

**CALENDAR ITEM
C12**

A 10

12/03/08

WP 2529.1 and WP 4813.1

S 7

V. Caldwell

**CONSIDER RATIFICATION OF ASSIGNMENTS, TERMINATION OF GENERAL
LEASE - RIGHT-OF-WAY USE NO. PRC 2529.1, AND ISSUANCE OF NEW
GENERAL LEASE - INDUSTRIAL USE**

LESSEE:

Gaylord Container Corporation
2301 Wilbur Road
P.O. Box 10
Antioch, California 94509

APPLICANT:

Forestar (USA) Real Estate Group, Inc.
1300 S. Mopac Expressway, 3S
Austin, Texas 78746

AREA, LAND TYPE, AND LOCATION:

18.38 acres, more or less, of sovereign lands 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:

\$12,500 per year, from January 8, 2007 through January 7, 2009, and \$31,978 per year; beginning January 8, 2009, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

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SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance with combined coverage of no less than \$5,000,000.

Bond:

\$1,500,000

BACKGROUND INFORMATION:

On September 27, 1973, the Commission authorized the issuance of Lease No. 4813.1, a General Lease – Industrial Use, to Fibreboard Corporation for a term of 15 years with three renewal options of ten years each, for a water intake pipeline with appurtenant structures, three discharge pipelines and diffusers. On February 6, 1989, the Commission approved the assignment of PRC 4813.1 to Gaylord Container Corporation (Gaylord) effective March 29, 1988. Subsequently, through a series of mergers and transfers, the owner of the upland property is now Forestar (USA) Real Estate Group, Inc., (Forestar). Lease PRC 4813.1 expired on January 7, 2007, when the final renewal option was not exercised, but Forestar has now applied for a new industrial lease.

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. That lease will expire on February 25, 2009. The effluent pipeline extends from the upland property into the bed of the San Joaquin River (River) to Forestar's West Island (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. Forestar holds this lease through various mergers and transfers as described above. Forestar has agreed to the termination of PRC 2529.1 and has included the effluent pipeline with its application for a new industrial lease.

The facilities authorized under the two leases have been used in conjunction with the upland East mill recycle paper site in Antioch. The East mill site was shut down in 1991 and both the effluent discharge and water intake pipelines have now been capped and sealed.

The former Gaylord Container paper mill operations were formally shutdown in 2002 and Forestar's primary focus is to continue with the demolition and environmental cleanup in order to obtain a "Certificate of Completion" from the California Environmental Protection Agency. Forestar will be considering potential future use of the Lease Premises once full removal of mill operation facilities and remediation, which is to be completed in late 2009. Under the terms and conditions of the lease, Forestar is required to seek prior authorization from

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the Commission for any proposed new uses and prior to the re-activation of the improvements on State lands.

Staff recommends the ratification of the prior unauthorized assignments of PRC 2529.1 and PRC 4813.1; termination of PRC 2529.1 and inclusion of the authorized improvements into PRC 4813.1; and issuance of a new Industrial Lease.

OTHER PERTINENT INFORMATION:

1. Applicant owns the uplands adjoining the lease premises.
2. As discussed above, the upland facilities and the improvements authorized in the leases, were used in support of a recycling paper mill that has been shut down since 2002. Under a voluntary agreement approved by the California Environmental Protection Agency (Cal EPA) and the Department of Toxic Substances Control (DTSC), Forestar (formally Gaylord) has been working to remove and remediate the upland property. A recently revised soil clean-up plan is being reviewed by DTSC, however, the ground water investigation continues. At this time, it does not appear that lands under the jurisdiction of the Commission have been affected, but monitoring continues and Commission staff continues to coordinate with DTSC and Cal EPA regarding the clean up activities. Forestar intends to conduct the clean-up activities required by Cal EPA and DTSC to return these properties to other productive uses.
3. **Ratification of Assignments and Termination of Lease:** Pursuant to the Commission's delegation of authority and the State CEQA guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

4. **Issuance of New Lease:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; Title 2, California Code of Regulations, section 2905 (a)(2).

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5. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

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

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

RATIFICATION OF ASSIGNMENTS AND TERMINATION OF LEASE:

FIND THAT THE ACTIVITY IS NOT SUBJECT TO THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060(c)(3) BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.

ISSUANCE OF NEW LEASE: FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 1, EXISTING FACILITIES; TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTION 2905 (a)(2).

SIGNIFICANT LANDS INVENTORY FINDING:

FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.

AUTHORIZATION:

1. RATIFY THE PRIOR ASSIGNMENTS OF LEASE PRC 4813.1 AND LEASE PRC 2529.1 FROM GAYLORD CONTAINER CORPORATION TO FORESTAR (USA) REAL ESTATE GROUP, INC.

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2. AUTHORIZE TERMINATION, EFFECTIVE JANUARY 7, 2007, OF LEASE PRC 2529.1, A GENERAL LEASE – RIGHT-OF-WAY USE, ISSUED TO GAYLORD CONTAINER CORPORATION.

3. AUTHORIZE ISSUANCE OF A GENERAL LEASE – INDUSTRIAL USE TO FORESTAR (USA) REAL ESTATE GROUP, INC., BEGINNING JANUARY 8, 2007, FOR A TERM OF 15 YEARS, FOR THE CONTINUED USE AND MAINTENANCE OF 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, DIFFUSERS, AND A 36-INCH DIAMETER EFFLUENT PIPELINE ON THE LAND AS SHOWN ON EXHIBIT A (FOR REFERENCE PURPOSES ONLY) AND AS DESCRIBED ON EXHIBIT B ATTACHED, AND BY THIS REFERENCE MADE A PART HEREOF; ANNUAL RENT IN THE AMOUNT OF \$12,500 FROM JANUARY 8, 2007 THROUGH JANUARY 7, 2009 AND BEGINNING JANUARY 8, 2009, ANNUAL RENT IN THE AMOUNT OF \$31,978 WITH THE STATE RESERVING THE RIGHT TO FIX A DIFFERENT RENT PERIODICALLY DURING THE LEASE TERM, AS PROVIDED IN THE LEASE; LIABILITY INSURANCE WITH COVERAGE OF NO LESS THAN \$5,000,000; AND SURETY BOND IN THE AMOUNT OF \$1,500,000.