

Staff Report 40

LESSEE:

2101-2603 Wilbur, LLC, a Missouri Limited Liability Company

APPLICANT/SUBLESSOR:

2101-2603 Wilbur, LLC, a Missouri Limited Liability Company

SUBLESSEE:

APS West Coast, Inc., a California Corporation, dba AMPORTS

PROPOSED ACTION:

Consider Termination of a General Lease – Industrial Use; Issuance of a General Lease – Industrial Use; and Endorsement of a Sublease.

AREA, LAND TYPE, AND LOCATION:

13.89± acres of sovereign land in the San Joaquin River, adjacent to 2603 Wilbur Avenue, near Antioch and West Island, Contra Costa County and Sacramento County; Contra Costa County Assessor's Parcel Number 051-031-005, and Sacramento County Assessor's Parcel Number 158-0100-001.

AUTHORIZED USE:

Lease and Sublease: Maintenance of existing facilities that include an existing non-operational maintenance pier, two dolphins, a 42-inch-diameter water intake pipeline, one 18-inch-diameter and one 26-inch-diameter discharge pipeline and diffusers, and a 36-inch-diameter effluent pipeline.

TERM:

Lease: 20 years, beginning October 21, 2021.

Sublease: 20 years, beginning October 21, 2021, and ending concurrently with the lease on October 20, 2041.

CONSIDERATION:

\$35,288 for the first year, with an annual Consumer Price Index adjustment applied to each subsequent year; and Lessor and Lessee to establish a revised Base Rent through reappraisal before the first anniversary date with revised Base Rent to be retroactive to the first year of the lease beginning October 21, 2021, as an adjustment to the Base Rent owed for that lease year; and the State reserving the right to fix a different rent periodically during the lease term, as provided for in the lease.

SPECIFIC LEASE PROVISIONS:

- Liability Insurance in an amount no less than \$5,000,000 per occurrence.
- Surety bond or other security in the amount of \$1,000,000.
- Upon Lessee's delivery of a good-faith estimate prepared by a reputable contractor for the costs of full removal of the Improvements, to the sole satisfaction of the Executive Officer or her designee, Lessor and Lessee agree that the Surety Bond required in Section 1 may be modified to reflect the estimated removal costs.
- Lessee agrees and acknowledges hazards associated with sea level rise may require additional maintenance or protection strategies regarding the improvements on the Lease Premises.

BACKGROUND:

On September 27, 1973, the Commission authorized the issuance of Lease Number 4813.1, a General Lease – Industrial Use, to Fibreboard Corporation (Fibreboard) for a term of 15 years with three renewal options of 10 years each, for a water intake pipeline with appurtenant structures, three discharge pipelines and diffusers ([Item 6, September 27, 1973](#)). Fibreboard subsequently merged with Gaylord Container Corp. (Gaylord), and on February 6, 1989, the Commission approved the assignment of Lease PRC 4813.1 to Gaylord, effective March 29, 1988 ([Item 06, February 6, 1989](#)). Through a series of mergers and transfers, the owner of the upland property became Forestar (USA) Real Estate Group, Inc. (Forestar).

Prior to issuing the above Industrial Lease, on February 25, 1960, the Commission authorized the issuance of a 49-year Right-of-Way Easement, No. PRC 2529.1, to Fibreboard for an effluent pipeline ([Item 9, February 25, 1960](#)). That lease expired on February 25, 2009. The effluent pipeline extends from the upland property into the

bed of the San Joaquin River and under West Island where it crosses and terminates in the deep-water channel of the river north of the Island. Subsequently, on February 6, 1989, the Commission approved an assignment to Gaylord, effective March 29, 1988 ([Item 07, February 6, 1989](#)). Forestar held this lease through various mergers and transfers as described above. Forestar agreed to the termination of PRC 2529.1 and included the effluent pipeline with its application for a new industrial lease.

On December 3, 2008, the Commission authorized a General Lease - Industrial Use to Forestar (USA) Real Estate Group, Inc., and terminated Lease PRC 2529.1 ([Item C12, December 3, 2008](#)), which included the effluent pipeline. On August 9, 2016, the Commission authorized the assignment of the Lease to the Applicant ([Item C13, August 9, 2016](#)). That lease will expire on January 7, 2022.

