CALENDAR ITEM

C11

A 10 12/03/08

WP 4693.1 and WP 1546.1

S 7 V. Caldwell

CONSIDER RATIFICATION OF ASSIGNMENTS, TERMINATION OF GENERAL LEASE - INDUSTRIAL USE NO. PRC 4693.1 AND ISSUANCE OF A 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:

11.88 acres, more or less, of filled and unfilled sovereign lands in the San Joaquin River, adjacent to 2301 Wilbur Road, near the city of Antioch, Contra Costa County.

AUTHORIZED USE:

Continued use and maintenance of a non-operational industrial pier, two five-pile dolphins, a maintenance pier, water intake pipeline, electrical substation, storm water outfall, instrumentation shed, three day beacons, demolition of a main pump and electrical substation building, and modification to the surge basin.

LEASE TERM:

14 years, beginning August 9, 2008.

CONSIDERATION:

$125,617 per year; with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

Insurance:

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

Bond:

$2,500,000

BACKGROUND

On June 29, 1982, the Commission authorized a 20-year General Lease – Industrial Use, Lease No. PRC 1546.1, to Crown Zellerbach Corporation for various industrial improvements located on filled and unfilled tide and submerged lands that were used in conjunction with an upland recycle paper mill operation. Crown Zellerbach Corporation subsequently merged with Gaylord Container Corporation (Gaylord) and on January 22, 1987, the Commission approved the assignment of Lease PRC 1546.1 to Gaylord.

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 1546.1 expired August 8, 2000 and Forestar has applied for a new industrial lease and has agreed to pay additional rent in the amount of $58,451.50 for the holdover period of August 8, 2000 to August 8, 2008.

Prior to the issuance of the above Industrial Lease, on August 22, 1990, the Commission authorized a 20-year General Lease – Industrial Use, No. PRC 4693.1 to Gaylord for three day beacons. That lease will expire August 5, 2010. Forestar holds this lease through the various mergers and transfers as described above. Forestar has agreed to the termination of Lease PRC 4693.1 and has included the beacons with its application for a new industrial lease.

The 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 is completed in late 2009. Under the terms and conditions of the lease, Forestar is required to seek prior authorization from the Commission for any proposed new uses and prior to the re-activation of the improvements on State lands.

On September 12, 2008, Forestar requested authorization to perform planned demolition of the main pump and electrical substation building, and modification to the surge basin that is no longer needed. On October 17, 2008, staff provided a letter of non-objection to perform the work prior to Commission consideration. Forestar has signed and accepted the terms of the non-objection letter.

Staff is now recommending the Commission ratify the prior unauthorized assignments of Lease PRC 1546.1 and Lease PRC 4693.1; the termination of Lease PRC 4693.1 and inclusion of authorized improvements into Lease PRC 1546.1, acceptance of holdover rent, and the issuance of a new Industrial Lease.

OTHER PERTINENT INFORMATION:

1. Applicant owns the uplands adjoining the lease premises.

2. As discussed the upland facilities, as well as 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 Preliminary Endangerment Assessment (PEA) report has been prepared and approved by DTSC and a clean-up plan was recently submitted which is being reviewed by DTSC. 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 or 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).

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.

APPROVALS OBTAINED:

United States Army Corps of Engineers, United States Coast Guard, Central Valley Regional Water Quality Control Board, and Contra Costa County

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 1546.1 AND LEASE PRC 4693.1 FROM GAYLORD CONTAINER CORPORATION TO FORESTAR (USA) REAL ESTATE GROUP, INC.

