

**CALENDAR ITEM
100**

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10/19/12
PRC 5467.1
G. Kato
D. Oetzel

GENERAL LEASE – COMMERCIAL USE

APPLICANT:

Frank M. Coxe, LLC
816 E. 4th Avenue
San Mateo, CA 94401

AREA, LAND TYPE, AND LOCATION:

Filled and unfilled sovereign land located at 410 Airport Boulevard in the city of Burlingame, San Mateo County

BACKGROUND:

Beginning in April 1971, the Commission authorized several leases, subleases, assignments, and amendments for a floating restaurant operation at this site. Mr. Lloyd Bothwell, the representative of the current Applicant, was involved in the early operations of the floating restaurant. Over the past 41 years, there have been more than 14 restaurant operations at this location.

In 1978, the Commission authorized a lease to Robert M. Sherman for a term of 18 years. The lease authorized the continued mooring of the decommissioned vessel known as the "S.S. Gen. Frank M. Coxe" to be used as a floating restaurant, together with parking facilities to accommodate the restaurant. Over the years, the restaurant operated intermittently through a number of sub-lessees and assignments. In early 2006, Mr. Sherman reportedly sold the vessel to Dago Mary's, a California Corporation, which then refurbished the vessel.

On February 9, 2006, the Commission authorized the termination of the lease to Mr. Sherman and the issuance of a new lease to Dago Mary's, for a term of 25 years beginning April 1, 2006. The restaurant was reportedly closed by the Lessees in December 2009, who subsequently abandoned the lease premises. Staff made several unsuccessful attempts to contact the Lessees and, on November 10, 2010, sent a Notice of Default covering several items of breach, including non-payment of rent, failure to provide an accounting of business transactions, and failure to provide required insurance coverage. On April 6,

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2011, the Commission authorized the termination of the lease, collection of back rent in the amount of \$24,143, and litigation for trespass and ejectment.

On July 13, 2010, while staff was still trying to contact the Dago Mary's Lessee, Mr. Bothwell contacted staff to request a lease with the same terms and conditions of the Dago Mary's lease. Staff advised Mr. Bothwell of the application process and that there was still an existing lease in place. Over the course of the next 17 months, staff met with Mr. Bothwell several times in person and participated in many phone calls to review the application process. Staff received Mr. Bothwell's application on December 8, 2011.

On August 14, 2012, staff, at the request of Mr. Bothwell, brought the lease before the Commission for its consideration. Staff's recommendation, based on the lack of information received, was to deny the application. More specifically, staff's recommendation was based on concerns about the economic feasibility of the proposed floating restaurant operation in this location, given the site's recent history of failed floating restaurant operations, as well as unresolved questions regarding ownership of the vessel. The Commission deferred action on the lease application and directed staff to continue to work with the Applicant to try and resolve the outstanding issues presented at the meeting.

Staff has since been made aware that the current registered owner of the vessel (per Coast Guard documentation) is Maxim Commercial Capital LLC (Maxim). It is the understanding of staff that Mr. Bothwell sold the vessel to Maxim under a lease-back scenario. Maxim has told staff that they have conducted a thorough title search on the vessel and it is their position that there are no other valid title claims against the vessel. Further, Maxim has indicated that they will grant the Applicant the use of the vessel for the floating restaurant operation. Details regarding the business arrangement between Maxim and the Applicant were requested by staff, but have not been provided by either the Applicant or Maxim.

OTHER PERTINENT INFORMATION:

- 1) On April 6, 2011, the Commission authorized the termination of Lease No. 5467.1, a General Lease – Commercial Use, issued to Dago Mary's, a California Corporation, collection of back rent (in the amount of \$24,143), and litigation for trespasses and ejectment. Staff has been unable to collect the back rent from the prior lessee. Staff has not proceeded with the trespass and ejectment action pending Commission consideration of this lease application.
- 2) On December 8, 2011, Commission staff received a lease application from Frank M. Coxe, LLC for the operation of a floating restaurant, parking lot, and public access amenities.

