

**CALENDAR ITEM
C02**

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01/23/14

W 26713/WP 5467.1

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S. Haaf

CONSIDER APPROVAL OF A REVISED INTERIM AUTHORIZATION TO EFFECTUATE VESSEL REMOVAL FOR THE VESSEL KNOWN AS “THE FRANK M. COXE,” ALSO/FORMERLY KNOWN AS “DAGO MARY’S,” “THE SHERMAN,” AND “THE SHOWBOAT,” AMONG OTHER NAMES, AS WELL AS REMOVAL OF THE GANGWAY, PILINGS, AND OTHER RESTAURANT-RELATED IMPROVEMENTS, INCLUDING RESTORATION OF THE PREMISES LOCATED AT 410 AIRPORT BOULEVARD, BURLINGAME, SAN MATEO COUNTY

PARTY:

Maxim Commercial Capital, LLC

AREA, LAND TYPE, AND LOCATION:

Filled and unfilled sovereign land at and adjacent to 410 Airport Boulevard, Burlingame, San Mateo County.

AUTHORIZED USE:

To cause removal of the vessel, gangway, pilings, and other restaurant-related improvements from the Premises, including restoration of the Premises to the satisfaction of the Commission as specified therein.

TERM:

The lesser of four (4) months or the time to secure contracts and the necessary authorizations to effectuate removal of the vessel from sovereign lands and restoration of Premises, beginning on January 1, 2014, and terminating on April 30, 2014, or sooner as provided therein.

CONSIDERATION:

Payment of Back Rent Due: One-time non-refundable payment of \$12,720 (\$848 per month) (the “Back Rent Payment”), based upon the reasonable rental value of the subject property. Such consideration is calculated on a monthly basis for the period covering October 2012 through December 2013, during which time Maxim Commercial Capital, LLC (MAXIM), as the owner of the vessel, occupied the Premises absent authorization from the California State Lands Commission (Commission).

CALENDAR ITEM NO. **C02** (CONT'D)

Interim Rent: \$848 per month during the Authorization Term; and as specified in Paragraph 2 of Section 3, General Provisions.

SPECIFIC LEASE PROVISIONS:

Liability Insurance: Coverage in an amount of no less than \$2,000,000 per occurrence.

Surety Bond or Other Security: \$500,000 (or cash equivalent in a form acceptable to Commission staff).

BACKGROUND:

1. On October 19, 2012, the Commission authorized the issuance of Lease No. PRC 5467.1, a General Lease – Commercial Use, for a 10-year term to Frank M. Coxe, LLC for the operation and maintenance of a floating restaurant and appurtenant facilities, parking lot, and public access amenities on sovereign land adjacent to San Francisco Bay, in the city of Burlingame, San Mateo County. Lloyd Bothwell is the Managing Agent of Frank M. Coxe, LLC at all times relevant hereto.
2. Lloyd Bothwell claimed to be prior owner of the subject vessel and sold the vessel to MAXIM with an agreement to rent-back the vessel for use by himself and his company, Frank M. Coxe, LLC.
3. MAXIM is a California limited liability company and the current owner of the vessel known as the “General Frank M. Coxe,” also/formerly known as “Dago Mary’s,” “The Sherman,” and “The Showboat,” among other names, hereinafter referred to as the “vessel.”
4. After the November 16, 2012 execution of the Lease, Frank M. Coxe, LLC failed to satisfy any of the core lease conditions, including but not limited to providing the executed guaranty from MAXIM and payment of any rent. Commission staff promptly advised Frank M. Coxe, LLC of the unmet lease provisions on several occasions, including, but not limited to written correspondence on November 16, 2012, a default notice letter on December 18, 2012, and follow-up correspondence on January 25, 2013. MAXIM received a courtesy copy of each of the above-referenced correspondence.
5. As a result of the numerous unmet lease provisions, Commission staff recommended the Commission terminate the lease with Frank M. Coxe, LLC at its meeting on February 22, 2013. At said duly noticed public meeting, the Commission terminated the lease with Frank M. Coxe, LLC, determined the vessel was in trespass, and authorized Commission staff

CALENDAR ITEM NO. **C02** (CONT'D)

and the Attorney General to take whatever action was necessary, including filing suit, to remove the vessel and other restaurant-related improvements. Written notice of the Commission's action was promptly provided to Frank M. Coxe, LLC, Lloyd Bothwell, and MAXIM.

