

**CALENDAR ITEM
C13**

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08/09/16

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PRC 4813.1

V. Caldwell

**RESCISSION OF APPROVAL; ASSIGNMENT AND AMENDMENT OF LEASE AND
REVISION OF RENT AND SURETY**

LESSEE/ASSIGNOR:

Forestar (USA) Real Estate Group, Inc.

ASSIGNEE:

2101-2603 Wilbur LLC

AREA, LAND TYPE, AND LOCATION:

18.38 acres, more or less, of sovereign land in the San Joaquin River, adjacent to 2301 Wilbur Road, near the city of Antioch, and West Island, Contra Costa and Sacramento Counties.

AUTHORIZED USE:

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

LEASE TERM:

15 years, beginning January 8, 2007.

CONSIDERATION:

This lease provides that the Commission may modify the rent periodically during the lease term. Pursuant to this provision, staff has conducted a review of the rent under this lease, and recommends rent be revised from \$34,151 to \$35,288 per year, effective January 8, 2017.

PROPOSED AMENDMENT:

Amend the Lease to include a Corporate Parent Guaranty: Commercial Development Company, Inc., to provide a corporate parent guaranty for the performance of the lease obligations of its subsidiary, 2101-2603 Wilbur LLC.

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SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance in an amount no less than \$5,000,000 per occurrence.

Bond:

This lease provides that Lessor may modify the amount of the surety bond or other security device in the event of 1) an assignment, transfer, exchange, or sale of the littoral property; 2) any additionally authorized improvements and alterations or purposes; 3) any reactivation of the authorized improvements; and 4) any modification of consideration. Pursuant to this provision, staff has conducted a review of the surety bond under this lease, and recommends the bond be revised from \$150,000 to \$250,000, effective at the close of escrow but no later than September 30, 2016.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, and 6301; California Code of Regulations, title 2, section 2000, subdivision (b).

Public Trust and the State's Best Interests Analysis:

On December 3, 2008, the Commission authorized a General Lease - Industrial Use to Forestar (USA) Real Estate Group, Inc., http://archives.slc.ca.gov/Meeting_Summaries/2008_Documents/12-03-08/ITEMS_AND_EXHIBITS/C11.pdf. The upland property is currently in escrow with Commercial Development Company, Inc., and Forestar (USA) Real Estate Group, Inc., has requested an assignment of the lease, effective on the close of escrow but no later than September 30, 2016.

On June 28, 2016, the Commission authorized an assignment of lease from Forestar (USA) Real Estate Group, Inc., to Commercial Development Company, Inc., in addition to a revision of rent http://archives.slc.ca.gov/Meeting_Summaries/2016_Documents/06-28-16/Items_and_Exhibits/C27.pdf, (Calendar Item 27). Subsequent to the Commission's approval, but before the assignment was executed, staff was informed that the upland adjoining the lease premises would be transferred to 2101-2603 Wilbur LLC, a subsidiary of Commercial Development Company, Inc.

Since the upland and facilities on the leased lands will be held in the name of a recently formed limited liability company, staff has determined that a

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Parent Guaranty from Commercial Development Company, Inc., the parent company, would be in the best interests of the State. Staff is now requesting that the June 28, 2016, authorization be rescinded and that an assignment and amendment of the General Lease – Industrial Use to include the Corporate Parent Guaranty be authorized.

2101-2603 Wilbur LLC, intends to conduct the clean-up activities required by the California Environmental Protection Agency (CalEPA) and the Department of Toxic Substances Control (DTSC) to return this property to other productive uses. At this time, it does not appear that lands under the jurisdiction of the Commission have been affected, but monitoring continues and Commission staff continue to coordinate with DTSC and CalEPA regarding the clean-up activities. The effluent discharge and water intake pipelines have been capped and sealed. Under the terms and conditions of the lease, the Lessee is required to seek prior authorization from the Commission for any proposed new uses and prior to the reactivation of the improvements on State lands. 2101-2603 Wilbur LLC accepts all existing lease conditions.

