



CLEAN MARINE DISTRIBUTION
FOR CALIFORNIA'S HEARTLAND

August 7, 2024

Honorable Judge Timothy Fall
1000 Main Street
Woodland, CA 95695

Yolo County Civil Grand Jury Foreperson
120 W. Main Street, Suite A
Woodland, CA 95695

via e-mail: grandjury@yolocounty.org

Re: Sacramento-Yolo Port Commission Response to Civil Grand Jury Report - West Sacramento Port Commission Leverages Real Estate Assets

Dear Judge Fall:

The Sacramento-Yolo Port Commission is in receipt of the Grand Jury's report, "West Sacramento Port Commission Leverages Real Estate Assets, dated June 12, 2024. The report makes three findings (F1-F3) and three recommendations (R1-R3). Pursuant to Penal Code Sections 933 and 933.05, the Grand Jury requested the Commission respond to all findings and all recommendations within 90 days. As requested, the Commission has completed the responses requested by the Grand Jury.

GRAND JURY 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.

Response: The Port disagrees partially with the finding. The Port agrees that the March approval of the ENA was not reported following closed session, but disagrees that it should have been reported. The Ralph M. Brown Act ("Brown Act") governs the conduct of closed sessions, and allows a local agency to meet in closed session to discuss "price and terms" of real property dispositions (Government Code Section 54956.8).¹ Following such a closed session, the Brown Act requires a public report of the "approval of an agreement concluding real estate negotiations . . . after the agreement is final" (§ 54957.1(a)(1).) An ENA is not an "agreement concluding real estate negotiations"; it is merely an interim step in the negotiations process, and binds neither party to the sale or lease of real property. As such, disclosure of the approval of an ENA is not legally required. Furthermore, there are legitimate reasons for why public agencies take this approach, including the need to maintain market competitiveness for the project being considered.

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

¹ All statutory references are to the Government Code unless otherwise noted.

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].

Response: The Port disagrees with the finding. At the time the Port Commission made its determination that the property at issue was exempt surplus land, the statute did not require that that determination be reported to HCD. Section 54221(f)(1)(P)(iv) of the Government Code was updated after 2022 to make that a requirement. In any event, that new section only requires that a local agency provide HCD with a written notification at least 30 days before the “disposal” of land, not the approval of an agreement to sell land. Consistent with the law at the time, the Port Commission made written findings to support its determination that the Property was exempt when it approved Resolution P22-4 on October 5, 2022. Following a change in the law that required disclosure of exemption determinations, the Port notified HCD on March 6, 2024, more than 30 days prior to disposal of the land. A copy of that notification is attached as Enclosure 1. HCD confirmed that the Port had properly identified the Property as exempt surplus land in its letter of March 27, 2024 (Enclosure 2). As confirmed by HCD, the Port acted in compliance with the Surplus Land Act.

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.

Response: The Port agrees with the finding.

GRAND JURY 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.

Response: The recommendation to amend the March 2022 minutes to report the ENA with Fulcrum-Bluerise will not be implemented. As explained above, the Brown Act does not require that approval of an ENA be reported out of closed session. The Port will continue to comply with all requirements of the Brown Act.

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.

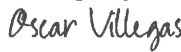
Response: The recommendation has been implemented. A copy of Resolution P22-4 and HCD’s letter, dated March 27, 2024, confirming the Port properly identified the Property as exempt surplus land can be found on the Port of West Sacramento’s webpage at: <https://www.cityofwestsacramento.org/government/departments/city-manager-s-office/port-of-west-sacramento>

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.

Response: **The recommendation requires further analysis.** The Port Policies Manual pre-dates changes in governance that occurred in 2006, including a change in the Port's operating model. The Port will review the Policies Manual and the 2013 Business Plan to determine the extent to which the Policies Manual remains useful and consider adding to it, or replacing it, as appropriate. The expected date for completion of this review is December 12, 2024, following which direction from the Port Commission will be sought.

Sincerely,

DocuSigned by:

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Oscar Villegas
Sacramento-Yolo Port Commission, Chair

Enclosure

cc: Yolo County Grand Jury Foreperson (via email only)