

# Staff Report 29

**LESSEE/ASSIGNOR:**

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First American Title Insurance Company, a Nebraska corporation

**APPLICANT/ASSIGNEE:**

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Dunard Fund USA, Ltd., an Illinois not-for-profit corporation

**PROPOSED ACTION:**

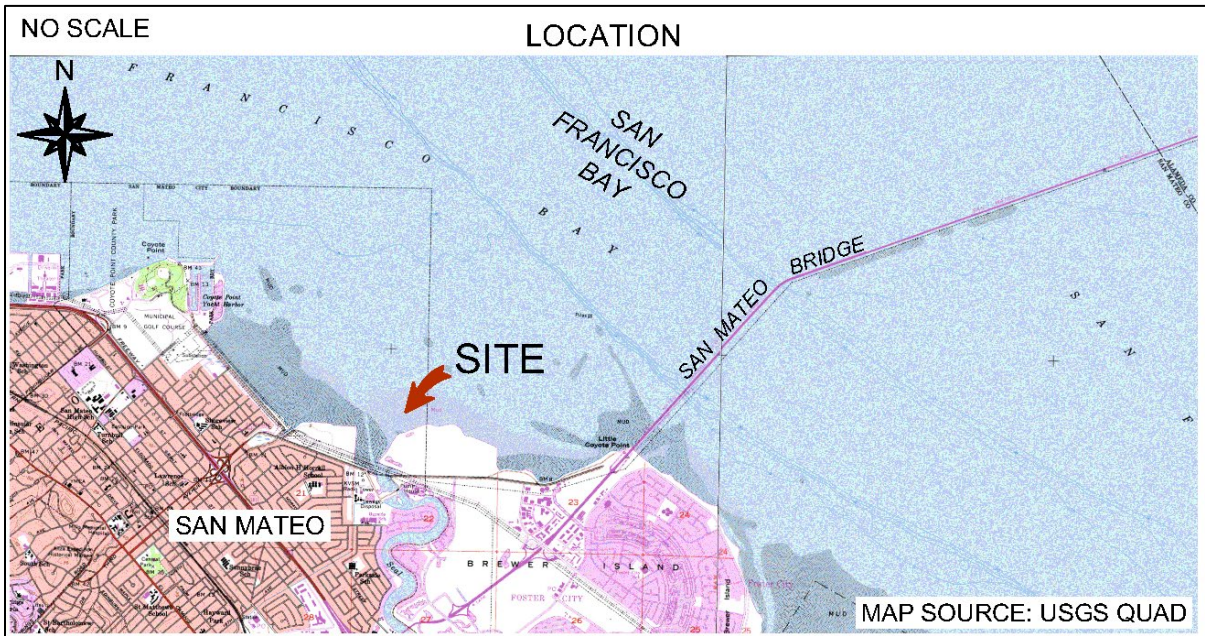
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Assignment of a General Lease – Right-of-Way Use.

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

Sovereign tide and submerged lands in San Francisco Bay, adjacent to Assessor's Parcel Numbers 033-391-100, 033-391-110, 094-130-010, 096-120-240, 096-120-280, 096-120-300, 096-120-370, and 096-120-380, near Foster City and San Mateo, San Mateo County (as shown in Figure 1).

