

# Staff Report 43

## **LESSEE/ASSIGNOR:**

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

## **APPLICANT/ASSIGNEE:**

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AnzaCo LLC, a Delaware Limited Liability Company

## **PROPOSED ACTION:**

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Assignment of a General Lease – Commercial Use; Denial of an Application to Amend a General Lease – Commercial Use

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

Filled and unfilled submerged sovereign land in San Francisco Bay, in Burlingame, San Mateo County consisting of 1.24 acres.

## **AUTHORIZED USE:**

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

## **TERM:**

66 years, beginning July 1, 1972

## **CONSIDERATION:**

\$78,331 per year.

## **SPECIFIC LEASE PROVISIONS:**

Liability insurance in an amount no less than \$1,000,000 per occurrence.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **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 July 6, 1972, the Commission authorized Lease Number PRC 4683, a General Lease – Commercial Use, to Anza Pacific Corporation along with a Boundary Agreement and Land Exchange (BLA 131) ([Item 26, July 6, 1972](#)). On March 25, 1976, pursuant to BLA 131, the Commission authorized an assignment to Anza Shareholder's Liquidating Trust ([Item 47, March 25, 1976](#)).

On December 16, 1980, the Commission authorized an assignment to the Lessee ([Item 29, December 16, 1980](#)). On February 27, 2018, the Commission authorized an amendment of the lease and a revision of rent ([Item 46, February 27, 2018](#)). On June 23, 2020, the Commission authorized an amendment of the lease to allow for a temporary rent deferral consistent with the Commission's COVID-19 rent deferral program ([Item 56, June 23, 2020](#)) since the Lessee did not qualify for that program based on the rent amounts. The Lease will expire on June 30, 2038.

The lease area consists of 1.24 acres of filled sovereign land that has been developed, along with several other parcels, into a parking lot operation totaling over 11 acres. The lease authorizes the use, maintenance, and operation of a commercial parking lot. The parking lot provides off-site parking for the San Francisco International Airport. NZP Group, LLC (NZP), a business owned by the Lessee, manages the parking lot. The business is dependent on San Francisco International Airport for the majority of its revenue. The Lessee has a Conditional Use Permit with the City of Burlingame for operation of the parking lot.

As a result of consolidation, the current Lessee formed AnzaCo LLC (Applicant), a limited liability company formed in Delaware, in January 2020 and now the Lessee and Applicant seek assignment of the lease. Although the Applicant is a relatively new entity, staff believe there are numerous factors that support assignment approval. Staff understands that, given the ownership role of the Lessee in the Applicant, the operations will not substantially change and will remain consistent with that of the Lessee, which has operated this parcel since 1972. In addition, and as discussed in this staff report, although requests have been made to defer and waive rent, the Lessee is currently in substantial compliance with the lease terms and the Applicant will be required to maintain an insurance policy and ensure proper maintenance of lease improvements. The lease area itself is a small portion

(1.24) of the overall parking lot (11 acres) and the improvements consist of a concrete road base, parking stalls and appurtenant lighting and infrastructure. The parking lot serves San Francisco International Airport with high demand and appears to generate suitable operating income, which suggests the improvements would remain marketable and not become an abandonment liability to the State in the event of a default or the insolvency of the Applicant. Ultimately, the Lessee/Assignor is still liable for the performance of the lease obligations through the end of the lease term should the new LLC/Assignee fail in any regard.

**LEASE AMENDMENT APPLICATION:**

The lease commenced in 1972 with consideration of one-half the net cash income from the lease property, which in no event would be less than \$626 per year. On February 27, 2018, the Commission authorized an amendment to revise the rent, with a contingency if the Lessee did not sign the amendment. The amendment revised the rent to a fixed amount of \$59,580 per year, effective July 1, 2016, with an annual CPI adjustment beginning July 1, 2017. The contingency provided that if the Lessee did not deliver a properly executed lease amendment to staff by June 1, 2018, the rent would be revised to a fixed rent of \$78,331 per year, effective July 1, 2016. The Lessee did not deliver a properly executed lease amendment by June 1, 2018, resulting in annual rent being revised to \$78,331.

The Lessee submitted an application to amend its lease to: forgive rent from April 1, 2020 through June 30, 2021; reduce rent from July 1, 2021 through June 30, 2022 to \$10,000 annually; and defer rent payments for 24 months with a subsequent payment plan. The Commission's COVID-19-Related Rent Deferral program did not provide for waiving or reducing rent. Although this request is not specifically under the authorized COVID-19 Rent Deferral program, staff carefully analyzed this request to ensure any recommendation would not violate Article XVI, Section 6 of the California Constitution which prohibits making a gift of any public thing of value, including use of State land. Staff requested specific financial information from the Lessee to support its proposed rent modifications and received the information requested. Staff's review and analysis of all the financial information the Lessee provided indicated NZP experienced declines in revenues from COVID-19, but gross profit did not appear significantly impacted. In review of the current assets and liabilities, NZP has a strong ability to pay current obligations. Furthermore, the Assignee is well capitalized and appears to have the financial ability to fulfill the terms of the lease. In addition, the Assignee would receive monthly rental income from NZP as the Assignee would take over ownership of NZP.

