

**CALENDAR ITEM**

**C53**

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12/06/16

W 6005.170

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R. B. Greenwood

**CONSIDER AN APPLICATION FOR A NON-EXCLUSIVE GEOLOGICAL  
SURVEY PERMIT ON FILLED TIDE AND SUBMERGED LANDS ADJACENT  
TO THE SAN FRANCISCO BAY, SAN MATEO COUNTY**

**APPLICANT:**

Burlingame Bay Park Hotel, LLC

**BACKGROUND:**

Burlingame Bay Park Hotel, LLC, (Applicant) applied for a 5-month Non-Exclusive Geological Survey Permit (Permit). The Permit would allow gathering of data that the Applicant will use in evaluating the feasibility of constructing a hotel with parking and an open space park on filled tide and submerged lands adjacent to the San Francisco Bay. The proposed survey involves obtaining subsurface information by drilling from two possible locations and five cone penetration tests to a maximum depth of 100 feet. Drilling and sampling will be conducted over a period of 5 months. The samples will be collected using rotary drilling methods, down-hole sampling, and testing from a self-contained truck-mounted drilling rig at locations more or less as depicted on attached Exhibit A.

The 3 7/8-inch-diameter boreholes will be drilled, with water or a bentonite clay drilling fluid, in a closed circulation system isolated from the adjacent bay waters. After drilling and sampling, the boreholes will be backfilled with drill cuttings and clean sand. Excess drill cuttings, drilling fluid, and wash water will be retained and properly disposed off-site. Upon request, the Commission will receive copies of all data collected under this Permit.

**STAFF ANALYSIS AND RECOMMENDATION:**

**Public Trust and State's Best Interests Analysis:**

Burlingame Bay Park Hotel, LLC, is a real estate development company, and this authorization would allow the Applicant to conduct geological surveys to investigate subsurface soil conditions and obtain foundation design data. Collection of scientific data is a use recognized by the courts to be consistent with the common law Public Trust Doctrine. (See, for example, *Marks v. Whitney* (1971) 6 Cal. 3d 251, 259-260.) The Permit

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contains restrictions that protect public rights and environmental resources. For example, the Permit is non-exclusive and limited to 5 months in length. Commission staff believes that granting the Permit will not substantially interfere with Public Trust needs at this time, or for the foreseeable term of the Permit.

For all the reasons above, staff believes the approval of the Permit application is consistent with the common law Public Trust Doctrine and is in the best interests of the State. Staff recommends approval of this Non-Exclusive Geological Survey Permit application.

**TERM OF PROPOSED PERMIT:**

Five months beginning December 6, 2016, through May 5, 2017.

**PREREQUISITE CONDITIONS, FEES AND EXPENSES:**

Required fees, expense deposit, and other security have been received.

**STATUTORY AUTHORITY AND OTHER REFERENCES:**

- A. Public Resources Code sections 6005, 6212.2, 6216, and 6301
- B. California Code of Regulations, title 2, section 2905, subdivision (e)(1)
- C. California Code of Regulations, title 14, section 15061

**OTHER PERTINENT INFORMATION:**

1. Staff recommends that the Commission find that this activity is exempt from the requirements of California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 6, Information Collection; California Code of Regulations, title 2, section 2905, subdivision (e)(1).

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

2. 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 staff's consultation with the persons nominating such lands and through the CEQA review process, it is staff's opinion that the project, as proposed, is consistent with its use classification.

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3. This action is consistent with the Commission's Strategic Plan, Strategy 1.1 to deliver the highest levels of public health and safety in the protection, preservation and responsible economic use of the lands and resources under the Commission's jurisdiction.

**EXHIBIT:**

- A. Location Map

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDINGS:**

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 6, Information Collection; California Code of Regulations, title 2, section 2905, subdivision (e)(1).

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

Find that the proposed Permit will not substantially interfere with the Public Trust needs and values, is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

