

Staff Report 40

LESSEE/APPLICANT:

Westport Office Park, LLC, a Delaware limited liability company

SECURED-PARTY LENDER:

JPMorgan Chase Bank, N.A., a national banking association

PROPOSED ACTION:

Issuance of a General Lease – Right-of-Way Use; and Authorization of an Agreement and Consent to Encumbrance of Lease

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Belmont Slough, adjacent to 1400 and 1600 Bridge Parkway, near Redwood City, San Mateo County.

AUTHORIZED USE:

Use and maintenance of two 48-inch-diameter stormwater outfalls and rock riprap at the outfall discharge areas.

TERM:

6 years, beginning February 27, 2021.

CONSIDERATION:

\$12,446 per year with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$2,000,000 per occurrence.
- Surety bond or other security in the amount of \$450,000.

- Lessee agrees and acknowledges hazards associated with sea-level rise may require additional maintenance or protection strategies regarding the improvements on the Lease Premises.

STAFF ANALYSIS AND RECOMMENDATION:

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 February 27, 1996, the Commission authorized a General Lease – Right-of-Way Use to Westport Investments for a term of 25 years beginning February 27, 1996, for the construction of two 48-inch-diameter plastic stormwater outfalls and rock riprap at the outfall discharge areas ([Item C30, February 27, 1996](#)). On December 8, 2005, the Commission authorized an assignment of the lease to Prudential Financial Insurance Company of America ([Item C61, December 8, 2005](#)). On April 5, 2019, the Commission authorized a correction to the prior authorization and an Agreement and Consent to Encumbrance of the General Lease – Right-of-Way Use ([Staff Report C44, April 5, 2019](#)).

The existing lease will expire on February 26, 2021, and the Lessee is applying for a new General Lease – Right-of-Way Use and an authorization of a new Agreement and Consent to Encumbrance of the Lease. On February 8, 2019, the Applicant obtained refinancing in favor of JPMorgan Chase Bank, N.A., the Secured-Party Lender, with a loan amount of up to \$390.5 million. Under the terms of the loan, the Secured-Party Lender is requiring the Applicant to pledge their interest in Lease 7876 as additional security. The purpose of the loan is to refinance the existing debt on the upland property and leasehold.

The privately owned upland adjacent to the lease area has been developed as a commercial office park and parking lot. The office building and parking lot are privately owned and maintained.

The encumbrance of the lease may be implemented through the document, "Agreement and Consent to Encumbrance of Lease," that includes protections for the State land associated with the lease. These protections include the following requirements:

1. No subsequent encumbrance of the lease shall be allowed without prior written consent of the Commission.

2. Any transfer of the lease to a third party shall be subject to prior written approval and consent of the Commission.
3. If the Secured Party-Lender forecloses on the lease, it shall be bound by all terms and conditions of the lease.
4. The duration of the encumbrance agreement is limited to the term of the lease.

The proposed lease will expire on February 26, 2027. In approving the encumbrance agreement, the Commission, through a delegation to the Executive Officer, retains the right to approve any transfer of the lease from the Secured Party-Lender to a prospective lessee, should any foreclosure of the loan occur. The proposed Agreement and Consent to Encumbrance of Lease provides that the Commission's Executive Officer make certain approvals as provided in the Agreement, including the approval of purchasers during a foreclosure sale.

In April and August of 2020, engineering reports of the outfall pipeline's condition found that the pipes are buried in bay mud, have cracks and perforations, and standing water in the junction boxes where the outfall pipes begin. In order to better understand the internal condition of the pipelines, the Applicant will need to conduct a closed-circuit television (CCTV) survey and prepare a plan to mitigate the deficiencies. However, performing a CCTV survey will require excavation of bay mud, which in turn will require permits from multiple regulatory agencies. Such permitting will need to include alternatives for rehabilitation that can cover a range of outfall pipe defects that may be uncovered during the field investigation work, including the option to replace the pipes, if needed.

Because the current lease expires on February 26, 2021, and obtaining permitting and preparing a plan to mitigate the deficiencies will likely take years, staff is recommending the issuance of a 6-year lease. The Applicant will be required to submit a detailed work plan by August 26, 2021, outlining the rehabilitation and/or replacement of the existing facilities located on the lease premises. Upon staff's approval of the work plan, the Applicant is required under the terms of the lease to submit an application for an amendment of the lease to authorize the work under the work plan and provide for a long-term lease.

The outfall pipelines are buried and do not impede surface use or interfere with Public Trust needs and values at this location, at this time, and for the foreseeable term of the proposed lease. The existing facilities do not significantly alter the land, and the lease does not alienate the State's sovereign interest, or permanently impact public rights. The lease is limited to a 6-year term and does not grant the lessee exclusive rights to the lease premises. Upon termination of the lease, the lessee may be required to remove any improvements and restore the lease premises to their original condition. Additionally, the proposed lease requires the

lessee to maintain a performance bond in the amount of \$450,000 and to insure the lease premises and indemnify the State for any liability incurred as a result of the lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved.

