

Staff Report 13

LESSEE:

Burlingame Point, LLC

PROPOSED ACTION:

Consider Acceptance of a Partial Lease Quitclaim and Release

AREA, LAND TYPE, AND LOCATION:

Approximately 2.5 acres of filled sovereign land, known as Fisherman's Park, located in Burlingame, San Mateo County. Described as "Parcel C" in Exhibit A of the first amendment to lease, effective February 4, 2015 ([Item C51, February 20, 2015](#)).

AUTHORIZED USE:

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

TERM:

Parcel C – Originally, for 4 years and 8 days, commencing February 20, 2015. As amended, term extended to February 3, 2022.

CONSIDERATION:

Parcel C – Public benefit from interim improvements to Fisherman's Park.

BACKGROUND:

The land encompassing Parcel C (Also known as Fisherman's Park) was conveyed to the State as part of the Anza Pacific Boundary Line Agreement (BLA 131) in 1972 and is comprised of a strip of land adjoining the northern and eastern sides of commercial land privately owned in fee by the Lessee, in the city of Burlingame. Since 1972, the lands underlying Fisherman's Park have been leased for the construction and maintenance of a public park (lease 4682.9). The park is currently

leased to New Town Hotel, Inc. (New Town) ([Item C06, September 26, 1989](#)) which remains the current operator until the expiration of lease 4682.9, in 2038.

On February 20, 2015, the Commission authorized a short-term lease to Burlingame Point LLC (Burlingame Point) to enter and construct interim park improvements to Fisherman's Park. The improvements were in conjunction with development of the Burlingame Point office project immediately south of the park, across Airport Boulevard and a requirement of the development agreement with the city of Burlingame. The improvements were intended to update park infrastructure and extend and connect the park to the Bay Trail. The area underlying the park was added, via amendment, as Parcel C to lease 9084.1 and remained non-exclusive and overlapped with New Town's lease 4682.9 ([Item C51, February 20, 2015](#)). Burlingame Point's lease over Parcel C was intended to be short-term, covering only the period necessary to construct the improvements, with a 12-month warranty period and an obligation to invest no less than \$200,000, exclusive of design and short-term maintenance costs. The lease was solely intended to grant the legal land control necessary to complete the improvements. A second amendment to the Lease, effective February 4, 2019, was authorized by the Commission which, in relevant part, extended the duration to complete construction to February 3, 2022 ([Item C30, February 4, 2019](#)).

Despite good faith efforts and the procurement of professional design build and contracting resources to undertake the Improvements, Burlingame Point has been unable to secure the cooperation or consent of New Town for the improvement of its park facilities. In addition, the improvements require a development permit by the Bay Conservation and Development Commission (BCDC) which would bind Burlingame Point with significant long-term liabilities for the operation and maintenance of the park, beyond the expectations of the 2015 amendment. The BCDC permit acts as a form of covenant that runs with the land and would place enforceable obligations to maintain the park to certain standards that are outside Burlingame Point's control, once the Commission-issued lease expired over Parcel C.

Since 2019, staff worked collaboratively with BCDC and Burlingame Point on an execution and permitting strategy for the improvements; however, staff now conclude that further efforts are unlikely to achieve the original goals of the 2015 Amendment.

Therefore, staff recommend the acceptance of a partial lease quitclaim of lease 9084.1 (encompassing only Parcel C) and release of the leasehold obligations over the same, in exchange for a \$220,000 donation to the Kapiloff Land Bank Fund for

any lawful purpose pursuant to the Kapiloff Land Bank Act, Public Resources Code sections 8600 et seq.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6220, 6301; 8602, 8610, 8611; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Parcel C overlaps with a portion of those lands leased to New Town for the long-term maintenance of Fisherman's Park, under Lease No. 4682.9. A natural prerequisite of the interim park improvements required Burlingame Point to negotiate access and use of Fisherman's Park with New Town. In addition, the Lessee would be required to obtain necessary permits to conduct the work. New Town's lease on Parcel C remains in effect and expires June 30, 2038.

