

**2023–2024**  
**Yolo County Civil Grand Jury**  
June 12, 2024

West Sacramento Port Commission  
***LEVERAGES REAL ESTATE ASSETS***



*Photo courtesy of juror*

## YOLO COUNTY CIVIL GRAND JURY

### WEST SACRAMENTO PORT COMMISSION

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## ***LEVERAGES REAL ESTATE ASSETS***



*-Photo Courtesy of Juror-*

*"Buy land, they're not making it anymore"*

*-Mark Twain*

### **SUMMARY**

The City of West Sacramento assumed management of the Sacramento-Yolo Port (Port) in 2006 and in 2013 adopted a new business plan known as the West Sacramento Port Business Plan [1] (Business Plan), deploying a landlord operating model, with leases to operators of the Port's North Terminal maritime facilities as well as several other non-maritime leases. It was noted in the Business Plan that the Port holds a substantial amount of real estate at the North Terminal and off-site locations. These are not currently producing significant revenue. The plan recommended strategies to activate real estate assets to produce additional income and economic benefit for the Port and the City of West Sacramento.

In 2022, the West Sacramento Port Commission (Port Commission) approved an exclusive negotiating agreement and subsequently a purchase option agreement. This potential sale was the subject of a citizen complaint submitted to the Yolo County Civil Grand Jury (Grand Jury) and an article in the Sacramento Bee [2], making allegations that the Port Commission did not follow proper competitive bidding processes, did not properly exempt the land from the Surplus Land Act (SLA), and may have sold the land below market value. The Grand Jury

researched the events leading to the purchase option agreement and found that while there were some irregularities in the process of the exclusive negotiating agreement and purchase option, the overall process supported the stated objective of the Port Commission and the City of West Sacramento to promote the economic development of West Sacramento and the region.

## **BACKGROUND**

The Port was formed in 1947 and opened in 1963 with the creation of a 40 mile Deep Water Ship Channel stretching from the Suisun Bay to West Sacramento. It largely serves the agricultural and construction sectors in Northern California with rice being its primary export cargo and cement its primary import cargo. The City of West Sacramento assumed management responsibility of the Port in 2006. It was then renamed the Port of West Sacramento and is governed by the West Sacramento Port Commission. The Port Commission is comprised of four members appointed by the West Sacramento City Council and one member appointed by the Yolo County Board of Supervisors (BOS), with all members required to be West Sacramento residents.

The business plan adopted by the Port Commission in 2013 explicitly identified the following mutual objectives of the Port and the City of West Sacramento to include:

1. Achieving revenue stability for the Port and West Sacramento
2. Making and attracting strategic investments to develop real estate and new businesses
3. Promoting long-term economic sustainability
4. Promoting economic development of West Sacramento and the region

The most significant real estate asset belonging to the Port is the 260-acre Seaway International Trade Center property located across from the “Deep Water Ship Channel” from the North Terminal (map 1). In its 2013 Business Plan, the Port Commission recognized that “while a focused amount of work will be required to advance Seaway’s development, the property is arguably the Port’s most valuable and promising asset with the most long-term economic benefit for the City”. The sale and development of this property has been under negotiation for several years and this potential sale became the subject of a citizen complaint and an article in the Sacramento Bee. The complaint alleged the Port Commission did not follow proper competitive bidding processes, that the land was not properly exempted from the Surplus Land Act (SLA), and the land may have sold below market value.



**Map 1** showing the Seaway property comprised of 4 quadrants and located across the Deep Water Ship Channel from the North Terminal in the Port of West Sacramento. (Photo credit: From the “Port of West Sacramento Business Plan”, March 2013, map #2)

## APPROACH

The Grand Jury reviewed publicly available information including Port Commission Meeting minutes, option agreements, property legal descriptions, purchase and sale agreements, City of West Sacramento memoranda, Port Commission agenda reports and the complainant’s submission. Several individuals were interviewed regarding Port operations, policies, and practices. The complainant was interviewed as well as persons in relevant government positions.

## DISCUSSION

### Real Estate Development Negotiations

The Seaway property has been the subject of active real estate negotiations since, at least, Dec. 5, 2018. An Exclusive Negotiating Agreement (ENA) was approved by the Port Commission to authorize the Port Commission’s Chief Executive Officer (CEO) to negotiate a purchase agreement with TC No. Cal Development, Inc. This ENA was for 14 acres on the northeast quadrant of the Seaway property, specified a negotiation period of 90 days and required a negotiation fee of \$50,000 from the developer with 50% refundable if a Purchase and Sale Agreement (PSA) was not concluded. A PSA was not agreed upon. The Grand Jury learned through interviews that the use of an ENA is a generally accepted approach to complex land development negotiations and allows each entity (seller and buyer) to specify detailed requirements.

