

**STAFF REPORT
C44**

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04/05/19
PRC 7876.1
G. Asimakopoulos

**CORRECTION OF PRIOR AUTHORIZATION; AND AUTHORIZATION
OF AN AGREEMENT AND CONSENT TO ENCUMBRANCING
OF A GENERAL LEASE – RIGHT-OF-WAY USE**

LESSEE/APPLICANT:

Westport Office Park, LLC, a Delaware limited liability company

SECURED-PARTY LENDER:

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

AREA, LAND TYPE, AND LOCATION:

0.298 acre, more or less, of sovereign land in Belmont Slough, adjacent to 1400 and 1600 Bridge Parkway, near Redwood City, San Mateo County.

AUTHORIZED USE:

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

LEASE TERM:

25 years, beginning February 27, 1996.

CONSIDERATION:

\$7,811 per year, with the State reserving the right to fix a different rent on each fifth anniversary of the lease, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

Liability Insurance: Liability insurance in an amount no less than \$1,000,000 combined single-limit coverage.

Surety Bond: Surety bond or other security in the amount of \$5,000.

PROPOSED CORRECTION:

Change the name of the Assignee authorized at the December 8, 2005 Commission meeting from Prudential Insurance Company of America to Westport Office Park, LLC, a Delaware limited liability Company. All other terms of the lease shall remain in effect without change.

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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 Analysis:

The Applicant owns the upland adjoining the lease premises. 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](#)). Staff has since discovered that the Commission authorization named the wrong entity. However, the fully executed State Lease Assignment, Acceptance, and Approval document correctly named the Applicant, Westport Office Park, LLC, a Delaware limited liability company, an entity that is a wholly owned subsidiary of Prudential Financial Insurance Company of America. Staff recommends the Commission correct the prior authorization to name Westport Office Park, LLC as the Assignee/Lessee.

On November 29, 2017, the Commission authorized the revision of rent ([Item C38, November 29, 2017](#)). The lease will expire on February 26, 2021. On January 28, 2019, the Lessee submitted an application for an agreement and consent to encumbrancing of the lease.

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

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 \$360.5 million. Under the terms of the new loan, the Secured-Party Lender is requiring the Applicant to pledge their interest in Lease No. PRC 7876.1 as additional security. The purpose of the new loan is to refinance the existing debt on the upland property and leasehold.

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

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1. No subsequent encumbrancing 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 encumbrancing agreement is limited to the term of the lease.

The existing lease will expire on February 26, 2021. In approving the encumbrancing agreement, the Commission, through a delegation to the Executive Officer, retains the right to approve any transfer of the lease from the lending institution to a prospective lessee, should any foreclosure of the loan occur. The proposed Agreement and Consent to Encumbrancing 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.

The existing lease includes certain provisions protecting the public use of the lease area, including a limited lease term of 25 years. The facilities have existed for many years at this location, and the encumbrancing of the lease would not permanently alienate the State's fee simple interest in the underlying land, and it would not permanently impair public rights. Upon termination of the lease, the lessee may be required to remove any improvements and restore the lease premises to their original condition.

The existing lease requires that the lessee 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.

For all the reasons above, staff believes the issuance of this Agreement and Consent to Encumbrancing 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.

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OTHER PERTINENT INFORMATION:

1. 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.
2. Authorization to correct the lease assignee and to execute the Agreement and Consent to Encumbrancing of Lease are not projects as defined by the California Environmental Quality Act 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).

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that correction of the lease assignee and issuance of the proposed Agreement and Consent to Encumbrancing of Lease will not substantially interfere with 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 the correction of the Commission's December 8, 2005 authorization of an assignment of a General Lease – Right-of-Way Use to correct the Assignee from Prudential Financial Insurance Company of America to Westport Office Park, LLC, a Delaware limited liability company.
2. Authorize the Executive Officer or her designee to execute the document entitled "Agreement and Consent to Encumbrancing of Lease," allowing Lessee's right, title, and interest in Lease No. PRC 7876.1 to be pledged as partial security for a loan in the principal amount not to exceed \$360.5 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

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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 r or her 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"

PRC 7876.1

DESCRIPTION OF THE LANDS OF THE STATE
OF CALIFORNIA LEASED TO WESTPORT INVESTMENTS

An easement for ingress, egress and the installation and maintenance of drainage facilities over, under, across and along that real property situate in the State of California, more particularly described as follows:

Easement 1

Beginning 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 Pages 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 TRUE 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 TRUE POINT OF BEGINNING.

