entitlements from the City of Burlingame (City) and entered into a Development Agreement (DA) with the City for a development project, known as Burlingame Point (Development), located on property adjacent to the existing lease premises in an area commonly referred to as Anza Point North.

On September 20, 2013, the Commission authorized Lease No. PRC 9084, to 350 Beach Road LLC to improve Parcel A and Parcel B [\(Item C73, September 20, 2013\)](#).

The DA contains provisions regarding the lease premises including the Lessee's obligation to the City to form an entity to fund and maintain the proposed public open space areas within the lease premises.

On November 20, 2014, the San Francisco Bay Conservation and Development Commission (BCDC) issued an original permit to the Lessee and City to conduct activities within the 100-foot-wide shoreline band. That permit was amended October 18, 2017.

On June 6, 2018, the Lessee and City entered into a long-term Site Maintenance Agreement and the Lessee and BCDC entered into an Agreement Imposing Public Access Restrictions on the Use of Real Property that affects Parcel A.

The easterly edge of the North/South Parcel, adjacent to San Francisco Bay, consists of sections of broken reinforced concrete from the old San Mateo Bridge. This edge will be removed and replaced with an engineered rock revetment to accommodate climate change, including sea-level rise, and improved with an extension of the Bay Trail including benches, trash receptacles, mounted binoculars, signage, lighting, viewing platforms, cantilevered overlooks, stormwater

retention areas, and landscaping. Four stormwater outfalls will be removed and replaced with two 30-inch-diameter outfalls with associated headwalls.

As part of Lessee's Development, existing utilities within the lease premises were abandoned in place, including a 12-inch-diameter water line and 12-inch-diameter sewer pipeline. The overhead electric lines and streetlights were removed. Two 30-inch-diameter storm-drain lines with outfall structures were constructed that serve the Development.

The existing Airport Boulevard: (a) on the western portion of the East/West Parcel was replaced with an improved section of Airport Boulevard connected to the roadway's new alignment through the Burlingame Point project; and (b) the eastern portion of the East/West Parcel was improved to provide access to Fisherman's Park and adjacent private property and will include public parking for the Bay Trail.

On February 20, 2015, the Commission authorized an amendment and assignment of Lease No. PRC 9084, from 350 Beach Road to Burlingame Point, LLC ([Item C51, February 20, 2015](#)). The amendment included adding Parcel C for the purpose of designing and installing interim park improvements that include an extension of the Bay Trail, new benches, seating, trash containers, and signage. On February 4, 2019, the Commission authorized an amendment of the lease to extend the time to complete the Parcel C interim improvements ([Item C30, February 4, 2019](#)).

The Development is improved with four newly built, Class A office and research and development buildings totaling approximately 771,000 rentable square feet, a 33,000-rentable-square-foot amenity building, and approximately 2,300 on-site covered and surface parking spaces. In addition to completing the construction of the Development, Lessee has completed all of the authorized improvements under the Lease, except for the improvements to Fisherman's Park, which are to be completed by February 3, 2022. Lessee has not yet commenced construction of the improvements to Fisherman's Park, as staff is currently working with Lessee to resolve certain threshold permitting issues within BCDC's jurisdiction.

The Development is 100 percent leased to Facebook, Inc. (Facebook), and will serve as the headquarters for Facebook's Oculus division. Facebook has taken possession of the Development and is currently installing tenant improvements.

In connection with the construction of the Development, Lessee entered into a construction loan (Construction Loan) with JPMorgan Chase Bank, N.A., as administrative agent (Construction Loan Agent) for itself and on behalf of Starwood Property Mortgage Sub-14-A, L.L.C. The obligations of the Lessee with respect to the Construction Loan were secured by a deed of trust lien in favor of the Construction

Loan Agent that encumbers the Lease Premises and the Development. In connection with the Construction Loan and the aforementioned deed of trust, Lessee, Construction Loan Agent, and the Commission entered into a certain Agreement and Consent to Encumbrancing of Lease (Construction Loan Encumbrance Agreement) not to exceed \$515 million, on August 23, 2019 ([Item 19, August 23, 2019](#)).

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

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

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Lessee/Trustor is applying for a new agreement and consent to encumbrancing of lease in favor of Secured Party – Lender or Lender/Beneficiary, for a loan amount not to exceed \$750 million. This will require termination of the existing Construction Loan Encumbrance Agreement and issuance of a new agreement.

The encumbrancing of the lease is a condition of the Lender/Beneficiary for the permanent financing of Lessee's acquisition of a fee simple interest, construction and other costs, and expenses as set forth in the Construction Loan and Security Agreement. The Secured Party – Lender requires execution of one or more security instruments in the form of a Deed of Trust, mortgage, equity pledge, or other security device to encumber the Lease to secure the financing required by the Lessee.

