

# Staff Report 31

## **LESSEE:**

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EW-PG Airport Owner, LLC

## **APPLICANT:**

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Peninsula Owner LLC

## **PROPOSED ACTION:**

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Termination and Issuance of a General Lease – Commercial Use

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

1.978 acres, more or less, of filled tidelands in San Francisco Bay adjacent to the Sanchez Channel and Burlingame Lagoon, Burlingame, San Mateo County.

## **AUTHORIZED USE:**

Continued use and maintenance of an existing landscaped segment of the San Francisco Bay Trail including paved pedestrian walkways, bike trails, viewing areas, benches, trash containers, and commercial parking.

## **TERM:**

25 years, beginning July 1, 2021.

## **CONSIDERATION:**

\$27,551 per year, with an annual Consumer Price Index adjustment and the State reserving the right to fix a different rent periodically during the lease term, as provided for in the lease.

## **SPECIFIC LEASE PROVISIONS:**

- Liability Insurance in an amount no less than \$1,000,000 per occurrence.
- Bond: \$150,000 surety bond or other security.

- Lessee shall monitor any erosion or flooding within the Lease Premises on an annual basis and when warranted by any major storm event and shall immediately notify Lessor of any erosion or flooding within the Lease Premises.
- Lessee shall repair any damage to the Lease Premises from flooding and any major storm event.
- Lessee shall be responsible for protecting the Lease Premises from erosion and flooding.

## **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 November 21, 2006, the Commission authorized a 24-year General Lease – Commercial Use to CA-Bay Park Plaza Limited Partnership, a Delaware Limited Liability Partnership (CA-Bay Park Plaza), for landscaping, public access, parking facilities, bicycle paths, and other improvements authorized by local and regional authorities (e.g., viewing areas, benches, and trash containers) to support Public Trust needs including access to and enjoyment of the shoreline. The Lessee maintains the portion of the San Francisco Bay Trail (Bay Trail) within the lease area pursuant to the lease and San Francisco Bay Conservation and Development Commission requirements ([Item 34, November 21, 2006](#)).

On February 20, 2015, the Commission authorized an Assignment of Lease from CA-Bay Park Plaza to Hudson Bay Park Plaza, LLC (Hudson Bay) ([Item 54, February 20, 2015](#)).

On August 19, 2015, the Commission authorized an Assignment of Lease from Hudson Bay to Burlingame Bay, LLC (Burlingame Bay) ([Item 45, August 19, 2015](#)).

On August 9, 2016, the Commission authorized an Agreement and Consent to Encumbrancing of Lease at the request of Burlingame Bay ([Item 15, August 9, 2016](#)).

On August 23, 2018, the Commission authorized an Assignment, Amendment, and Agreement and Consent to Encumbrancing of Lease from Burlingame Bay to EW-PG Airport Owner, LLC (EW-PG) ([Item 41, August 23, 2018](#)).

On June 30, 2021, the commercial office buildings located at 555 and 577 Airport Road, Assessor's Parcel 026-363-590 (Upland Property), adjacent to Assessor's

Parcel 026-363-470 (Lease Premises), transferred from EW-PG to the Applicant and the Applicant is applying for a General Lease – Commercial Use.

The Applicant was formed on April 23, 2021, by its sole member Peninsula Property JV LLC, a joint venture formed by BIG Peninsula Co-Invest Venture Member LLC, a Delaware limited liability company (95%) (BIG) and Lane Burlingame Bay, LLC, a California limited liability company (5%). BIG, is a wholly owned subsidiary of MM Big Peninsula Co-Invest Member LLC, a Delaware limited liability company, which is a wholly owned subsidiary of Massachusetts Mutual Life Insurance Company (Parent). The Applicant is seeking a new lease for real estate financing purposes. The primary purpose of the lease is to maintain a portion of the Bay Trail with its pedestrian walkways, bike trails, viewing areas, benches, and trash containers. Ensuring that these Public Trust consistent uses are maintained, and the lease obligations supported by secure financing will help ensure this portion of the trail is usable for decades to come. Staff recommends that the lease commence on July 1, 2021, which is the day after the date that the Applicant acquired the property.