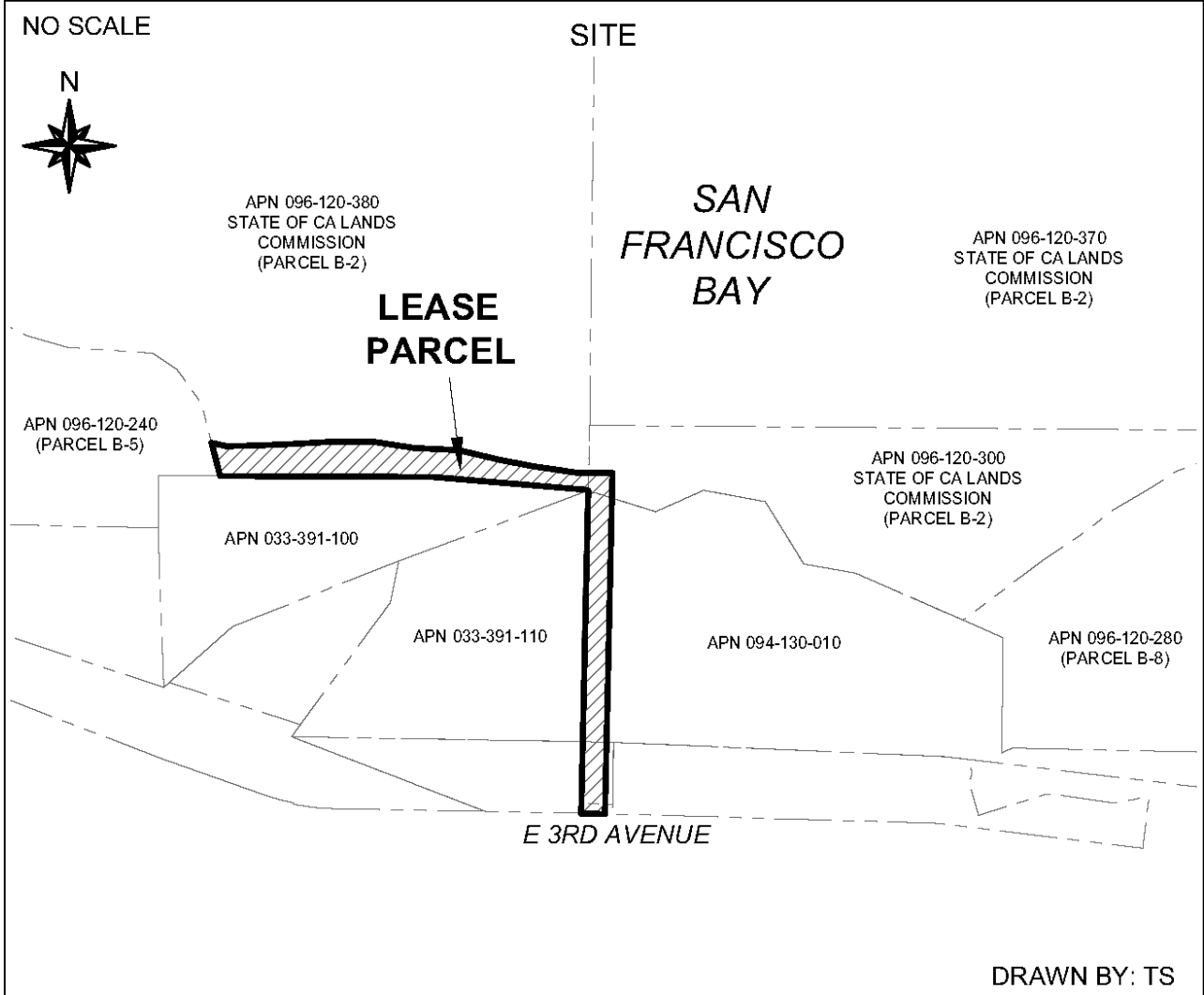
**Figure 1. Location**



**AUTHORIZED USE:**

Accessway for ingress and egress and the passage of vehicles, utilities, equipment, and pedestrians (as shown in Figure 2).

**Figure 2. Site Map**



NOTE: This depiction of the lease premises is based on unverified information provided by the applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

**TERM:**

66 years, beginning July 28, 1977.

**CONSIDERATION:**

None, pursuant to the title settlement, Boundary Line Agreement 159 (BLA 159).

**SPECIFIC LEASE PROVISIONS:**

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee shall file with the Lessor and maintain in full force and effect at all times during the term of the lease or any extension thereof, and an additional period of one hundred twenty (120) days or until the State has accepted a lease quitclaim deed and sufficient evidence of removal of improvements requested to be removed, whichever is longer, a good and sufficient surety bond drawn in favor of the State of California, or other security device satisfactory to Lessor, in the amount of the lesser of: (1) Twenty five percent (25%) of the capital improvement cost; or (2) The actual estimated cost of removal of said improvements.
- The public shall be permitted full use of the subject area so long as it remains in an unimproved state. Upon the construction of any transportation carrier, the public shall be permitted reasonable use of the subject area.

**BACKGROUND:**

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In order to broaden the waterfront development plan and extend it throughout the San Francisco Bay Area, in 1868, the State Legislature created the State Board of Tide Land Commissioners (Board or BTLC), pursuant to [Chapter 543, Statutes of 1868](#). The Board was authorized to take possession of and to survey and subdivide all of the remaining tide and submerged lands still owned by the state out to a depth of 24 feet of water at low tide along the San Francisco Bay frontage. These subdivided lots are known as BTLC lots which the state sold in order to create a new San Francisco waterfront.