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 facilities are located on the south bank of Suisun 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.

According to a report from the Applicant's engineering consultant dated August 28, 2020, the outfall pipes are buried in bay mud and have cracks and perforations, and it is likely that the storm drain system upstream is not able to drain as intended. Although the pipes can be rehabilitated after clearing the mud, sediment accumulation will continue to be a problem that requires routine maintenance. To minimize routine maintenance, the report recommends that the outfall pipes be raised. Outfalls that are below new high-tide or storm-event levels may need to be elevated, have check valves installed to prevent backups, or be pumped rather than gravity drained. Reduced discharge capacity and/or failures of pump stations could cause flooding of adjoining properties and, in neighborhoods served, disrupt access to homes, jobs, and recreation areas leading to potentially significant

concerns. In their current condition, the capacity to collect, convey, and discharge stormwater flows to the slough would be further reduced by higher water levels due to climate change.

CONCLUSION:

For all the reasons above, staff believes the issuance of this lease will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

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 trustee of the State's Public Trust lands. An applicant has no right to a new lease or to renewal of any previous lease. Denial of the application may result in a determination that the proposed activity on or use of State land is unauthorized and may result in legal action.
2. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan 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.
3. Authorization of an Agreement and Consent to Encumbrance of 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).

4. Staff recommends that the Commission find that issuance of the lease 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 2, section 2905, subdivision (a)(2).

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

EXHIBITS:

- A. Land Description
- B. Site and 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 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease 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; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize issuance of a General Lease – Right-of-Way Use to the Applicant beginning February 27, 2021, for a term of 6 years, for the use and maintenance of two 48-inch-diameter stormwater outfalls and rock riprap at the outfall discharge areas, as described in Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof; annual rent in the amount of \$12,446, with an annual Consumer Price Index adjustment; liability insurance in the amount of no less than \$2,000,000 per occurrence; and surety bond or other security in the amount of \$450,000.
2. Authorize the Executive Officer, or designee, to execute the document entitled "Agreement and Consent to Encumbrance of Lease," allowing Lessee's right, title, and interest in Lease No. 7876 to be pledged as partial security for a loan in a principal amount not to exceed \$390.5 million in favor of the Secured-Party Lender in substantially the same form as that on file in the Sacramento office of the Commission; effective upon signature by all parties; and to execute, acknowledge, accept, and record all related documents as may be reasonably necessary to complete the transaction.

3. Authorize the Executive Officer, or designee, to give approval on behalf of the Commission of prospective purchasers during a foreclosure sale and make any other approvals required of the Commission under the Agreement.

EXHIBIT A

LEASE 7876

LAND DESCRIPTION

Two parcels of sovereign land, lying in the bed of the Belmont Slough, situated in the City of Redwood City, County of San Mateo, State of California, more particularly described as follows:

PARCEL 1

COMMENCING at the most northwesterly corner of Parcel A as shown on that certain map entitled "Parcel Map 84-6", recorded in Volume 54 of Parcel Maps at Page 72 and 73, San Mateo County Records, State of California; thence along the westerly boundary of said Parcel A South 09° 11' 27" West 28.76 feet; thence South 03° 33' 33" East 211.52 feet; thence South 00° 55' 54" West 46.06 feet to the POINT OF BEGINNING; thence leaving said westerly boundary of Parcel A, North 89° 04' 06" West 100.00 feet; thence South 00° 55' 54" West 50.00 feet; thence South 89° 04' 06" East 100.00 feet to the westerly boundary of said Parcel A; thence continuing along said westerly boundary North 00° 55' 54" East 50.00 feet to the POINT OF BEGINNING.

PARCEL 2

COMMENCING at the most southwesterly corner of Parcel B as shown on that certain map entitled "Parcel Map 84-6", recorded in Volume 54 of Parcel Maps at Page 72 and 73, San Mateo County Records, State of California; thence along the westerly boundary of said Parcel B North 09° 11' 27" East 185.88 feet; thence North 07° 56' 53" East 198.21 feet; thence North 10° 25' 00" East 408.60 feet to the POINT OF BEGINNING; thence leaving said westerly boundary of Parcel B, North 79° 35' 00" West 160.00 feet; thence North 10° 25' 00" East 50.00 feet; thence South 79° 35' 00" East 160.00 feet to the westerly boundary of said Parcel B; thence continuing along said westerly boundary South 10° 25' 00" West 50.00 feet to the POINT OF BEGINNING.