OTHER PERTINENT INFORMATION:

1. MAXIM is the record owner of the subject vessel based upon U.S. Coast Guard documentation submitted to Commission staff. Furthermore, MAXIM claims ownership and has represented to staff that it has conducted a thorough title search on the vessel and it is MAXIM's position that there are no other valid title claims against the vessel.
2. As owner of the vessel, on March 1 and April 4, 2013, notice of the Commission's February 22, 2013 lease termination action and written demand were also made on MAXIM to request removal of the vessel. When Commission staff received no response, on May 30, 2013, another letter was sent to MAXIM notifying them that the vessel was in trespass and demanding that the vessel be immediately removed.
3. On June 18, 2013, Commission staff posted a Notice of Trespass on the vessel and a final demand letter was sent to MAXIM. Subsequently, it was discovered that said Notices were removed. On July 2, 2013, the trespass Notices were re-posted and MAXIM was advised that the Notices should not be removed. To date the vessel remains at the same location, in trespass.
4. In lieu of commencing litigation for trespass and ejectment, Commission staff recommended the Commission authorize the issuance of a short-term *Interim Authorization* in order to allow MAXIM the time to secure contracts and the necessary authorizations for removal of the vessel, gangways, pilings and other restaurant-related improvements from sovereign lands, including restoration of the Premises consisting of the removal of all attachments to the vessel, including but not limited to, service lines, electrical systems, and satellite dish. The shoreline protection, storage shed located on the upland, and paved parking lot shall remain. All services shall be capped at the adjacent upland.
5. On September 20, 2013, the Commission authorized the issuance of an Interim Authorization to Effectuate Vessel Removal to MAXIM. However, subsequently MAXIM retained new counsel and sought to renegotiate key terms. Staff has been engaged in ongoing discussions with MAXIM related to the vessel removal and recommends recession of the prior action and requests authorization for the revised Interim Authorization.

CALENDAR ITEM NO. **C02** (CONT'D)

6. The key terms of the revised *Interim Authorization* include:
 - a. MAXIM shall use a reputable, licensed, bonded tug boat company to remove the vessel from the Premises and shall comply with all applicable laws while completing this work. MAXIM shall notify Commission staff within seventy-two (72) hours of securing any necessary contracts and authorizations to effectuate removal of the vessel and within seven (7) calendar days after removal of the vessel and completing all restoration work.
 - b. The subject vessel may not be towed to any area under the jurisdiction of the Commission, including granted lands.
 - c. On or before February 6, 2014, MAXIM shall submit a Work Plan setting forth in reasonable detail the work necessary to remove the vessel from state lands and restore the Premises including, but not limited to, proof of the selected contractor's credentials, scope of work for the vessel's removal, notice of any required regulatory authorizations, estimates of costs, and scheduled dates for completion of work for Commission staff's review and approval prior to commencement of any work at the Premises.
 - d. MAXIM agrees to provide Commission staff with monthly updates, due by the 10th of each month (commencing as of January 10, 2014), as to the status of the removal of the vessel, including, but not limited to: parties contacted, contracts rendered, and actions taken to effectuate removal of the vessel and restoration of the Premises.
 - e. MAXIM shall provide a surety bond or cash equivalent/other security device acceptable to CSLC, for the specified amount, and naming the State of California as the obligee or beneficiary, to guarantee to CSLC the faithful observance and performance by MAXIM of all of the terms, covenants, and conditions of this Interim Authorization. MAXIM shall post bond (or cash equivalent) for the benefit of the Commission prior to or upon execution of the Interim Authorization.

7. Both the Commission and MAXIM acknowledge and understand that the *Interim Authorization* is intended to be limited in scope and duration and permits MAXIM to occupy the Premises only insofar and for the purposes expressly set forth therein. The *Interim Authorization* is non-transferable and non-assignable. Likewise, MAXIM's obligations under the *Interim*

CALENDAR ITEM NO. C02 (CONT'D)

Authorization, including but not limited to all provisions related to removal of the vessel, are non-transferable and non-assignable.

8. The staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, Title 14, section 15301.

Authority: Public Resources Code section 21084 and California Code of Regulations, Title 14, section 15301.

9. 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.

EXHIBITS:

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

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 categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, Title 14, section 15301.

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:

1. Rescind the Commission's September 20, 2013 authorization of the Interim Authorization to Effectuate Vessel Removal.
2. Authorize issuance of a revised Interim Authorization to Effectuate Vessel Removal (in a form substantially similar to that on file at the Commission), to Maxim Commercial Capital, LLC for the lesser of four (4) months or the time to secure contracts and the necessary

CALENDAR ITEM NO. **C02** (CONT'D)

authorizations to effectuate removal of the vessel from sovereign lands and restoration of Premises, beginning on January 1, 2014, and terminating on April 30, 2014, or sooner as provided therein; payment of back rent due by the one-time non-refundable payment of \$12,720, based upon the reasonable rental value of the subject property for the period covering October 2012 through December 2013, during which time MAXIM, as owner of the vessel, occupied the Premises absent authorization from the Commission; consideration in the amount of \$848 per month during the Interim Authorization term, and as specified in Paragraph 2 of Section 3, General Provisions; comprehensive general liability and property damage insurance in an amount no less than \$2,000,000 per occurrence; surety bond (or cash equivalent, including a Letter of Credit, in a form acceptable to Commission staff) in the amount of \$500,000.