In August 2021, the Lessee paid all outstanding rent, including interest and penalties owed on late payments, as required pursuant to the lease and the COVID-19 rent deferral amendment described above.

Article XVI, Section 6 of the California Constitution specifically prohibits the Legislature from making or authorizing any gift of public money or thing of value to any individual, municipality, or corporation. A 'thing of value' includes the use of State-owned land for private benefit with no rent or compensation for such use. Under Title 2, Division 3 of the California Code of Regulations, and the Public Resources Code, the Commission has broad discretion in all aspects of leasing state lands, including the amount of rent that is most appropriate (tit. 2, Cal. Code of Regulations, section 2000(b)). Rents must be set to serve the best interests of the State.

Staff recommends that the Commission deny the Lessee's requested amendment to modify the rent. Staff has not recommended waiving rent for individuals or small businesses located on State land, and the Lessee is a well-capitalized corporation with significantly better ability to withstand the financial impacts of COVID-19. Thus the proposed rent modifications may constitute a violation of the California Constitution as a gift of State-owned land for private benefit with reduced or no rent or compensation for such use, and would result in the State not receiving the fair market rent for the lease.

The lease requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved. Upon termination of the lease, the Applicant may be required to remove all improvements from State land. The assignment will require the Applicant to insure the lease premises and indemnify the State for any liability incurred as a result of the Applicant's activities thereon. The Applicant agrees to perform and be bound by the terms, conditions, covenants, and agreements contained in the lease.

**CONCLUSION:**

The proposed approval of an assignment is limited to the remaining term of the 66-year lease, does not change the nature or use of the lease premises or grant the Applicant exclusive rights to the lease premises. In addition, the proposed assignment of lease does not alienate the State's fee simple interest in the underlying land, nor will it permanently impair public rights. Assignment of this lease and denial of the amendment application will not result in a change in the use of or impacts to Public Trust resources. Commission staff believes approval of this assignment and denial of the amendment is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

## **OTHER PERTINENT INFORMATION:**

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1. Approval or denial of the application for assignment of the lease and 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 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. Assignment of the lease is not a project as defined by the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

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

## **EXHIBIT:**

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- A. Site and Location Map

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

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

Find that the proposed assignment of the lease and denial of the amendment of the lease will not substantially interfere with Public Trust needs and values at this location, at this time, and for the remaining term of the lease; and is in the best interests of the State.

### **AUTHORIZATION:**

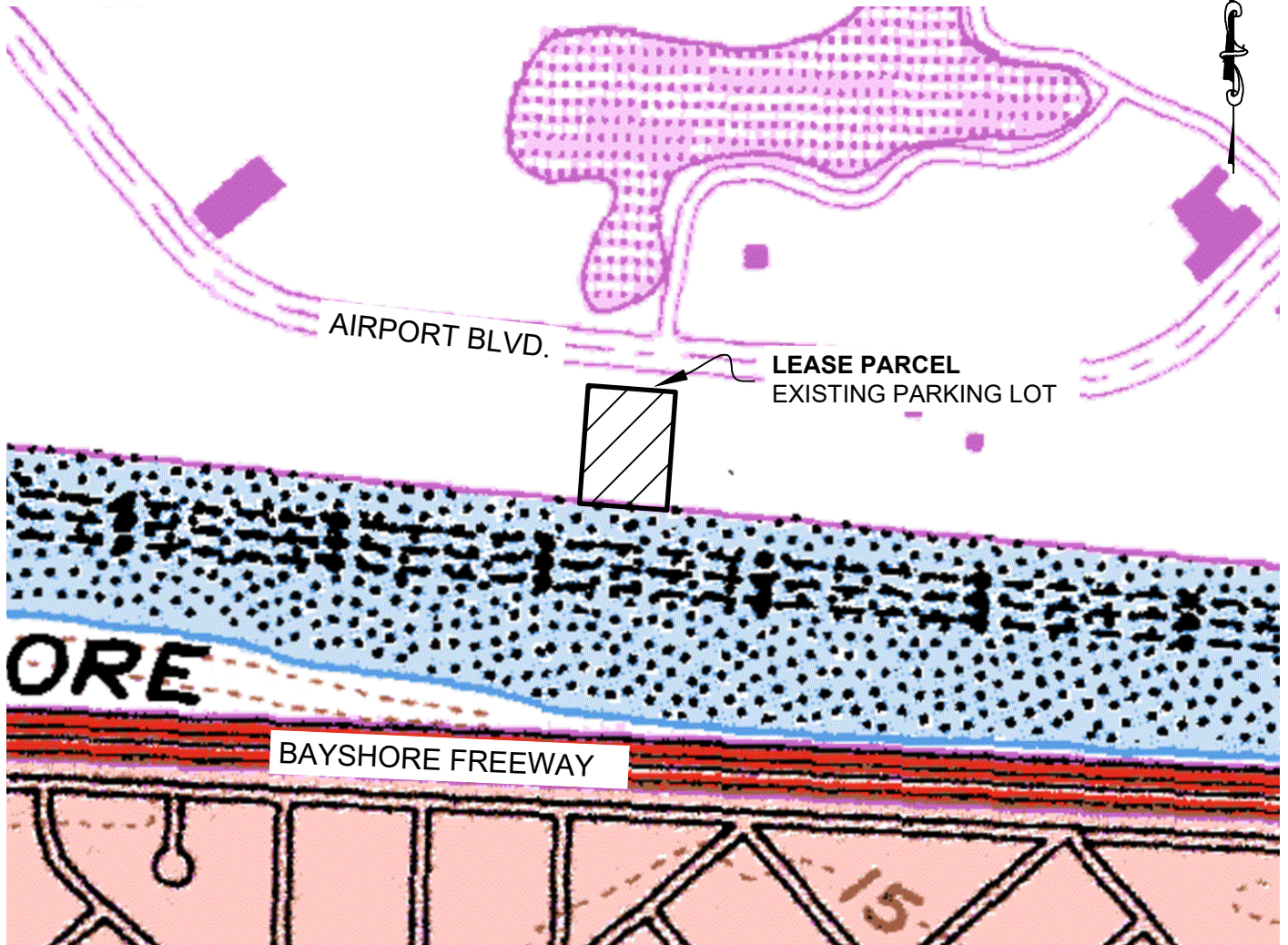
1. Authorize the assignment of Lease Number PRC 4683, a 66-year General Lease – Commercial Use, of sovereign land located in the San Francisco Bay, as shown on Exhibit A, Site and Location Map, (for reference purposes only) attached and by this reference made a part hereof, from Lessee to Applicant; effective December 8, 2021.