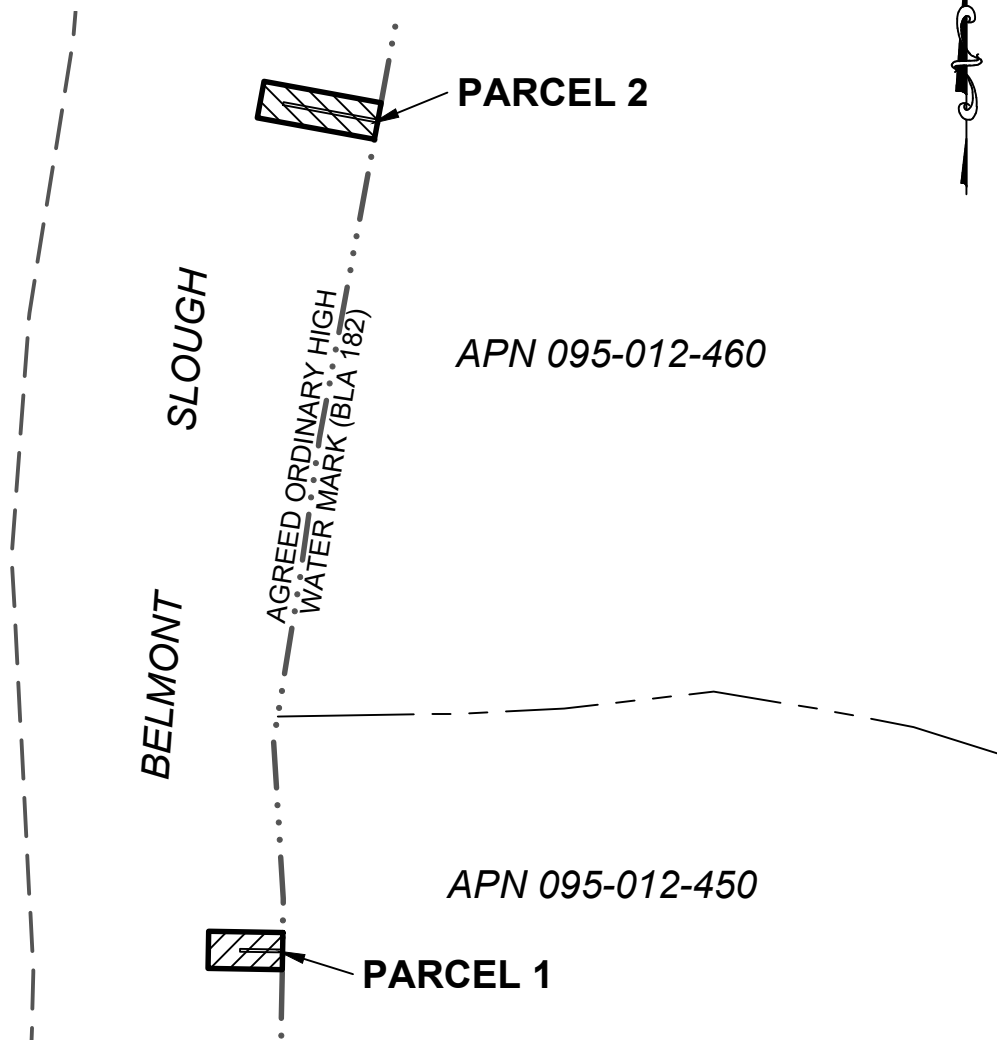
END OF DESCRIPTION

Original description prepared by Lisa M. Maley, PLS 7096 on 12/11/1995 as found in PRC 7876 file, Calendar Item 30.

Revised by the California State Lands
Commission Boundary 11/19/2020.

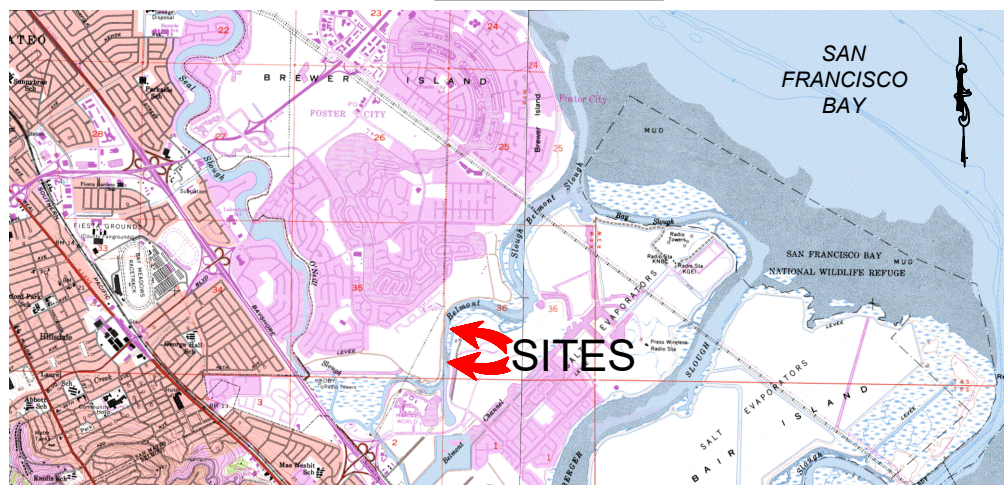


SITE



NO SCALE

LOCATION



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 B

LEASE 7876
WESTPORT OFFICE
PARK, LLC
APNs 095-012-450 & -460
GENERAL LEASE -
RIGHT-OF-WAY USE
SAN MATEO COUNTY



TS 11/19/2020