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:

The Applicant is applying for termination of the existing General Lease – Industrial Use, the issuance of a new General Lease – Industrial Use, and endorsement of a sublease. The proposed lease will authorize maintenance of non-operational existing facilities within the lease area adjacent to 2603 Wilbur Avenue. Any proposed change in use of the upland property or any of the existing facilities in the lease area would require an amendment to the proposed lease, including additional environmental review.

The proposed sublessee, APS West Coast Inc., dba AMPORTS (AMPORTS), is an automotive service industry import/export business. The company has been in the industry for over 60 years and has locations throughout the United States and Mexico. AMPORTS is developing an automotive logistics and processing facility on the adjacent upland parcel located at 2301 Wilbur Avenue, near Antioch. The Commission recently authorized a new lease to the lessee and a sublease endorsement to the Applicant under Lease 1546 ([Item 04, October 21, 2021](#)), for the proposed automotive facility improvements located on sovereign land in the San Joaquin River adjacent to 2301 Wilbur Avenue. The proposed sublessee has been using the upland parcel at 2603 Wilbur Avenue since approximately 2017 to temporarily store vehicles, but there will be no upgrades made to the upland

parcel, and the existing facilities within the lease area will remain in non-operational, caretaker status. As the sublessee will be responsible for both the upland parcels, as well as the neighboring lease area, the parties have requested that the Commission endorse a sublease for Lease 4813. The sublease would allow Amports as the Sublessee to have access and control over this lease area if any repairs or maintenance to the existing non-operational improvements are required as a result of Amport's use of the upland property.

Staff recommends termination of the current lease, approval of a new lease, and endorsement of the sublease. The proposed lease includes certain provisions protecting the public use of the proposed lease area, including a limited lease term of 20 years and a non-exclusive use provision. The beginning date of October 21, 2021, and 20-year term are recommended to allow the lease and sublease endorsement to run concurrently with Lease 1546.

The facilities do not significantly alter the land, and the lease does not alienate the State's fee simple interest, nor permanently impair public rights. Upon termination of the lease, the lessee may be required to remove all improvements from State land and restore the lease premises to their natural state.

Furthermore, the proposed lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred, directly or indirectly, 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 facility is located in Antioch on the San Joaquin River 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 lease area 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.

This effect could increase the San Joaquin River's inundation levels within the lease area, and this risk of flood exposure is likely to increase with time. In addition, 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, fire, drought, extreme heat, and storms (especially when coupled with sea level rise). In rivers and tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris as well as decreased bank stability and structure. Conversely, climate-change induced droughts could decrease river levels and flow for extended periods of time. Climate change and sea level rise will further influence riverine areas by changing erosion and sedimentation rates. Although the banks within the lease area are vegetated, flooding and storm flow, as well as runoff, will likely increase scour and decrease bank stability at a faster rate.

The combination of these projected conditions could increase the likelihood of damage and affect access to structures within the lease premises during the term of the lease. For example, the potential for more frequent and stronger storm events may expose the lease area structures to higher flood risks and cause facilities to be damaged or dislodged, presenting hazards to public safety as well as dangers for navigation within the channel. Conversely, prolonged drought conditions could lower water levels, exposing previously submerged structures (such as the pipelines) to the elements and potentially leading to increased wear and tear on the pier infrastructure. Lowered water levels could also reduce navigability of the channel, thereby increasing hazards related to the lease area structures.

The lease area infrastructure may need reinforcement and possibly replacement to withstand higher levels of flood exposure and more frequent storm events, based on projected sea level rise and climate change scenarios. Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant

acknowledges that the lease premises and adjacent upland (not under lease) are located in an area that may be subject to effects of climate change, including sea level rise.