The encumbrancing of the lease will be implemented through a document, Agreement and Consent to Encumbrancing of Lease, that will include protections for the State land associated with the lease. These protections include requirements that: 1) no subsequent encumbrancing of the lease shall be executed without prior written consent of the Commission; 2) the Secured Party – Lender or its designee or successor will be bound by all terms and conditions of the lease if it becomes lessee, including through foreclosure; and 3) any transaction requiring Commission approval and consent is void without such approval and consent.

The financing for the construction of the Development originally contemplated that the Construction Loan would consist of a mortgage loan component and a mezzanine loan component (Secured Party – Mezzanine Lender/Beneficiary). A mezzanine loan is a loan that is secured by a pledge of all the equity interests in the entity that owns the property securing the related mortgage loan. However, the

Lessee was unable to complete the mezzanine loan in time to include it within the August 2019 Construction Loan Encumbrance Agreement. Because the Lessee now seeks to include both the mortgage and mezzanine loans, a new agreement is needed. The loans fund the Development, which is located primarily on private lands but also fund the improvements located on the lease premises, as a condition of the Lease and the Development Agreement with the City. Approval of the termination of the existing Construction Loan Encumbrance Agreement and issuance of a new agreement is in the State's best interests because it would ensure viable and long-term funding for lease improvements and their operations and maintenance by the Lessee.

CONCLUSION:

The existing lease requires the Lessee to insure the lease premises and indemnify the State for any liability incurred as a result of the Lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved.

The purpose of the Mortgage Loan and Mezzanine Loan is to facilitate implementation and operation of the Burlingame Point Project by converting the construction loan to permanent financing. With construction complete, the public will derive and enjoy numerous benefits that support Public Trust uses and values, including, but not limited to, enhancements to infrastructure that will address climate change and expected sea-level rise. Shoreline access along the easterly edge of the North/South Parcel has been improved with an extension of the Bay Trail, including the provision of benches, trash receptacles, signage, lighting, viewing platforms with mounted binoculars, cantilevered overlooks, stormwater retention areas, and landscaping. For these reasons, the proposed Encumbrance Agreement will not result in a change in the use of, or impacts to, Public Trust resources and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the authorization to execute the agreement and consent to encumbrance of the lease is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land (including encumbrance of a lease for sovereign land), it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. Upon expiration or prior termination of the lease, the lessee has no right to a new lease or to renewal of any previous lease.

2. This action is consistent with the “Meeting Evolving Public Trust Needs” Strategic Focus Area of the Commission’s 2021-2025 Strategic Plan.
3. The termination of an existing agreement and consent to encumbrance of lease and issuance of an agreement and consent to encumbrance of lease are not projects as defined by the California Environmental Quality Act because they are administrative actions that will not result in direct or indirect physical changes in the environment.

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

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE’S BEST INTERESTS:

Find that the proposed agreement and consent to encumbrancing of the lease will not impact the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize the termination of the Agreement and Consent to Encumbrancing of Lease No. PRC 9084 previously authorized by the Commission on August 23, 2019, by and between Lessee/Trustor and JP Morgan Chase Bank, N.A. and Starwood Property Mortgage Sub-14-A, L.L.C.
2. Authorize the Executive Officer or her designee to execute the document titled “Agreement and Consent to Encumbrancing of Lease,” allowing Lessee’s right, title, and interest in Lease No. PRC 9084 to be pledged as partial security for a loan in the principal amount not to exceed \$750 million in favor of Secured Party – Mortgage Lender and Secured Party – Mezzanine Lender, in substantially the same form as that on file in the Sacramento office of the Commission; authorize the Executive Officer or designee to execute, acknowledge, accept, and

record all related documents as may be reasonably necessary to complete the transaction, effective upon signature by all parties.

3. Authorize the Executive Officer or designee to give approval on behalf of the Commission of prospective purchases during a foreclosure sale and make any other approvals required of the Commission under the Agreement.

EXHIBIT A

PRC 9084.1

LAND DESCRIPTION

Three parcels of State owned land lying in the City of Burlingame, County of San Mateo, State of California, described as follows:

PARCEL A

Parcel 3 as described in Exhibit A of Grant Deed recorded in Book 6198, Page 76, Official Records of said County.

PARCEL B

The South 956 feet of Parcel 4 as described in Exhibit A of Grant Deed recorded in Book 6198, Page 76, Official Records of said County.

PARCEL C

Parcel 4 as described in Exhibit A of Grant Deed recorded in Book 6198, Page 76, Official Records of said County.

EXCEPTING THEREFROM the South 956 feet of said Parcel 4.

END OF DESCRIPTION

Prepared 2/10/2015 by the California State Lands Commission Boundary Unit.



NO SCALE

SITE

SAN FRANCISCO BAY

LEASE PARCEL C

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

LEASE PARCEL A

(PORTION OF BLA 131)

APN 026-350-080

APN 026-350-100

LEASE PARCEL B

(PORTION OF BLA 131)

BEACH ROAD

300 AIRPORT BLVD., BURLINGAME

AIRPORT BLVD.

SANCHEZ CHANNEL



NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 9084.1

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



SITE

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

DJF 7/25/19