The park Improvements required Burlingame Point to obtain a development permit from BCDC placing enforceable obligations on the construction and long-term maintenance and operation of Fisherman's Park extending beyond the term of the Lease, as it applies to Parcel C. Burlingame Point believes that being the BCDC permittee for development of Parcel C creates substantial burden and liabilities not contemplated by either it or the Commission at the time of the first amendment. The permit obligation would extend so long as the location operates as a park, whereas the Lease envisioned a temporary construction and maintenance obligation ceasing soon after construction was completed.

Commission staff and Burlingame Point expended considerable time between 2019 and 2022, in good faith, exploring various solutions to these permitting concerns, to no avail. The primary obstacle is securing the consent of a party to assume enforceable, long-term obligations as the BCDC permittee over Fisherman's Park (a permit never having been issued, prior). New Town retains maintenance obligations under lease 4682.9, but lacks the obligation to improve the facilities or extend the bay trail, as envisioned by Burlingame Point. In addition, the permit would make New Town liable for conditions of construction undertaken by Burlingame Point, which lay outside New Town's control. Likewise, Burlingame Point, if it were the BCDC permittee, would retain a long-term obligation to maintain the park, enforceable by potentially significant monetary penalties. Because long-term maintenance is New Town's responsibility, Burlingame Point would be similarly liable for issues outside its control. Staff contemplated the possibility of the Commission as

permittee but, short of the State assuming long-term maintenance of the park, staff concluded that having the Commission assume permit obligations that would naturally fall to the lessee was not in the State's best interest and set an undesirable precedent. After 7 years working towards improving Fisherman's Park, staff and Burlingame Point now conclude, mutually, that further effort is unlikely to achieve the original goals of the first amendment and that settling Burlingame Point's obligations to the Commission, now, economizes limited staff resources and resolves the issue equitably.

Burlingame Point seeks a compromise to liquidate its obligations over Parcel C. In consideration of the Commission's acceptance of a partial lease quitclaim and release of its obligation to make interim improvements at Fisherman's Park; Burlingame Point will donate \$220,000 to the Kapiloff Land Bank Fund which may be utilized for any lawful purpose pursuant to the Kapiloff Land Bank Act, Public Resources Code sections 8600 et seq. Lease 9084.1, as it pertains to Parcel's A and B (which encompass lands to the South and East of Fisherman's Park) will remain in full effect.

Staff believe that acceptance of a partial lease quitclaim and a donation into the Kapiloff Land Bank Fund is a good compromise as the donation will allow the Commission to undertake future work to enhance Public Trust lands and the persisting lease with New Town over Parcel C ensures the park remains maintained at its current levels, at no expense to the public.

CONCLUSION:

For all the reasons above, staff believes that acceptance of a partial lease quitclaim and release is consistent with the common law Public Trust Doctrine; will not substantially interfere with the Public Trust needs and values at this location, at this time, and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Acceptance of a partial lease quitclaim 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.
2. This action is consistent with the "Meeting Evolving Public Trust Needs," Strategic Focus Areas of the Commission's 2021–2025 Strategic Plan.

3. Acceptance of a partial lease quitclaim 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).

EXHIBITS:

- A. Land Description
- B. Site and Location Map
- C. Partial Lease Quitclaim, Acceptance and Release Agreement

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

1. Find that the proposed partial lease quitclaim and release 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.
2. Find that accepting the partial lease quitclaim and release, which includes a deposit in the Kapiloff Land Bank Fund, is in the best interests of the State.

AUTHORIZATION:

Authorize the Executive Officer or designee to take all steps necessary to execute an agreement in settlement of outstanding claims, substantially similar to Exhibit C attached to this staff report, to accept a partial lease quitclaim encompassing Parcel C, release Burlingame Point from further obligations related to Parcel C, and accept a deposit in the amount of \$220,000 for the Kapiloff Land Bank Fund.

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.