The recommended action will not substantially interfere with the Public Trust needs at this time and at this location. The assignment, amendment and revision of rent and surety will not change the authorized uses within the lease premises. Additionally, the proposed amendments will provide for a Corporate Parent Guaranty of the responsibility incurred by the Assignee pursuant to the lease, increase the surety associated with the lease and allow for the remediation of the associated upland facilities. For these reasons, staff recommends finding the proposed action is in the best interests of the state at this time.

OTHER PERTINENT INFORMATION:

1. Assignee is under contract with the Assignor to acquire the upland adjoining the lease premises at the close of escrow but no later than September 30, 2016.
2. Staff conducted the rent review called for in the lease and recommends the rent be increased based on the California Consumer Price Index, effective January 8, 2017.

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3. Staff conducted the surety review called for in the lease and recommends the surety be increased, effective on the close of escrow but no later than September 30, 2016.
4. 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; Strategy 2.1 to optimize returns for the responsible development and use of State lands and resources, both onshore and offshore; and Strategy 2.2 to ensure timely receipt of revenues and royalties from the use and development of State lands and minerals.
5. Approving the rescission of approval and application for a lease assignment, amendment, and revision of rent and surety is not a project as defined by the California Environmental Quality Act (CEQA) 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, sections 15378, subdivision (b)(5).

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease will not substantially interfere with the Public Trust needs and values at this location at this time, or for the foreseeable term of the lease, is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

AUTHORIZATION:

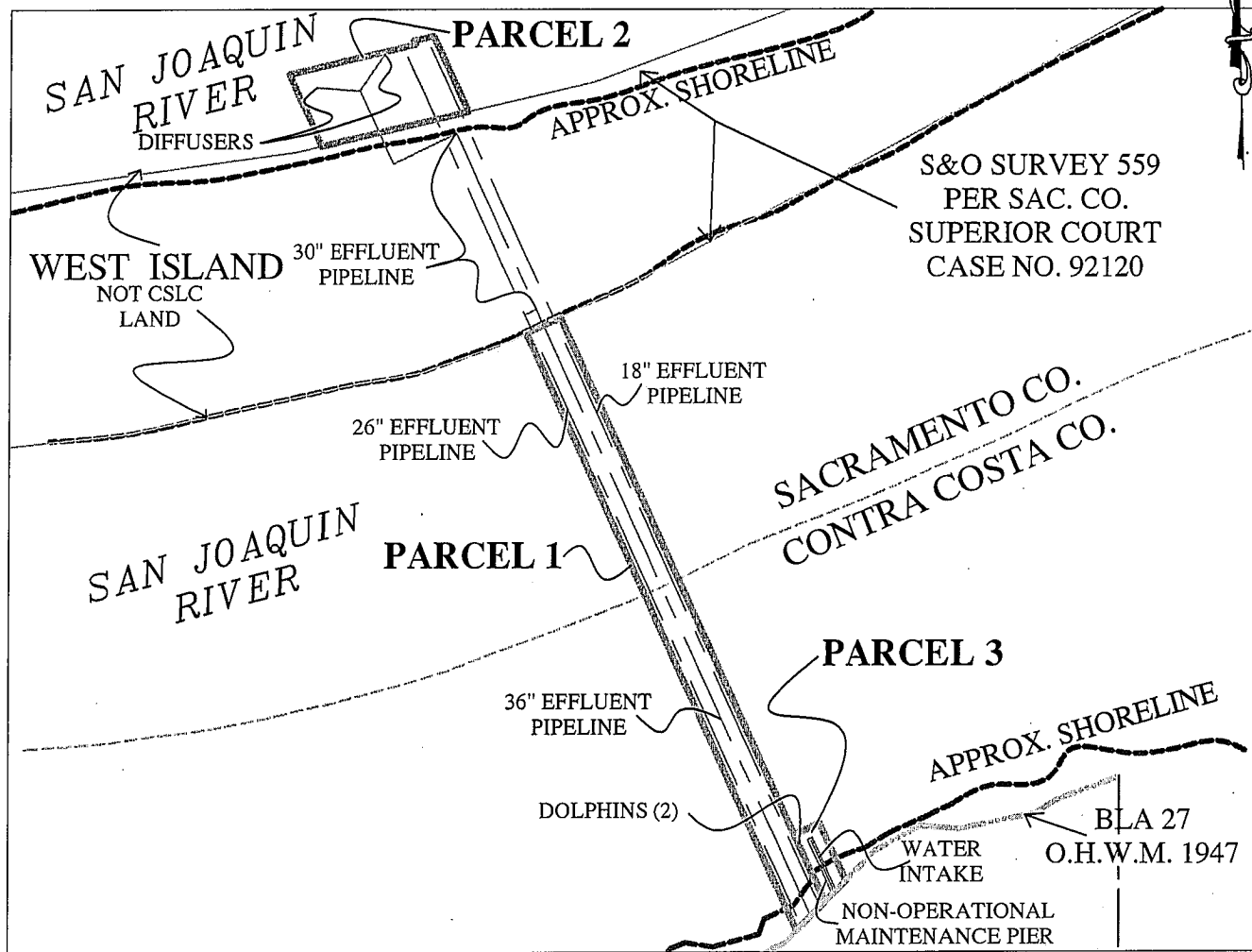
1. Rescind previous authorization for the assignment and revision of rent of Lease No. PRC 4813.1, a General Lease – Industrial Use, on June 28, 2016, to Commercial Development Company, Inc.