In 2022, the Seaway property was the subject of another ENA with Smart Growth Investors II L.P.; however, the Grand Jury did not find a public record approving this ENA. The ENA was referenced in a purchase option agreement that was approved by the Port Commission on October 5, 2022, which indicated the ENA had been approved in March 2022. The 2022 purchase option agreement between the Port of West Sacramento and Smart Growth Investors II L.P. was authorized under Port Commission Resolution 22-4 on October 5, 2022. This resolution authorized the Port CEO to execute the purchase option agreement and certified a finding that the 71.94-acre Seaway property was exempt from the Surplus Land Act (SLA). If the Seaway land is not exempt from the SLA, the land must first be offered for sale or lease to other government agencies or non-profits before an offer for commercial use could be made. Port staff concluded the property to be exempt from the SLA because “the sale of the property had been contemplated as part of the Port’s business plan since at least 1995” [3]. Although the rationale of the staff analysis may be correct, the Grand Jury learned that such an exemption (see glossary of terms) from the SLA could not be simply certified by the Port Commission but required review and certification by the Department of Housing and Community Development (HCD) and such an exemption required renewal preceding any potential new transactions. Such an exemption from HCD appears not to have been sought or approved.

### **Competitive Bidding Processes**

The complaint suggested the Port Commission did not follow proper competitive bidding processes. The Grand Jury did not find any document requiring resort to a competitive bid process. The 2013 Port Business Plan did, however, include an appendix entitled “Request for Statements of Interest” which included a section on “Port Real Estate Development Opportunity Sites”, suggesting the possible development opportunities at the Port were well-known to the development community. The Grand Jury learned that the Port Commission made inquiries with the region’s major industrial real estate brokers (CBRE, Cushman Wakefield, Jones Lang Lasalle, and Collier) regarding interest among developers in the Seaway property. This again suggested that the possible real estate development opportunities at the Port of West Sacramento were well-known to the regional development community.

The Grand Jury was provided with a copy of the 1989 Sacramento-Yolo Port District Commission Policies Manual. The document provided guidance for the structure and procedures of the Port Commission, procedures for procurement of materials and supplies, and maritime and non-maritime land development. It did not, however, address processes or provide guidance in real estate development for the purpose of regional economic development. The Policies Manual was last revised in 1997, still pre-dating the transfer of the Port management to the City of West Sacramento in 2006. The manual is seriously out-of-date and provided no help in this investigation.

### **Land Sale Below Fair Market Value**

The suggestion was that the sale contemplated in the 2022 option agreement was well below market value. The Grand Jury explored this in considerable detail. This was not a typical land sale which would allow any commercial use, such as regional warehouse distribution centers. Instead, the option agreement explicitly called for development that was comprised of up to “One million square feet of building area occupied by manufacturing, research and

development, laboratory and/or office uses”. It was further anticipated the development timeframe would be five to 10 years and ultimately have an assessed value of \$200M, generating approximately \$1M in property tax revenue. It also anticipated the jobs created in the West Sacramento region could have a significant economic impact. Thus, the “market value” of the land sale was not simply evaluated in the cash transaction but in the valuation of future economic development. It recognized the developer would be assuming a very high risk in making the required investment over an extended period and the terms of the agreement were intended to incentivize such investment. All of these components were contributing factors in the negotiation that resulted in the 2022 option agreement.

## **FINDINGS**

The Grand Jury makes the following findings:

- F-1 The West Sacramento Port Commission reported the Exclusive Negotiating Agreement (ENA) with Fulcrum-Bluerise was entered and recorded at their closed Board meeting in March 2022, but no record was found in the March 2022 minutes. The public was unaware that an ENA was being considered for this property and created a perception the Port Commission was not being transparent in their plans.
- F-2 In order for the West Sacramento Port Commission to proceed with the Purchase and Sale Agreement of the Seaway property as described in Resolution No. P22-4 of the Port Commission, adopted on October 5, 2022, the California Department of Housing and Community Development (HCD) must deem the property Exempt Surplus Property from the Surplus Land Act (SLA). The process described by law for the property to be exempt requires the Port Commission to apply to the HCD for approval and exemption. The Port Commission did not apply to HCD for the exemption, but simply declared in its Resolution that the property was exempt. Self-certification of exempt status is not sufficient as stated in the SLA. In the final stages of preparing this report, the Grand Jury learned that the Port Commission applied for an SLA exemption which was granted on March 27, 2024 [4].
- F-3 The Sacramento-Yolo Port Policies Manual of 1997 is out-of-date, does not include guidance on the sale of surplus land, and does not address strategies and policies for the sale and use of real estate properties.