**SIGNIFICANT LANDS INVENTORY FINDING:**

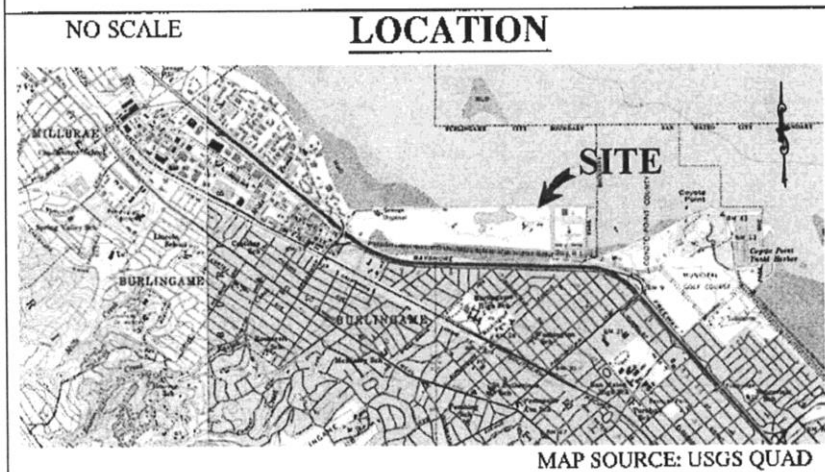
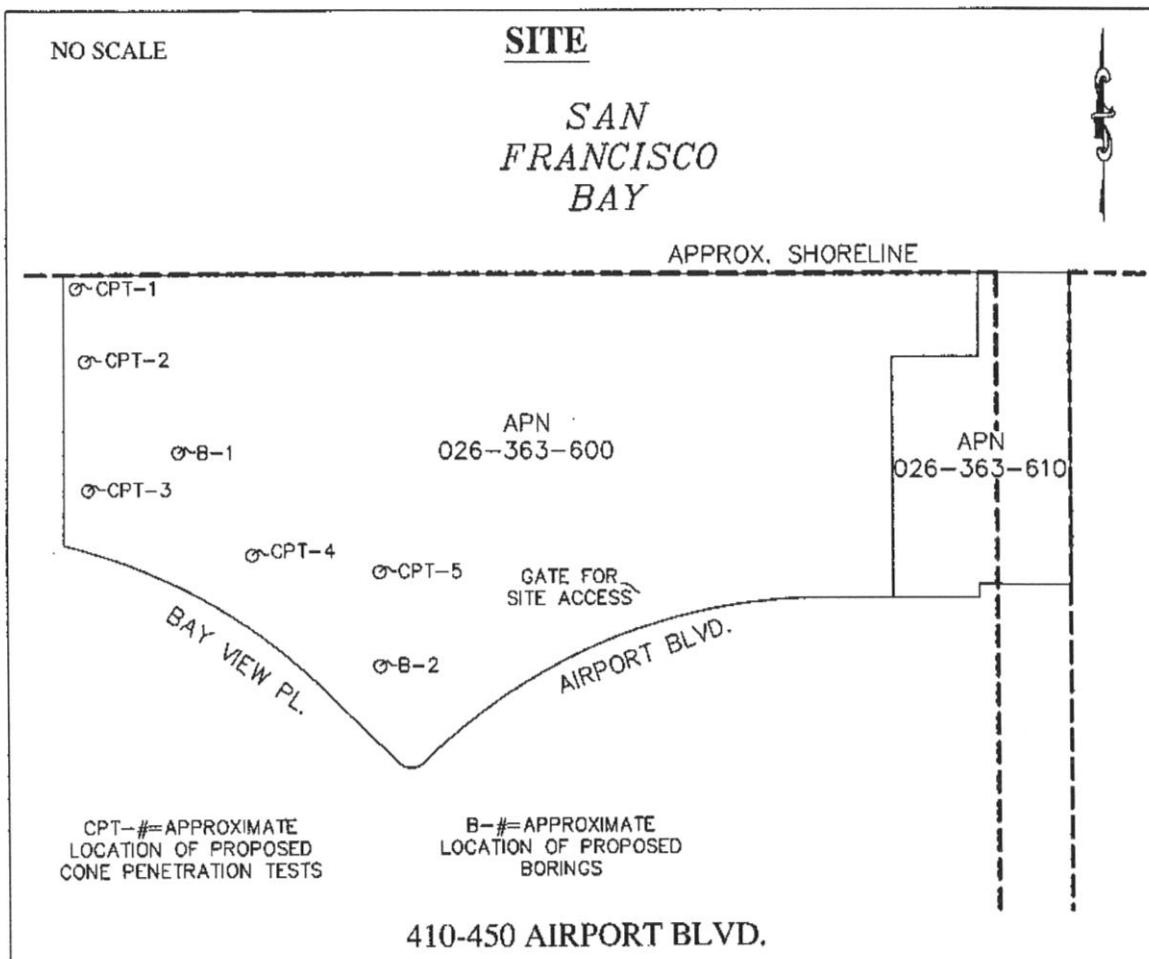
Find this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370, et seq.

**AUTHORIZATION:**

Authorize issuance of a Non-Exclusive General Permit to conduct Geological Surveys for the period December 6, 2016, through May 5, 2017, within project locations as designated on the attached Exhibit A, to Burlingame Bay Park Hotel, LLC.

# Exhibit A

W 6005.170



### Exhibit A

W 6005.170  
BURLINGAME BAY PARK  
HOTEL LLC  
APN 026-363-600, 026-363-610  
GEOTECHNICAL PERMIT  
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.