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2. Authorize the assignment of Lease No. PRC 4813.1, a General Lease – Industrial Use, of sovereign land as shown on Exhibit A, Site and Location Map (for reference purposes only) and as described on Exhibit B, Land Description attached and by this reference made a part hereof, from Forestar (USA) Real Estate Group, Inc., to 2101-2603 Wilbur LLC; effective on the close of escrow but no later than September 30, 2016.
3. Authorize the amendment of Lease No. PRC 4813.1, a General Lease – Industrial Use, effective on the close of escrow but no later than September 30, 2016, to add a Corporate Parent Guaranty; all other terms and conditions of the lease will remain in effect without amendment.
4. Approve the revision of rent for Lease No. PRC 4813.1 from \$34,151 per year, to \$35,288 per year, effective January 8, 2017.
5. Approve revision of surety for Lease No. PRC 4813.1 from \$150,000 to \$250,000, effective on the close of escrow but no later than September 30, 2016.

NO SCALE

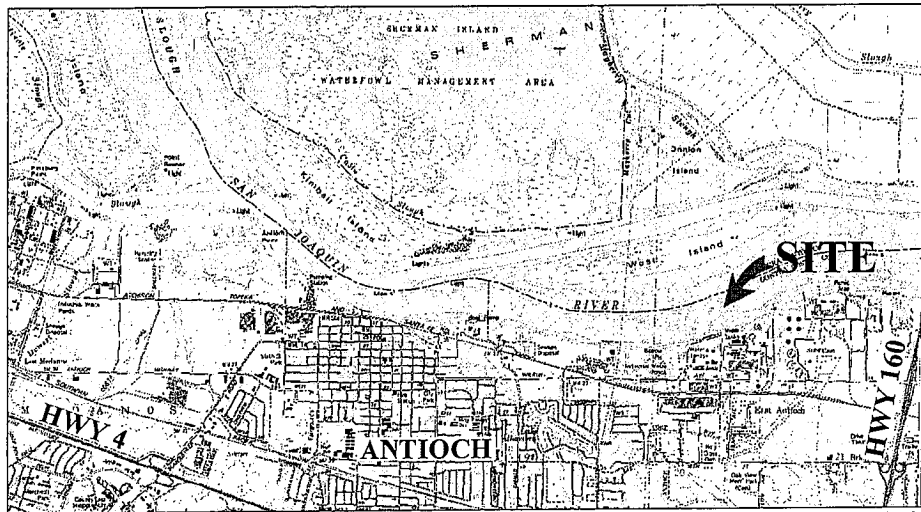
SITE



2301 Wilbur Avenue, Antioch

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit A

PRC 4813.1
 APN 051-031-005,158-0100-001
 2101-2603 WILBUR ROAD LLC.
 GENERAL LEASE - INDUSTRIAL USE
 CONTRA COSTA & SACRAMENTO
 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.

EXHIBIT B

PRC 4813

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 are 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