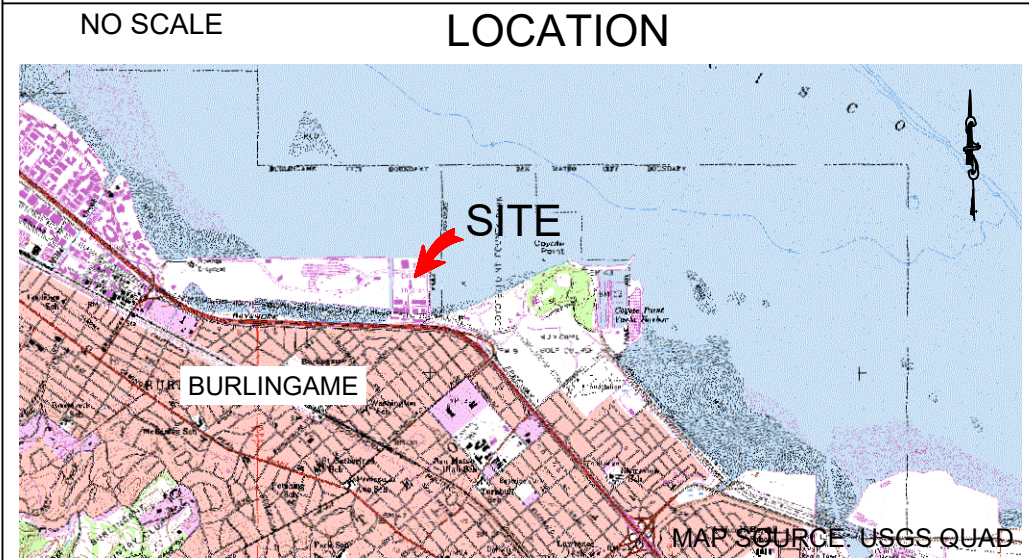
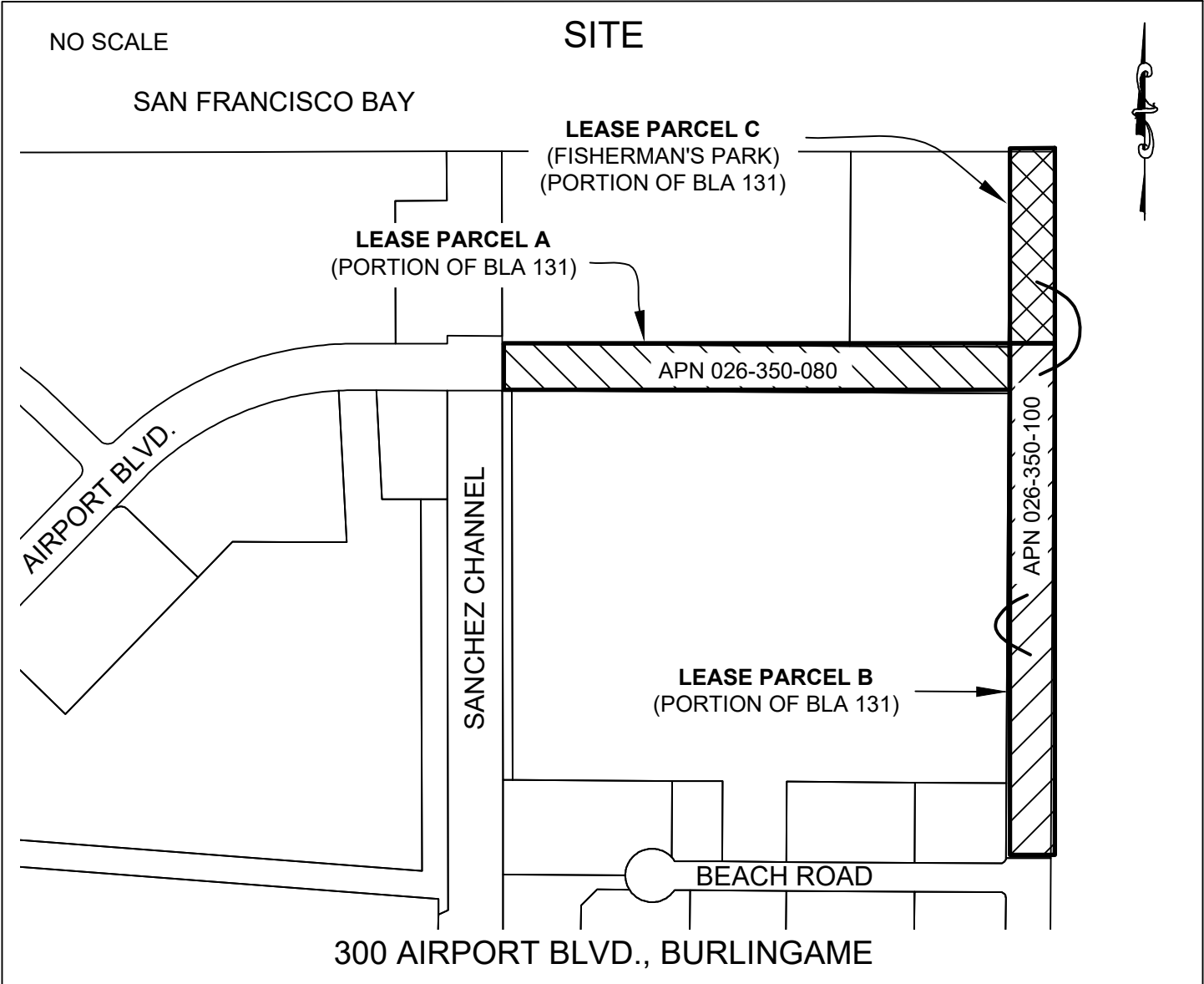


