

**CALENDAR ITEM
C41**

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06/24/08
PRC 4769.1
N. Smith

REQUEST FOR APPROVAL OF THE MERGER OF LESSEE'S INDIRECT PARENT

LESSEE:

Pacific Atlantic Terminals LLC
Land Department
P. O. Box 4648
Houston, Texas 77002

APPLICANT:

Plains All American Pipeline, L.P.
333 Clay Street, Suite 1600
Houston, Texas 77002

AREA, LAND TYPE, AND LOCATION:

14.04 acres, more or less, of sovereign lands in the Carquinez Strait, near the city of Martinez, Contra Costa County.

AUTHORIZED USE:

An existing marine terminal consisting of a 40 foot x 100 foot concrete wharf connected to land by a 1,700 foot long trestle supporting an 11-foot wide roadway and pipe rack; an existing 12-inch petroleum pipeline crossing Pacheco Slough and filled sovereign lands along Waterfront Road; and annual dredging of up to 6,000 cubic yards of material.

LEASE TERM:

20 years, beginning January 1, 2005.

CONSIDERATION:

\$250,000 per year; with the State adjusting the annual base rent each year by application of the Consumer Price Index (CPI) and the adjusted annual rent never being lower than the base rent. This CPI adjustment will continue at least until the tenth anniversary of the lease, when a new base rent may be established.

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SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance: Combined single limit coverage \$10,000,000.

Bond:

\$2,000,000.

OTHER PERTINENT INFORMATION:

1. On August 8, 2005, the Commission authorized a 20-year General Lease – Industrial Use Lease to Shore Terminals LLC for the existing marine terminal and appurtenances. The lease will expire December 31, 2024. At the same meeting the Commission also authorized the assignment of the lease to Pacific Atlantic Terminals LLC (Lessee).

2. When the lease was assigned to Pacific Atlantic Terminals (Pacific), Pacific was a subsidiary of Pacific Energy Partners, L.P. Subsequently, pursuant to a Purchase Agreement, Pacific Energy Partners, L.P., Pacific Energy GP, LP, and Pacific Energy Management LLC to Plains All American Pipeline, L.P. (Plains), Plains AAP, L.P., and Plains All American GP LLC entered into an Agreement and Plan of Merger dated June 11, 2006. The effective date of the merger was November 15, 2006.

As Pacific is now an indirect subsidiary of Plains and pursuant to the terms of the lease, the merger is a transfer of a controlling interest in the lease, the consent of the Commission is required. However, Pacific continues to be the legal entity that owns and operates the marine terminal under the merger.

3. Plains has submitted corporate and financial data, which has been reviewed by Commission staff. Based on the results of the review, Commission staff has determined that Plains is a financially viable company and possesses the financial resources to provide financial assistance to Pacific, if needed. Additionally, Plains has executed a non-transferrable Guaranty, as the parent company, for full performance by Pacific, of all the obligations under the lease and has provided a new certificate of insurance and a Letter of Credit in lieu of a bond.

4. 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.

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

EXHIBIT:

- A. Location Map

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

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.

AUTHORIZATION:

1. AUTHORIZE THE ACCEPTANCE OF THE MERGER OF LESSEE'S INDIRECT PARENT IN LEASE NO. PRC 4769.1, A GENERAL LEASE – INDUSTRIAL USE, OF SOVEREIGN LANDS SHOWN ON EXHIBIT A ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF, FROM PACIFIC ATLANTIC TERMINALS LLC TO PLAINS ALL AMERICAN PIPELINE, L. P., EFFECTIVE NOVEMBER 15, 2006.
2. AUTHORIZE THE ACCEPTANCE OF A GUARANTY FROM PLAINS ALL AMERICAN PIPELINE, L.P., FOR THE PERFORMANCE OF ALL THE LEASE OBLIGATIONS OF ITS SUBSIDIARY, PACIFIC ATLANTIC TERMINALS LLC AS A CONDITION OF THE ASSIGNMENT OF THE CONTROLLING INTEREST OF LEASE NO. PRC 4769.1.