3. Authorize staff of the Commission and the Office of the Attorney General to take all steps necessary, including litigation, against MAXIM, its agents, successors, and/or assigns, to redress trespass and for ejectment, to recover damages, to cause payment of rent and back rent, for the removal of any improvements, for the restoration of the Premises to the satisfaction of the Commission, to recover the Commission's damages and costs, including reimbursement of staff costs, to contract for the removal, sale and/or decommissioning of the vessel and restoration of the Premises as may be necessary, to take all steps necessary to effectuate the resolution contemplated under the Interim Authorization, to release the surety bond (or cash equivalent) upon MAXIM's full performance under the Interim Authorization or in the event the Commission declines to approve the revised Interim Authorization.

EXHIBIT A

W 26713

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:

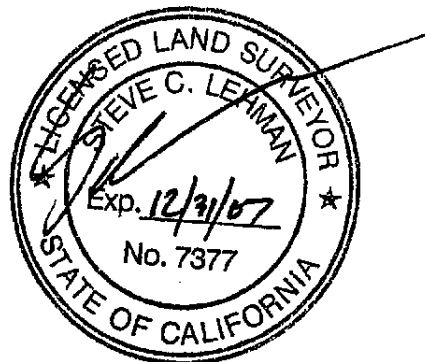
Parcel 5 as described in that Grant Deed recorded July 13, 1972 in Book 6198 at Page 76 of official records of the County of San Mateo.

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

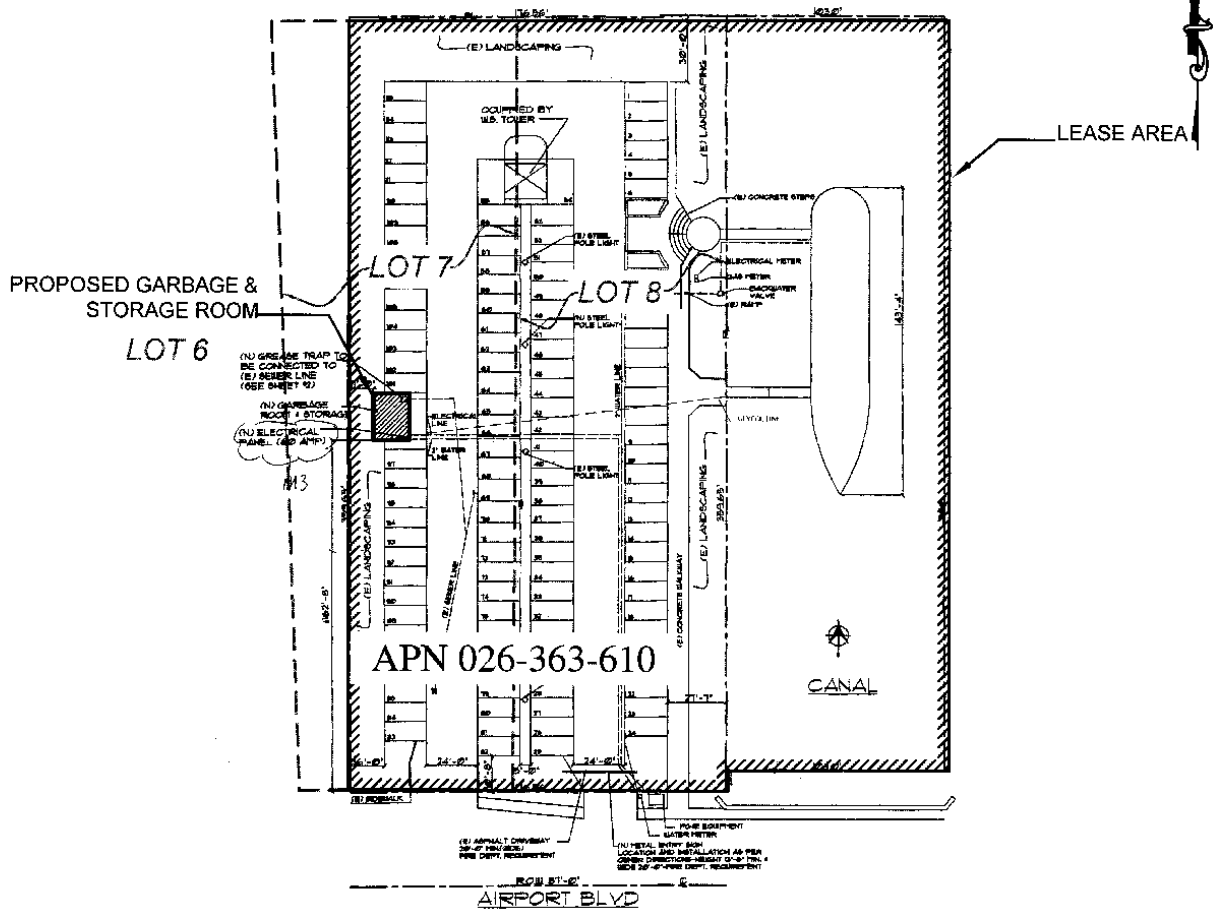
Prepared by the California State Lands Commission Boundary Unit November 19, 2007.



NO SCALE

SITE

San Francisco Bay



410 AIRPORT BLVD.

NO SCALE

LOCATION



Exhibit B

W 26713
 MAXIM COMMERCIAL
 CAPITOL LLC
 INTERIM AUTHORIZATION
 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.