CONCLUSION:

For all the reasons above, staff believes the issuance of this lease and endorsement of a sublease is consistent with the common law Public Trust Doctrine; 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 an application for termination of an existing lease, issuance of a new lease, and endorsement of a sublease are discretionary actions 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 as authorized by law. If the Commission denies the application, the Applicant may be required to remove the existing maintenance pier, pipelines, and appurtenant facilities located on sovereign land and restore the premises to their original condition. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Meeting Evolving Public Trust Needs" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
3. Termination of the lease and endorsement of a sublease are not projects as defined by the California Environmental Quality Act (CEQA) because they are administrative actions 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 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
- C. Sublease Endorsement

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that issuance of the lease 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 or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the proposed lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize termination, effective October 20, 2021, of Lease No. PRC 4813, a General Lease – Industrial Use, issued to 2101-2603 Wilbur, LLC, a Missouri Limited Liability Company.
2. Authorize issuance of a General Lease – Industrial Use to the Applicant, beginning October 21, 2021, for a term of 20 years, for the maintenance of an existing non-operational maintenance pier, two dolphins, a 42-inch-diameter water intake pipeline, one 18-inch-diameter and one 26-inch-diameter discharge pipeline and diffusers, and a 36-inch-diameter effluent pipeline, as described in Exhibit A, Land Description, and shown on Exhibit B, Site and Location Map (for reference purposes only), attached and by this reference made a part hereof; annual rent in the amount of \$35,288, with an annual Consumer Price Index adjustment and the State reserving the right to fix a different rent periodically during the lease term, as provided for in the lease;

liability insurance in an amount no less than \$5,000,000 per occurrence; and a surety bond in the amount of \$1,000,000.

3. Authorize the Executive Officer or designee to establish a revised Base Rent through reappraisal before the first anniversary date.
4. Authorize the Executive Officer or designee to modify the Surety Bond amount based on an estimate of the full improvement removal costs, as specified in the lease.
5. Authorize, by endorsement, a sublease from 2101-2603 Wilbur, LLC, a Missouri Limited Liability Company, to APS West Coast, Inc., a California Corporation, dba AMPORTS, of Lease 4813, which shall be subject to the terms of Lease 4813, for the use and maintenance of the non-operational maintenance pier and appurtenant improvements, for 20 years, beginning October 21, 2021.

LAND DESCRIPTION**PARCEL 1** (formerly PARCEL 1 PRC 4813 & PARCEL 1 PRC 2529)

A strip of tide and submerged land 150 feet wide lying within the San Joaquin River, Sacramento and Contra Costa Counties, State of California, being 30 feet southwesterly and 120 feet northeasterly of the following described line:

COMMENCING at the State Lands Commission Monument "BOARD 1947" as shown on the survey map made in January 1948 for Leland S. Rosener by J.G. Barnard, R.C.E. No. 5161, and entitled "Fibreboard Products Inc. – East Antioch – Parts of Sections 8,9,16 and 17 Township 2 North, Range 2 East, M.D.B. & M."; thence N 59°32'10" E 462.25 feet; thence N 24°47'50" W, 144.76 feet to a the POINT OF BEGINNING, being an intersection with that particular course and distance of N 44°43'15" E, 519.73 feet as shown on the Boundary Line Agreement between the State of California and Fibreboard Products Inc., recorded April 17, 1948 in Liber 1193, page 190, office of Official Records of Contra Costa County, said intersection being 97.46 feet easterly from the western terminus of said course and distance; thence continuing N 24°47'50" W, 2551.20 feet to the southerly line of Parcel 1 as described in Fibreboard paper Products Corporation vs. State of California, Sacramento County Superior Case 92120 and the point of terminus of the herein described line.

The sidelines of said strip shall be lengthened or shortened at the point of beginning so as to terminate on the ordinary high water mark along the southerly bank of the San Joaquin River described in California State Lands Commission Boundary Line Agreement 29 recorded in Liber 1193, page 190, in the records of said County and at the point of terminus so as to terminate on the south bank of West Island, also being Swamp and Overflowed Survey No. 559 as described in Sacramento Superior Court Case No. 92120 dated July 26, 1957.