Easement 2

Beginning 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 Pages 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 TRUE 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 TRUE POINT OF BEGINNING.



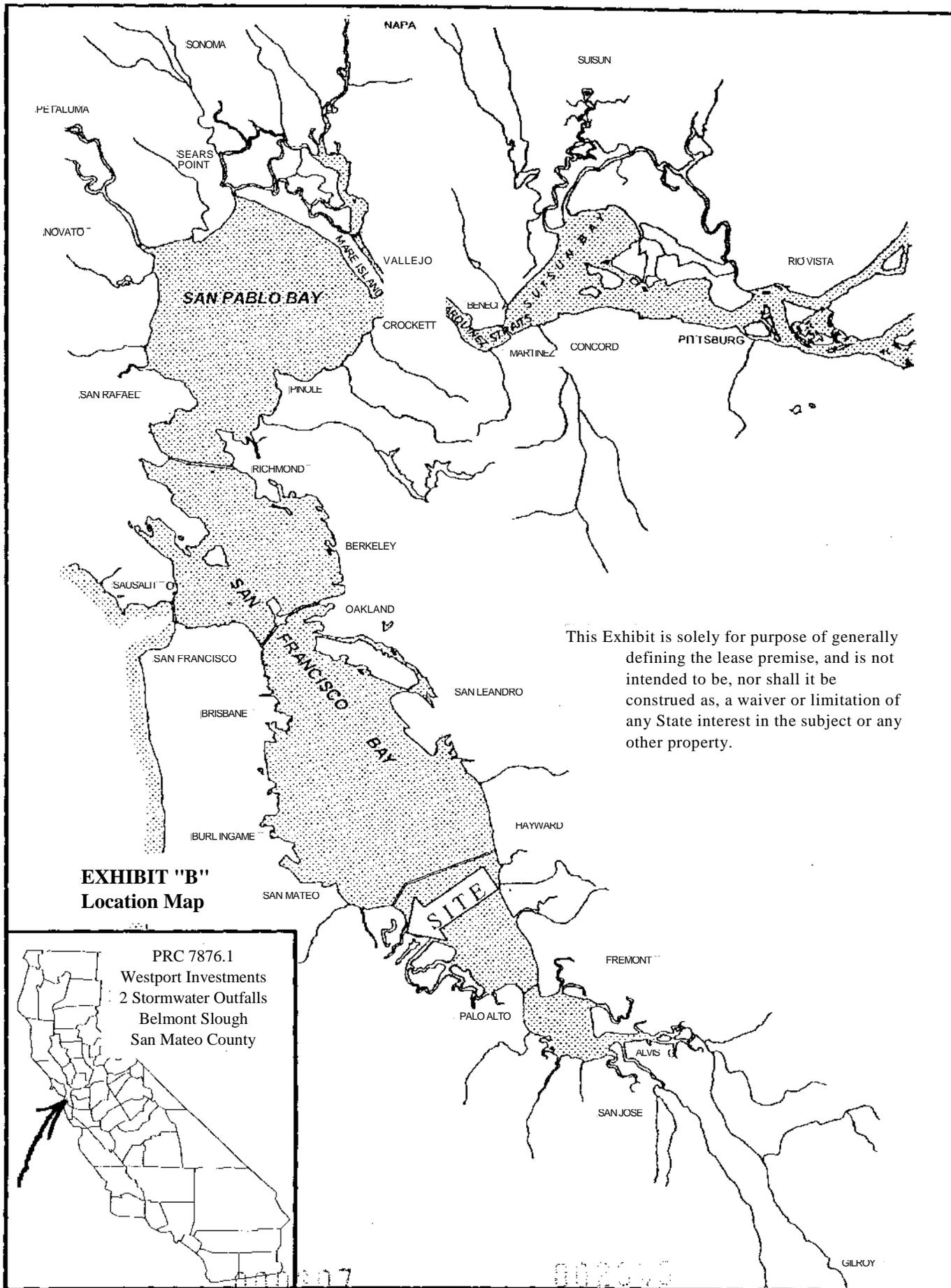


EXHIBIT "B"
Location Map

This Exhibit is solely for purpose of generally defining the lease premise, 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.

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 Westport Investments
 2 Stormwater Outfalls
 Belmont Slough
 San Mateo County