EXHIBIT B
PRC 9084.1
BURLINGAME POINT, LLC
APN 026-350-080 & 026-350-100
GENERAL LEASE -
RECREATIONAL, PROTECTIVE
STRUCTURE AND OTHER USE
SAN MATEO COUNTY



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 C

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:

STATE OF CALIFORNIA
California State Lands Commission
Attn: Title Unit
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

STATE OF CALIFORNIA
OFFICIAL BUSINESS
Document entitled to free recordation
pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

A.P.N. 026-350-100
County: San Mateo

PARTIAL QUITCLAIM, ACCEPTANCE AND RELEASE LEASE NO. PRC 9084.1

WHEREAS, the State of California, acting by and through the State Lands Commission, as lessor (the "State"), and Burlingame Point LLC, a Delaware limited liability company, as lessee ("Lessee"), are parties to a certain Lease dated March 2, 2015, designated lease PRC 9084.1 (as amended, the "Lease"), covering certain filled tide and submerged lands situated in the County of San Mateo, State of California, consisting of Parcel A, Parcel B, and Parcel C (collectively, the "Leased Land");

WHEREAS, Lessee obtained certain land use entitlements and entered into a Development Agreement with the City of Burlingame for a project commonly known as Burlingame Point ("Project"). The Development Agreement was recorded June 28, 2012, Document No. 2012-091089, Official Records, County of San Mateo.

WHEREAS, as part of the Project, Lessee entered into the Lease, for among other reasons, to abandon existing utilities within the Leased Land on Airport Boulevard, improve the easterly edge of the Leased Land by making accommodations for sea level rise through demolition, grading, and the addition of engineered rock riprap materials and bulkheads for viewing platforms, improve Airport Boulevard as a public spur road providing access to Fisherman's Park and adjacent private property, and provide public parking for an expanded Bay Trail. These improvements were authorized within Parcel A and Parcel B.

WHEREAS, a portion of the roadway improvement encroached upon the non-exclusive lease issued by the State, dated July 1, 1972, and assigned to New Town Hotel, Inc., dated August 10, 1989, designated as Lease Number PRC 4682.9, encompassing the operation and maintenance of Fisherman's Park.

Exhibit C

WHEREAS, by a First Amendment to the Lease dated February 24, 2015 (the "First Amendment"), Lessee agreed to fund, plan, and construct certain interim improvements at Fisherman's Park, to enhance public access to the park and coincide with Bay Trail improvements ("Improvements"). The First Amendment added Parcel C, as more particularly described on Exhibit A, attached hereto ("Parcel C") as part of the leased premises and allowed the temporary use of Fisherman's Park for construction of those Improvements, which were anticipated to be completed by February 28, 2019. The First Amendment contemplated that Lessee's use of Parcel C would be limited in duration to the period of construction and expire after the State deemed the construction of the Improvements was satisfactory. Lessee's contribution to construction costs toward the Improvements was identified in the First Amendment as \$200,000, exclusive of design and short-term maintenance costs.

WHEREAS, Lessee procured professional design build and contracting resources to undertake the Improvements, however, Lessee was unable to commence construction by the February 28, 2019, deadline. A Second Amendment to the Lease dated February 4, 2019, in relevant part, extended the deadline to complete construction of the Improvements to February 3, 2022.