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- 3) Staff reviewed the information contained in the lease application, including the market study provided. Staff believes that the application and market study do not adequately address its concerns about the economic feasibility of the proposed floating restaurant operation in this location, given the site's long history of failed floating restaurant operations, including the vessel sinking in 1987.
- 4) Should the Commission decide to issue a lease, staff believes that certain special lease provisions are necessary to protect the State's interest and assure adequate remedies are available to the State should the lease operation fail and the proposed leaseholder not be compelled to perform including removal of the vessel without cost to the State. These special lease provisions are outlined below:
- Frank M. Coxe, LLC (Applicant) and Maxim Commercial Capital LLC (Owner of the Vessel) will be Co-Lessees;
 - Maxim Commercial Capital LLC, Frank M. Coxe, LLC, and Lloyd Bothwell personally, insure, indemnify and hold the State harmless from any claims arising from a challenge to their ownership of the vessel;
 - Minimum of \$500,000 surety bond or other security (amount pending further investigation into costs to remove the vessel if necessary);
 - Surety shall be non-cancellable for the duration of the lease plus 90 days;
 - Lessees shall pre-pay three years of annual minimum rent within 30 days of Commission authorization of the Lease. If payment of rent is not received within 30 days, the Lessees shall be deemed in breach of the terms of the Lease;
 - If operations cease or there is a breach of the Lease prior to the third year of the Lease, all pre-paid rent shall be forfeited;
 - Lessees shall provide to the Commission within 30 days of execution of the Lease:
 - Letters of Commitment from investors including investment amounts committed or Letters/Lines of Credit from financial institutions;
 - Verification of monies received from investors, such as deposit slips from banks, copies of checks, or other such verifiable documentation;
 - If Letters of Commitment or Letters of Credit and verification are not received within 30 days, the lease shall terminate immediately;
 - Lessees agree that upon expiration or termination of the Lease, the Lease Premises must be cleared of all restaurant-related improvements, including the vessel, at Lessees' sole cost and expense;
 - Should the relationship between Frank M. Coxe, LLC and Maxim Commercial Capital LLC change, notice must be given immediately in

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writing to the Lessor or the Lessees will be considered to be in breach of the terms of the Lease;

- Ownership of the vessel shall not be transferred or registered to any other party without the consent of the Commission. A minimum 90 days advance notice for approval of an assignment or change in Lessee status will also be required as a term of the Lease;
- If Lessees' operations cease for longer than 6 months without prior written notice to and approval by the Commission, the Lessees will be considered to be in breach of the terms of the Lease;
- Residential use of the Lease Premises is strictly prohibited. Lessees, sublessee(s), restaurant operators and their employees, security personnel, or any other persons shall not live on the vessel or other parts of the Lease Premises; and
- No additional improvements or construction on the Lease Premises, including modifications shall be permitted without the Lessor's prior written consent.

- 5) As of the time of this staff report, the Applicant would not agree to a number of these special lease provisions. Consequently, the staff recommends the Commission deny this lease application as not in the State's best interest.
- 6) Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15061), the staff has determined that this activity is exempt from the requirements of CEQA as a statutorily exempt project. The project is exempt because CEQA does not apply to projects which a public agency rejects or disapproves.
- Authority: Public Resources Code section 21080, subdivision (b)(5) and California Code of Regulations, Title 14, section 15270, subdivision (a).
- 7) This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.
- 8) Should a lease be authorized, the staff recommends that the Commission find that this activity 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).

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

- 9) Should a lease be authorized, the activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15061 as a statutorily exempt project pursuant to Public Resources Code section 21080, subdivision (b)(5) and California Code of Regulations, Title 14, section 15270, subdivision (a), projects which a public agency rejects or disapproves.

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

Authorize denial of the application for a General Lease – Commercial Use, submitted by the Frank M. Coxe, LLC on December 8, 2011.

ALTERNATIVE FINDINGS SHOULD THE COMMISSION AUTHORIZE THE ISSUANCE OF A LEASE:

CEQA FINDING:

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15061 as a

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categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

Authorize issuance of a General Lease – Commercial Use to Frank M. Coxe, LLC and Maxim Commercial Capital LLC, as Co-Lessees beginning October 19, 2012, for a term of 10 years, for the operation of a floating restaurant at 410 Airport Boulevard, Burlingame, San Mateo County as shown on Exhibit A (for reference purposes only) and described on Exhibit B attached and by this reference made a part hereof. This Lease shall contain special lease provisions as detailed in paragraph 4 under Other Pertinent Information in this staff report with an annual rent in the amount of \$10,170, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease, liability insurance for a combined single-limit coverage of \$2,000,000, and surety in the amount of \$500,000.

EXHIBIT A

PRC 5467.1

LAND DESCRIPTION

A parcel of land conveyed to the State of California by Anza Pacific Corporation under Boundary Line Agreement 131, situate in the City of Burlingame, County of San Mateo, State of California, lying adjacent to the San Francisco Bay and more particularly described as follows:

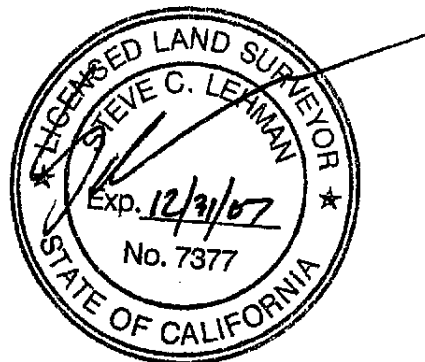
Parcel 5 as described in that Grant Deed recorded July 13, 1972 in Book 6198 at Page 76 of official records of the County of San Mateo.