PARCEL 2 (formerly PARCEL 2 PRC 4813 & PARCEL 2 PRC 2529)

A parcel of tide and submerged land lying within the San Joaquin River, Sacramento County, State of California, more particularly described as follows:

COMMENCING at Monument 203S as shown on the survey map made in January 1948 for Leland S. Rosener by J.G. Barnard, R.C.E. No. 5161, and entitled "Fibreboard Products Inc. – East Antioch – Parts of Sections 8,9,16 and 17 Township 2 North, Range 2 East, M.D.B. & M."; thence S 53°58'50" W, 173.04 feet; thence S 64°29'50" W 508.50 feet; thence N 24°47'50" W, 947.18 feet to the northerly line of line of Parcel 1 as described in Fibreboard paper Products Corporation vs. State of California, Sacramento County Superior Case 92120 and the TRUE POINT OF BEGINNING; thence along said northerly line

S 76°52'50" W 506.00 feet; thence leaving said northerly line
N 24°47'50" W 315.02 feet; thence N 76°52'50" E, 556.00 feet; thence
N 24°47'50" W 17.05 feet; thence N 76°52'50" E 80.37 feet; thence
S 24°47'50" E, 332.07 feet to said northerly line; thence along said
northerly line S 76°52'50" W 131.42 feet to the point of beginning.

PARCEL 3

A strip of tide and submerge land 110 feet wide, lying within the San Joaquin River, in Contra Costa County, State of California, being 60 feet southwesterly and 50 feet northwesterly of the following described line:

COMMENCING at the State Lands Commission Monument "BOARD 1947" as shown on the survey map made in January 1948 for Leland S. Rosener by J.G. Barnard, R.C.E. No. 5161, and entitle "Fibreboard Products Inc. – East Antioch – Parts of Sections 8,9,16 and 17, Township 2 North, Range 2 East, M.D.B. & M."; thence N 59°32'10" E 462.65 feet; thence N 24°47'50" W, 144.76 feet to a point of intersection with that particular course and distance of N 44°43'15" E, 519.73 feet as shown on the Boundary Line Agreement between the State of California and Fibreboard Products Inc., recorded April 17, 1948 in Liber 1193, page 190, office of Official Records of Contra Costa County; said intersection being 97.46 feet easterly from the western terminus of said course and distance; thence along the line described in said Boundary Line Agreement N 44°43'15" E, 192.15 feet to the POINT OF BEGINNING; thence leaving said boundary line N 24°47'50" W 275.00 feet to the point of terminus of the herein described line.

The sidelines of said strip shall be lengthened or shortened at the point of beginning so as to terminate on the ordinary high water mark along the southerly bank of the San Joaquin River described in California State Lands Commission Boundary Line Agreement 29 recorded in Liber 1193, page 190, in the records of said County and at the point of terminus so as to terminate on a line lying perpendicular to the point of terminus of said centerline.