Staff reviewed the Applicant's organizational structure and Limited Liability Company Agreement. Staff has also received information on key employees of the Applicant, verifying a satisfactory level of experience in managing and maintaining commercial real estate. Staff recommends a surety bond to mitigate the risk of the Applicant defaulting on lease obligations given it is a newly formed entity with no record of lease performance available. The Applicant agrees to perform and be bound by the terms, conditions, covenants, and agreements contained within the lease.

The proposed lease does not alienate the State's fee simple interest; does not grant the Applicant exclusive rights to the lease premises; allows monitoring of sea level rise changes and impacts; and requires the Applicant to insure the lease premises and indemnify the state for any liability incurred as a result of the 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.

**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 contains recreational paths (Bay Trail) and limited surface parking areas.

The California Ocean Protection Council updated the State of California Sea-Level Rise Guidance in 2018 to provide a synthesis of the best available science on sea level rise projections and rates. Commission staff evaluated the "high emissions,"

“low-high risk aversion” scenario based on both current emission trajectories and the lease location and structures. The San Francisco tide gauge was used for the projected sea level rise scenario for the Lease Premises as listed in Table 1.

**Table 1. Projected Sea Level Rise for San Francisco**

Year	Projection (feet)
2030	0.5
2040	0.8
2050	1.1
2100	5.8

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

Note: 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).

Even though the Lease Premises is not located directly on the San Francisco Bay, it is hydrologically connected to the Bay by channels, increasing the flood risk. The Sanchez Channel is adjacent east of the lease area, and the Bay Front Channel is adjacent south of the lease area. Just a few hundred yards northwest of the Lease Premises is the Burlingame Lagoon, which is open to the Bay. These areas are tidally influenced and vulnerable to flooding at current sea levels and will be at a higher risk of flood exposure given projected scenarios of sea level rise, combined with more frequent and extreme storm and tidal events, during the 25-year lease term.

Pursuant to the proposed lease, the Applicant acknowledges that the Lease Premises, including the Bay Trail and parking lot area are located in an area that may be subject to effects of climate change, including sea level rise and extreme storm events. It is very likely that the Bay Trail and parking lot will be impacted by flooding, and those impacts will increase in severity towards the later years of the lease term. Any adaptation strategies applied to the Lease Premises to reduce flood risk should not adversely impact equitable public access, water quality, shoreline habitat, wildlife, or public health and safety. Nature-based strategies are preferred by the State. Per the terms of the lease, if the Lessee has to repair or replace greater than 50 percent of the lease area structures (Bay Trail and/or parking lot), the Lessee must seek a new lease from the Commission.

**CONCLUSION:**

For all the reasons above, staff believes that termination and authorization of the lease will not result in a change in the use of, or impacts to, Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; 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 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 to 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" and "Leading Climate Activism" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. Termination of the lease 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.

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

4. Staff recommends that the Commission find that issuance of the lease 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 2, section 2905, subdivision (a)(2).

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

**EXHIBITS:**

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

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

### **CEQA FINDING:**

Find that issuance of the lease 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 2, section 2905, subdivision (a)(2).

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

Find that the proposed 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; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

### **AUTHORIZATION:**

1. Authorize termination of Lease Number PRC 6127, a General Lease – Commercial Use, effective June 30, 2021, issued to EW-PG Airport Owner, LLC.
2. Authorize issuance of a General Lease – Commercial Use to the Applicant, beginning July 1, 2021, for a term of 25 years, for the use and maintenance of a landscaped segment of the San Francisco Bay Trail including paved pedestrian walkways, bike trails, viewing areas, benches, trash containers, and commercial parking authorized by local and regional authorities, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; annual rent in the amount of \$27,551 with annual Consumer Price Index adjustments and the State reserving the right to fix a different rent periodically during the lease term; liability insurance in an amount no less than \$1,000,000 per occurrence; and a surety bond in an amount no less than \$150,000.