2. Deny the application to amend Lease Number PRC 4683, a 66-year General Lease – Commercial Use, of sovereign land located in the San Francisco Bay, as shown on Exhibit A, Site and Location Map, (for reference purposes only) attached and by this reference made a part hereof, for forgiveness of rent from April 1, 2020 through June 30, 2021; a reduction of rent from July 1, 2021 through June 30, 2022; and deferral of rent payments.



NO SCALE

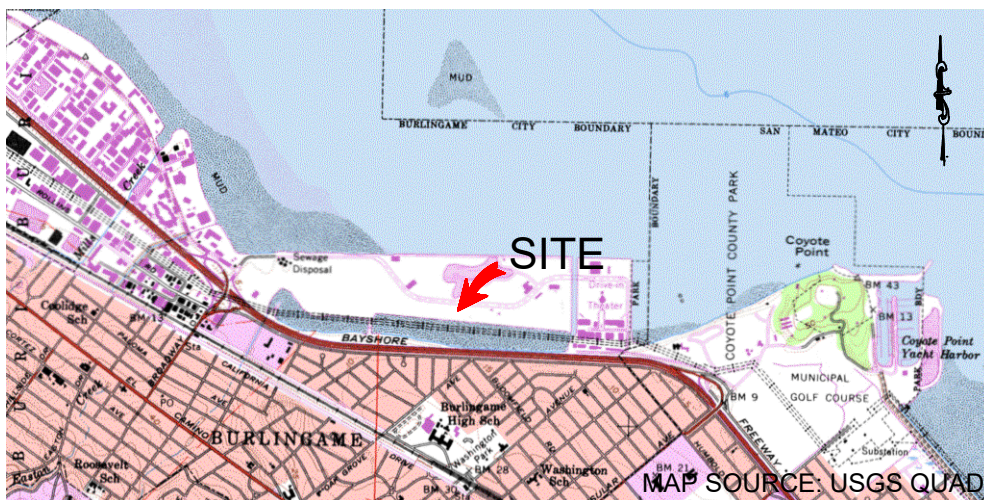
# SITE



701 AIRPORT BLVD., BURLINGAME

NO SCALE

# LOCATION



# EXHIBIT A

LEASE 4683  
 ANZACO LLC.  
 APN 026-344-100  
 COMMERCIAL LEASE  
 SAN MATEO COUNTY



THIS EXHIBIT IS SOLELY FOR PURPOSES OF GENERALLY DEFINING THE LEASE PREMISES, IS BASED ON UNVERIFIED INFORMATION PROVIDED BY THE LESSEE OR OTHER PARTIES AND IS NOT INTENDED TO BE, NOR SHALL IT BE CONSTRUED AS, A WAIVER OR LIMITATION OF ANY STATE INTEREST IN THE SUBJECT OR ANY OTHER PROPERTY.

DJF 1/13/2021