In the 1960s, disputes arose over the legal ownership status of certain BTLC lots, including the area involving the lease premises. The Commission engaged in litigation between 1969 and 1977 resulting in a title settlement (BLA 159) clearing title to the parcel as owned by the state, by and through the Commission, but granting a 66-year right of way lease to Westbay Community Associates. The lease area is partially filled with the remaining portion submerged.

**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 26, 1977, pursuant to the title settlement, BLA 159, the Commission authorized a 66-year General Lease – Right-of -Way Use to Westbay Community Associates for an accessway for ingress and egress and the passage of vehicles, utilities, equipment, and pedestrians ([Item 18, July 26, 1977](#)) (Lease 5363). The lease will expire on July 27, 2043.

On June 19, 1998, the Commission authorized the assignment of Lease 5363 to First American Title Company ([Item 78, June 19, 1998](#)). In 2022, the Applicant notified Commission staff that it had acquired title to the parcels adjacent to the lease premises on January 13, 2012. The Applicant subsequently applied for an assignment of the lease. The current Lessor supports the assignment.

The lease premises are currently unimproved and are open to the public. The Applicant has no current plans for the site other than to access their adjacent BTLC lot. The Applicant is qualified to hold the lease and staff has not discovered any information that would provide a basis for withholding the assignment. Thus, staff believes that assigning this lease is in the State’s best interest to ensure that a capable lessee is committed to fulfilling the lease obligations. The proposed assignment does not alienate the State’s fee simple interest or permanently impair public rights. The effective date of the assignment will be January 13, 2012, to coincide with the date the Applicant acquired title to the parcels adjacent to the lease premises.

Approval of this lease assignment will not result in a change in the use of, or impacts to, Public Trust resources at this location, at this time, and for the remaining term of the lease. For these reasons, staff recommends finding that approval of this assignment is in the best interests of the State.

**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 subject lands are located adjacent to San Francisco Bay, in a tidally influenced site vulnerable to flooding at current sea levels and at a higher risk of flood exposure given projected scenarios of sea level rise.

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,” “medium-high risk aversion” scenario to apply a conservative approach 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 region as listed in Table 1.

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

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

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, drought, and storms (especially when coupled with sea level rise). The combination of these conditions will likely result in increased wave run up, storm surge, and flooding in coastal and near coastal areas. Climate change and sea level rise will further influence coastal areas by changing erosion and sedimentation rates. Beaches, coastal landscapes, and near-coastal riverine areas will be exposed to increased wave force and run up, potentially resulting in greater beach or bank erosion than previously experienced. The combination of increased wave action, storm activity and sea level rise could result in additional damage or degradation to the right-of-way.

The combination of these projected conditions could increase the likelihood of damage to the right-of-way within the lease area during the term of the lease. The shoreline protection may need reinforcement and possibly replacement to withstand higher levels of flood exposure and more frequent storm events.

The lease is a 66-year General Lease – Right-of-Way Use that began on July 28, 1977, and may be subject to the climate change effects of the projected sea level rise scenario provided above. Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation or dislodgement. Further climate change impact analyses on the leased facilities will be assessed at the time the lease is up for renewal in 2043 and would be based on projected sea level rise scenarios at that time.

**CONCLUSION:**

Approval of this lease assignment will not result in a change in the use of, or impacts to, Public Trust resources at this location, at this time, and for the remaining term of the lease; 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 a trustee of the State's Public Trust lands authorized by law.
2. The Applicant/Assignee meets the legal qualifications to hold the lease and staff has not discovered any information that would provide a basis for withholding the assignment. As a result, the Assignor will be released from any further performance of the lease. Upon expiration or prior termination of the lease, neither the assignor nor the assignee has any right to a new lease or to renewal of any previous lease.
3. An application for the assignment of Lease No. PRC 5362 from First American Title Insurance Company, a Nebraska corporation to First Aquatic Data Systems, LLC, a Delaware limited liability company will be considered under a separate action at the August 17, 2023 Commission meeting.
4. This action is consistent with the "Meeting Evolving Public Trust Needs" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
5. 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).

## **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 lease will not substantially impair the public rights to navigation and fishing or substantially interfere with Public Trust needs and values at this location, at this time, and for remaining term of the lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

**AUTHORIZATION:**

Authorize the assignment of Lease 5363, a General Lease – Right-of -Way Use, from First American Title Insurance Company, a Nebraska corporation, to Dunard Fund USA, Ltd., an Illinois not-for-profit corporation, effective January 13, 2012, to coincide with the Applicant's acquisition of the adjacent parcels.