**EXHIBIT A**

**LEASE 6127**

**LAND DESCRIPTION**

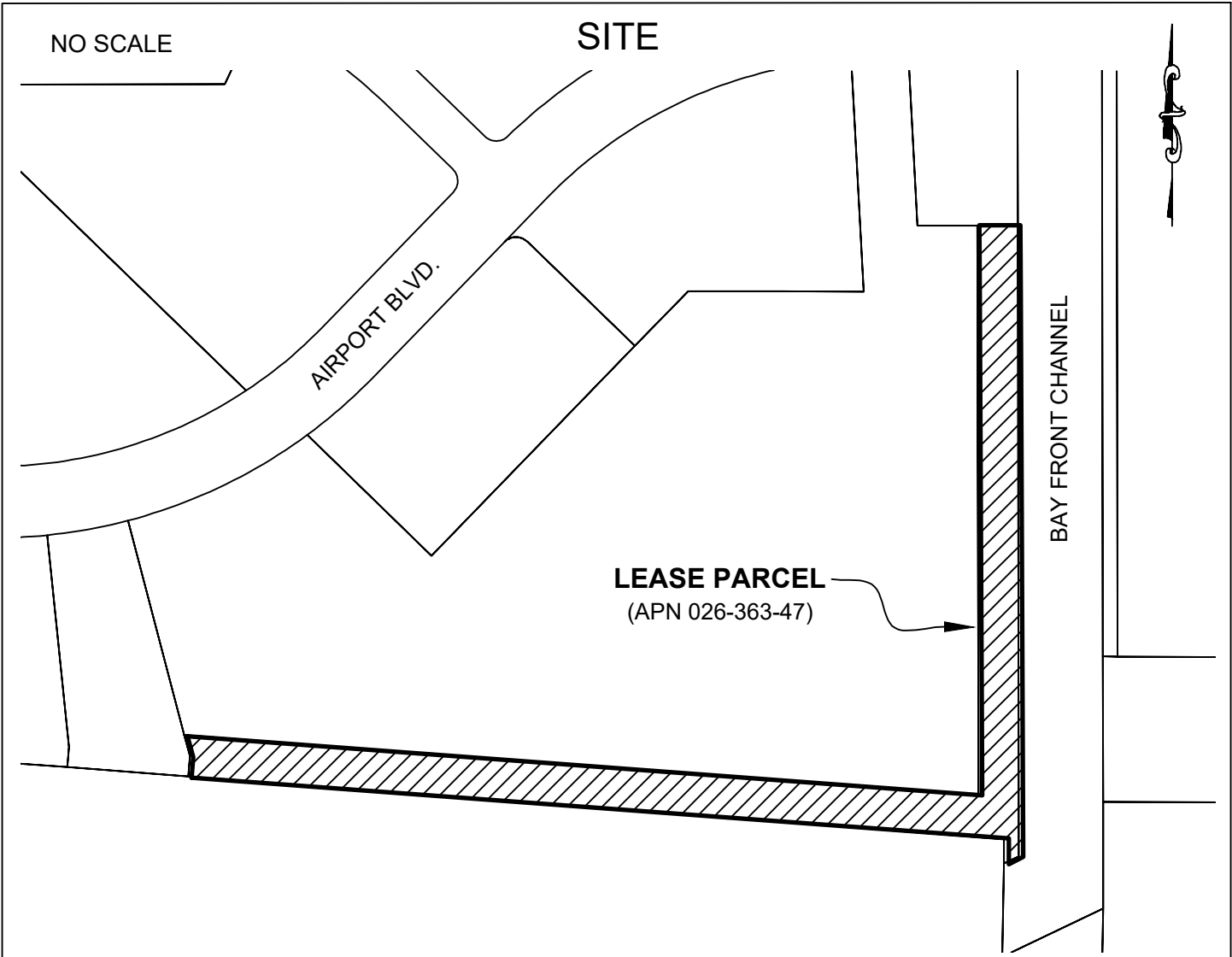
All that certain real property situate within the city of Burlingame, County of San Mateo, State of California, described as follows:

BEGINNING at the most Southerly corner of Lot 13 in Block 7, as shown on that certain map entitled "ANZA AIRPORT PARK UNIT NO. 7, CITY OF BURLINGAME, SAN MATEO COUNTY, CALIFORNIA", filed in the office of the County Recorder of San Mateo County, State of California, on January 15, 1979 in Book 98 of Maps at pages 90, 91, and 92; thence from said described point of beginning along the Southerly line of said Block 7, South 85° 44' 23" East 998.97 feet; thence South 31.11 feet to the most Southerly corner of said Block 7; thence along the Easterly line of said Block 7 North 64° 00' East 19.88 feet; thence North 0° 17' 00" West 689 .30 feet to the Northeasterly corner of Said Block 7; thence along the most Easterly line of Parcel "E", as said Parcel "E" is shown on that certain Parcel map entitled "PARCEL MAP BEING A RESUBDIVISION OF LOTS 5 AND 6, BLOCK NO. 8; ANZA AIRPORT PARK – UNIT NO. 6 (R.S.M. VOL. 70, PG. 35) BURLINGAME, SAN MATEO COUNTY, CALIFORNIA", which map was recorded in Book 41 of Parcel Maps at page 13, on February 10, 1973, in the office of the Recorder of San Mateo County, California; thence continuing along last said course along the said Easterly line of Parcel "E", North 0° 17' 00" West 80.55 feet to the Southeasterly corner of Parcel "D", as said Parcel "D" is shown on said described Parcel Map; thence along the South line of said Parcel "D", West 50.00 feet to a point; thence leaving said South line of Parcel "D", South 0° 17' 00" East 80.55 feet to a point on the Northerly line of said Block 7; thence continuing along last course, along a line within said Block 7, South 0° 17' 00" East 614.34 feet; thence North 85° 44' 23" West 971.30 feet to a point on the Easterly line of said Lot 13; thence along said Easterly line of said Lot 13 South 14° 49' 03" East 26.45 feet; thence South 4° 15' 37" West 25.00 feet to the said described point of beginning.

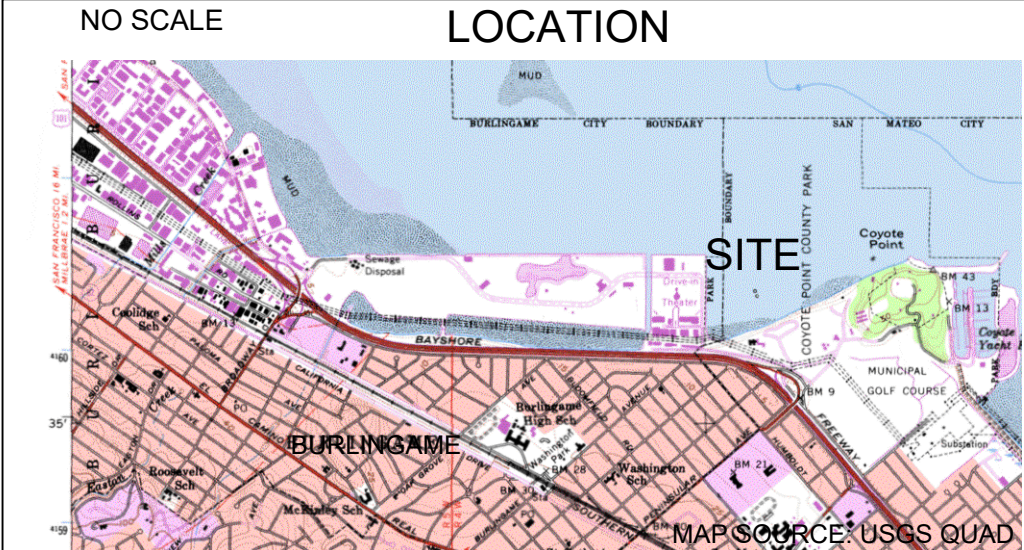
**END OF DESCRIPTION**

Prepared 2/2/2022 by the California State Lands Commission Boundary Unit.





ANZA PARK, CITY OF BURLINGAME



**EXHIBIT B**  
 LEASE 6127  
 PENINSULA OWNER, LLC.  
 APN 026-363-47  
 GENERAL LEASE -  
 COMMERCIAL USE  
 SAN MATEO COUNTY



DJF 2/1/2022

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.