## **RECOMMENDATIONS**

The Grand Jury makes the following recommendations:

- R-1 The West Sacramento Port Commission should ensure future land negotiations are transparently reported and post the amended minutes of the March 2022 meeting to report the Exclusive Negotiating Agreement (ENA) with Fulcrum-Bluerise. This should be completed by January 1, 2025.

- R-2 The West Sacramento Port Commission should post the SLA exemption from HCD, dated March 27, 2024, to a public site and linked to Resolution No. P22-4. This should be completed by September 1, 2024.
- R-3 The West Sacramento Port Commission should develop a new and updated Port Policies Manual to reflect actual Port practices and strategies envisioned in the 2013 Business Plan, specifically addressing strategies and policies for the sale and use of its real estate properties. This should be completed by January 1, 2025.

## COMMENDATION

The Grand Jury appreciates the California Department of Housing and Community Development (HCD) for explaining the Statewide Housing Plan and their role in holding jurisdictions accountable for meeting housing commitments and complying with State housing laws, including the Surplus Land Act (SLA).

## REQUIRED RESPONSES

Pursuant to Penal Code Sections 933 and 933.05, the Grand Jury requests responses to its Finding and Recommendations within 90 days as follows:

- West Sacramento Port Commission F-1, F-2, and F-3; and R-1, R-2, R-3

## INVITED RESPONSES

The Grand Jury also invites responses from the following individuals within 90 days:

- West Sacramento City Manager/Port CEO F-1, F-2, and F-3; and R-1, R-2, R-3
- Port General Manager F-1, F-2, and F-3; and R-1, R-2, R-3

## ACRONYMS and GLOSSARY OF TERMS

- ENA:** Exclusive Negotiating Agreement, is an agreement entered into between an agency and a private developer whereby the parties agree to negotiate for a set period of time, and to refrain from negotiating with others, for the development of a particular site.
- HCD:** California Department of Housing and Community Development is a department within the California Business, Consumer Services and Housing Agency that develops housing policy, develops, and enforces building codes and administers affordable housing programs.
- PSA:** Purchase and Sale Agreement is a binding legal contract between two parties that obligates a transaction to occur between a buyer and seller and is typically used for real estate transactions.

**Sacramento-Yolo Port:**

The original name of the Sacramento deep water port. The City of West Sacramento assumed management of the port in 2006 and it was renamed the West Sacramento Port. Both names continue to be used interchangeably.

**SLA:** “Surplus Land Act” is California law (Government Code sections 54220-54234). “Surplus land means land owned ... for which a local agency’s governing body takes formal action at a regular public meeting declaring land to be surplus and not necessary for a local agency’s use. The land must be declared either “surplus” or “exempt surplus” as supported by written findings before a local agency may take any action to dispose of it consistent with an agency’s policies or procedures.”

**Notice of Exemption Determination:**

A local agency determines a property is exempt from the SLA and supports such a determination with written findings and provides a copy of the written determination to HCD at least 30 days prior to disposition. [5]

**ENDNOTES**

- [1] <https://www.scribd.com/document/335485031/Port-Business-Plan>
- [2] Planned West Sacramento advanced manufacturing facility could create thousands of jobs, Sacramento Bee, March 29, 2024, <https://www.sacbee.com/news/business/article276645321.html>
- [3] October 5, 2022, Port Commission minutes: <https://www.cityofwestsacramento.org/home/showpublisheddocument/16214/638221778652100000>
- [4] <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/sacramento-yolo-port-district-exempt-review-032724.pdf>
- [5] Authority cited: California Government Code Section 54230, subdivision (c), Section 54230.5, subdivision (b)(2)(D). Reference cited: Government Code Section 50569, Section 54221, Section 54222, Section 54230.5, Section 54233, Section 54233.5, Section 65400

**DISCLAIMER**

This report was issued by the Grand Jury with the exception of a juror who had personal friendships with several community members in West Sacramento. This juror did not participate in any aspect of the investigation, including interviews and deliberations, or the writing and approval of this report.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.