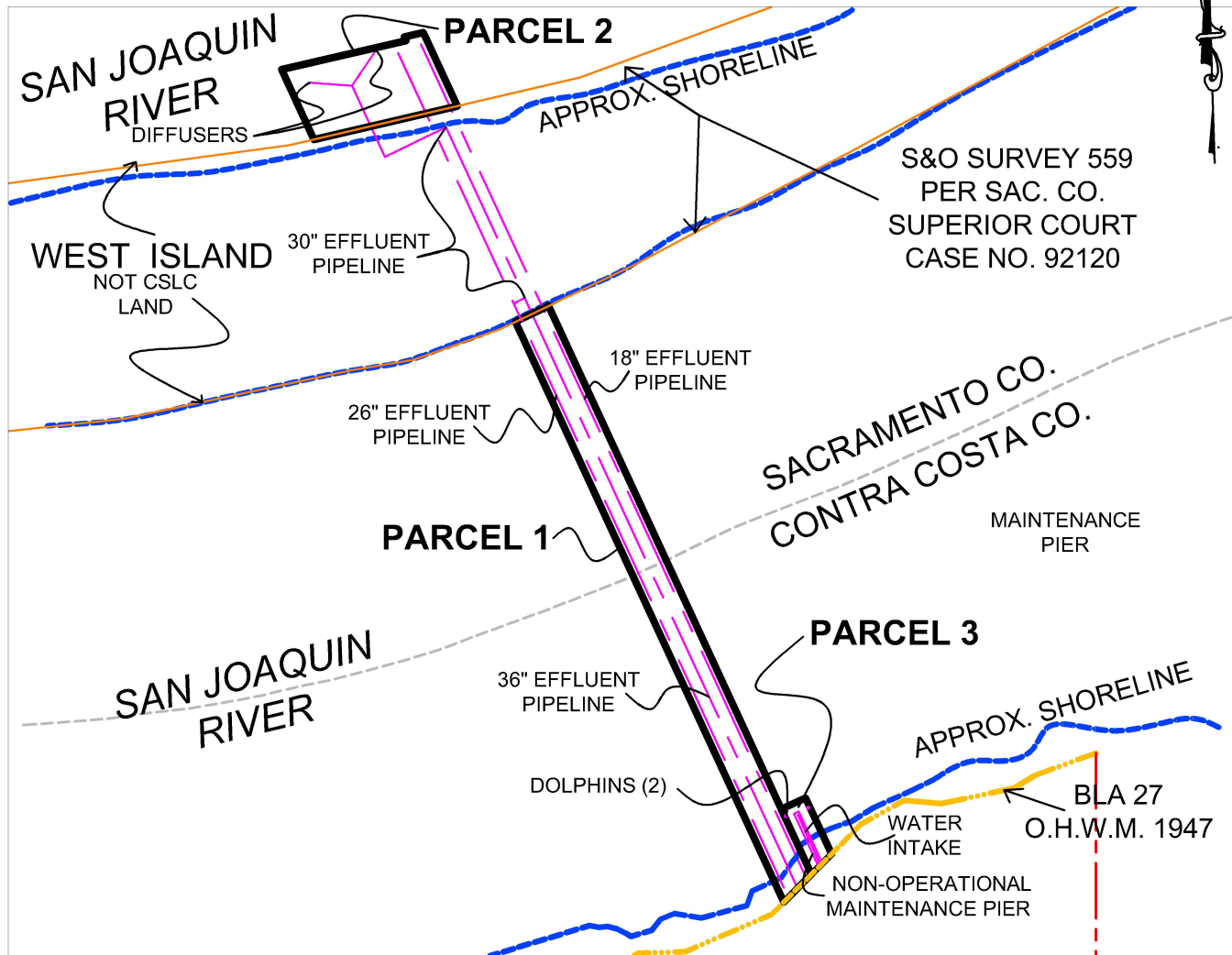
BASIS OF BEARINGS is California Coordinate System 1927, Zone 3 as shown on "Survey for Fibreboard Products Inc.", recorded 1-16-1948, Bk. LSM Pg. 29, Contra Costa County, also on file at the State Lands Commission CXB 1472. All distances are grid distances.

END OF DESCRIPTION



NO SCALE

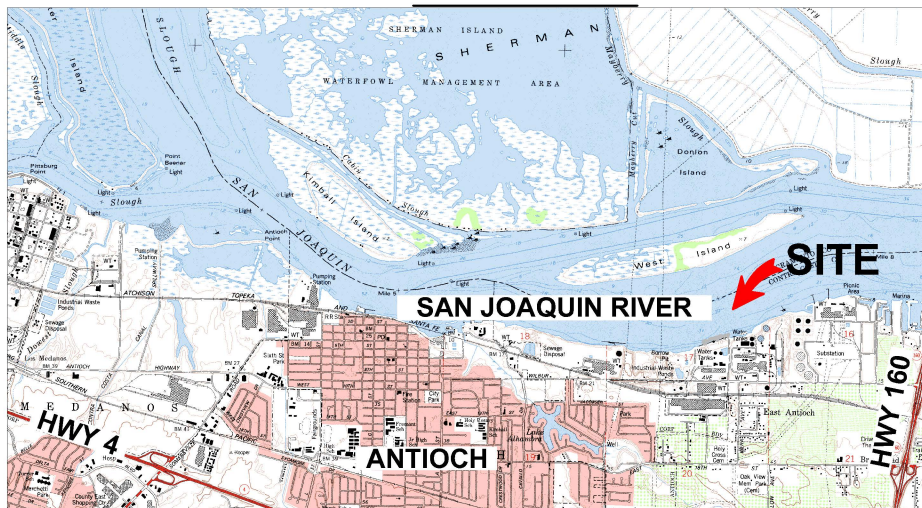
SITE



2603 Wilbur Avenue, Antioch

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

LEASE 4813

APN 051-031-005,158-0100-001

2101-2603 WILBUR LLC.

GENERAL LEASE -

INDUSTRIAL USE

CONTRA COSTA & SACRAMENTO
COUNTY



MJF 10/09/2021

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.