

**CALENDAR ITEM
01**

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09/22/98
PRC 5026.1
PRC 7659.1
N. Smith
D. Plummer
B. Stevenson

**REQUEST FOR APPROVAL OF ASSIGNMENT OF LEASES AND CONSENT TO
ENCUMBER LEASES**

LESSEE/ASSIGNOR:

California and Hawaiian Sugar Company, Inc.,
a Hawaiian Corporation
830 Loring Avenue
Crockett, California 94525

ASSIGNEE:

C&H Sugar Company, Inc.,
a Delaware Corporation
830 Loring Avenue
Crockett, California 94525

BACKGROUND:

At its meetings of July 24, 1975 and September 23, 1992, the California State Lands Commission authorized the issuance of State Leases PRC 5026.1 and PRC 7659.1 (the "Leases") to California and Hawaiian Sugar Company, Inc., a California (now Hawaiian) corporation. The Leases cover approximately 33 acres of filled sovereign lands adjacent to the Carquinez Strait in the town of Crockett, Contra Costa County. The permitted uses of the property are for a sugar refinery and its appurtenant facilities. Lease PRC 5026.1 will terminate in 2024; Lease PRC 7659.1 will terminate in 2022. The rent between the two Leases is now set at approximately \$373,000 per year, with the State retaining a right to periodically fix a higher rent during the lease term.

Two subsequent Commission actions concerning the Leases have followed the 1975 and 1992 authorizations. First, at its April 4, 1993 meeting, the Commission approved the transfer of controlling interest in the lessee to A&B Hawaii, Inc. ("ABHI") and to its wholly-owned subsidiary, McBride Sugar

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Company, Limited ("McBride"). Second, at its meeting of July 29, 1993, the Commission approved the lease of approximately 2 acres of the plant site for a cogeneration facility, with concurrence of the lessee.

In August, 1998, the current lessee requested approval to assign the Leases to C&H Sugar Company, Inc., a Delaware corporation, a new entity to be created as a part of a corporate reorganization and recapitalization (referred to in this item as "New C&H"). ABHI and McBride Sugar propose to transfer 60% of the equity interests in New C&H to Citicorp Venture Capital, Ltd., and to retain a 40% interest. The planned reorganization will result in a change in controlling owners of the Leases and a transfer of assets of the Lessee, either of which events is considered to be an assignment under the terms of the Leases. The assignment of the Leases will become effective only upon the completion of the reorganization and recapitalization of the current lessee.

As part of the reorganization and recapitalization of the present lessee, the California State Lands Commission has been requested to approve an "Agreement and Consent to Encumbrancing the Leases" (the "Encumbrancing Agreement") in the amount of \$60 million for a term of 5 years. The lenders group is made up of Goldman Sachs Credit Partners L.P. and NationsBank, N.A., although additional lenders may be added. The leasehold estate is being pledged as a part of asset based financing in which the loan is not attributable to a particular piece of property. The security for the loan will come from the various assets of New C&H, of which the leasehold estates are a part.

OTHER PERTINENT INFORMATION:

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 because the activity 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, section 15378.

EXHIBIT:

- A. Location Map for PRC 5026.1 and PRC 7659.1

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PERMIT STREAMLINING ACT DEADLINE:

N/A

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.

AUTHORIZATION:

APPROVE THE ASSIGNMENT OF GENERAL LEASES - INDUSTRIAL USE PRC 5026.1 AND PRC 7659.1 FROM CALIFORNIA AND HAWAII SUGAR COMPANY, INC., A HAWAIIAN CORPORATION TO C&H SUGAR COMPANY, INC., A DELAWARE CORPORATION, EFFECTIVE UPON COMPLETION OF CORPORATE REORGANIZATION;

APPROVE AN AGREEMENT AND CONSENT TO ENCUMBRANCING OF THE LEASEHOLDS, AND AUTHORIZE THE EXECUTIVE OFFICER TO APPROVE THE SUBSTITUTION OF LENDERS ENTERING OR LEAVING THE LENDERS GROUP; AND

AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO EXECUTE THE NECESSARY DOCUMENTS TO EFFECTUATE THESE TRANSACTIONS.