WHEREAS, constructing the Improvements on Parcel C requires Lessee to obtain a development permit from the San Francisco Bay Conservation and Development Commission ("BCDC") which would place enforceable obligations on the construction and long-term maintenance and operation of Fisherman's Park extending beyond the term of the Lease, as it applies to Parcel C. The State and Lessee believe that Lessee being the BCDC permittee for development of Parcel C creates substantial burdens and liabilities on Lessee not contemplated by either the State or Lessee at the time of the First Amendment.

WHEREAS, the State and Lessee expended considerable time between 2019 and 2022, in good faith, exploring various solutions to resolve these permitting concerns, to no avail and now conclude, mutually, that further exploration is unlikely to achieve the original goals of the First Amendment.

WHEREAS, the State and Lessee now seek compromise to conclude and terminate Lessee's obligations related to Parcel C in accordance with the terms of this Partial Quitclaim, Acceptance and Release (this "Agreement").

NOW THEREFORE, for valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. Lessee releases, surrenders and quitclaims unto the State any and all right, title or interest in Parcel C as more particularly described on Exhibit A, attached hereto (the "Partial Quitclaim").
2. The State accepts the Partial Quitclaim and releases Lessee from all obligations under the Lease, as they pertain to Parcel C, including, without limitation, the obligation to construct the Improvements.

Exhibit C

3. In consideration of the State's acceptance of the Partial Quitclaim and release, Lessee shall donate Two-Hundred and Twenty Thousand Dollars (\$220,000) to the State. The donated funds shall be held by the State in the Kapiloff Land Bank Fund and may be utilized for any lawful purpose pursuant to the Kapiloff Land Bank Act, Public Resources Code sections 8600 et seq. After Lessee's payment of such funds to the State, Lessee shall not have any obligation to ensure that such funds are used by the State in any particular manner.
4. The State and Lessee acknowledge and agree that the Partial Quitclaim and release terminates the Lease, as it pertains to Parcel C, and terminates all rights and obligations of Lessee thereunder, as they pertain to Parcel C, including, without limitation, the obligation to construct the Improvements. This Agreement does not amend or modify any rights or obligations granted under the Lease as to Parcel A and Parcel B, nor does it abridge any previous authorization granted by the State to Lessee, over the same. The Lease, as it pertains to Parcel A and Parcel B, remains in full force and effect until its expiration or sooner termination.
5. This Agreement will become binding on the State only when duly executed on behalf of the State Lands Commission of the State of California.
6. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same Agreement.
7. Promptly after the execution hereof by Lessee and the State, the Lessee may record this Agreement in the Official Records of San Mateo County.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date hereinafter affixed.

LESSEE:
BURLINGAME POINT LLC

LESSOR:
STATE OF CALIFORNIA
STATE LANDS COMMISSION

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACH NOTARY ACKNOWLEDGMENT

Exhibit C

**EXHIBIT A
DESCRIPTION OF LEASE PREMISES**

LEASE No. PRC _____

[BEHIND THIS PAGE]

Exhibit C

**EXHIBIT B
CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORDING**

Government Code 27281

This is to certify that the STATE OF CALIFORNIA, acting by and through the STATE LANDS COMMISSION (“Grantee”), an agency of the STATE OF CALIFORNIA, hereby accepts from _____ (“Grantor”), a Lease Quitclaim Deed effective _____, of any and all of Grantor’s right, claim, title, or interest arising by virtue of or pursuant to that certain lease designated as Lease No. PRC _____.

The STATE OF CALIFORNIA, acting by and through the STATE LANDS COMMISSION, an agency of the STATE OF CALIFORNIA, hereby consents to the recordation of this conveyance in the Office of the Recorder for the County of _____.

This acceptance and consent to recording is executed by and on behalf of the STATE OF CALIFORNIA by the STATE LANDS COMMISSION, acting pursuant to law, as approved by [include Item or Minute Item] of its public meeting in California on _____ by its duly authorized undersigned officer.

**STATE OF CALIFORNIA
STATE LANDS COMMISSION**

**ROBERT BRIAN BUGSCH
Chief, Land Management Division**

Date: _____

ATTACH NOTARY ACKNOWLEDGMENT