EXCEPTING THEREFROM that portion of Lot 7 as shown on that map of Anza Airport Park Unit No. 6 recorded February 27, 1973 in Book 70 of maps at Page 33 of official records of the County of San Mateo and more particularly described as follows:

BEGINNING at the southwest corner of Lot 7, thence along the West line of said Lot 7 $N02^{\circ}25'31''W$ 359.50 feet to the northwest corner of said lot, thence along the North line of said lot $N89^{\circ}43'01''E$ 35.89 feet to a point on said North line, thence leaving said North line $S00^{\circ}17'00''E$ 358.80 feet to a point on a non-tangent curve having a radius of 643.50 feet from which a radial line bears $S00^{\circ}25'32''E$, said point also being on the South line of said Lot 7, thence westerly along said South line 22.46 feet along said curve through a central angle of $1^{\circ}29'59''$ to the POINT OF BEGINNING.

END OF DESCRIPTION

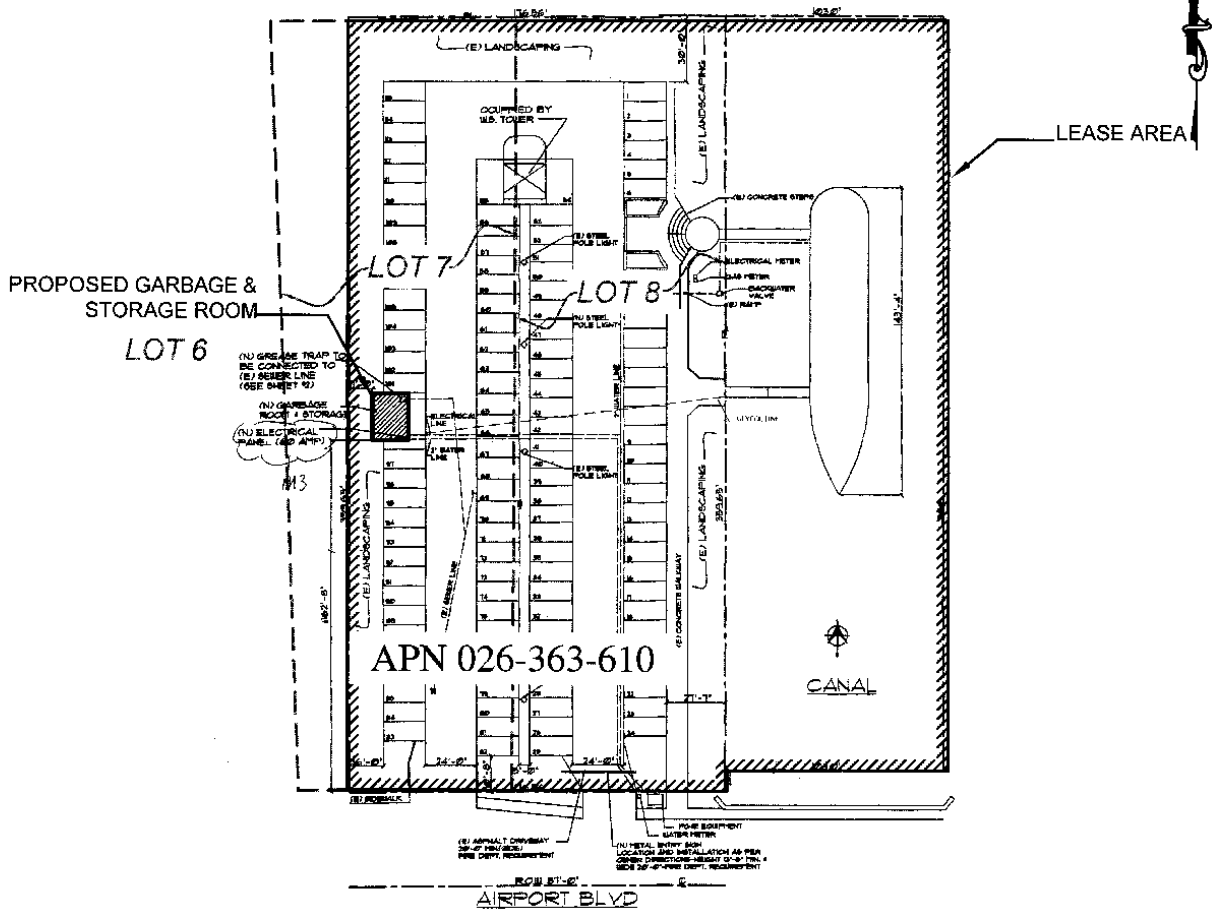
Prepared by the California State Lands Commission Boundary Unit November 19, 2007.



NO SCALE

SITE

San Francisco Bay



410 AIRPORT BLVD.

NO SCALE

LOCATION



Exhibit B

PRC 5467.1
 FRANK M. COXE LLC.
 GENERAL LEASE -
 COMMERCIAL 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.