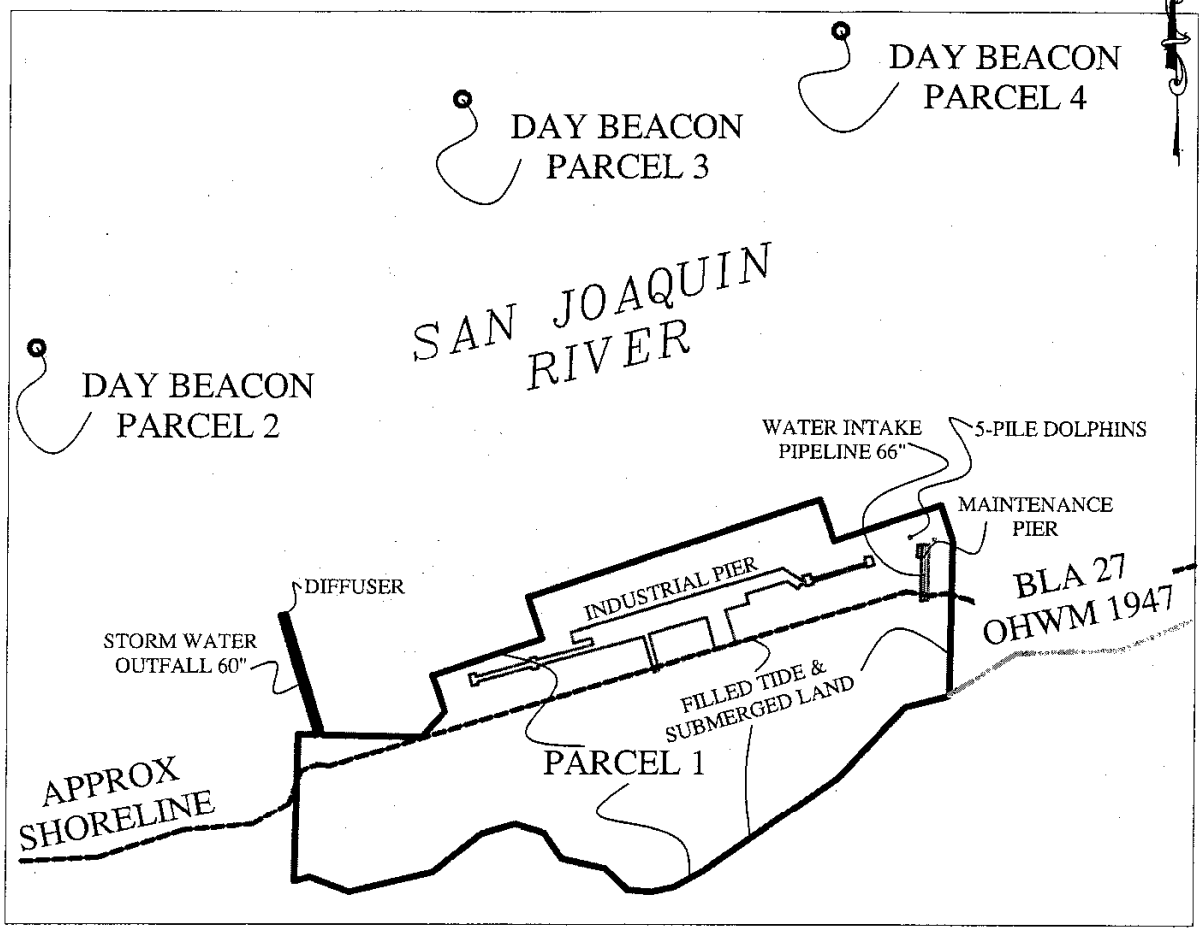
2. AUTHORIZE TERMINATION, EFFECTIVE AUGUST 8, 2008, OF LEASE PRC 4693.1, A GENERAL LEASE – INDUSTRIAL USE, ISSUED TO GAYLORD CONTAINER CORPORATION.

3. AUTHORIZE ACCEPTANCE OF RENT IN THE AMOUNT OF $58,451.50 FROM AUGUST 9, 2000 TO AUGUST 8, 2008 FOR LEASE PRC 1546.1.

4. AUTHORIZE ISSUANCE OF A GENERAL LEASE – INDUSTRIAL USE TO FORESTAR (USA) REAL ESTATE GROUP, INC., BEGINNING AUGUST 9, 2008, FOR A TERM OF 14 YEARS, FOR THE CONTINUED USE AND MAINTENANCE OF EXISTING FACILITIES THAT INCLUDE A NON-OPERATIONAL INDUSTRIAL PIER, TWO FIVE-PILE DOLPHINS, A MAINTENANCE PIER, WATER INTAKE PIPELINE, ELECTRICAL SUBSTATION, STORM WATER OUTFALL, INSTRUMENTATION SHED, AND THREE DAY BEACONS; AND THE DEMOLITION OF A MAIN PUMP AND ELECTRICAL SUBSTATION BUILDING, AND MODIFICATION TO THE SURGE BASIN ON THE LAND AS SHOWN ON EXHIBIT A (FOR REFERENCE PURPOSES) AND AS DESCRIBED ON EXHIBIT B ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF; ANNUAL RENT IN THE AMOUNT OF $125,617 PER YEAR 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 $2,500,000,

NO SCALE

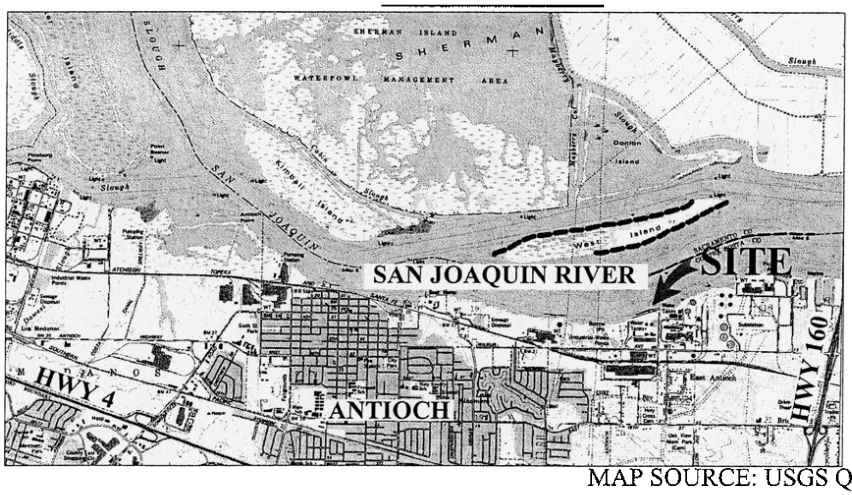
SITE



2301 Wilbur Avenue, Antioch

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit A

PRC 1546.1
APN 051-020-006,012
FORESTAR (USA) REAL ESTATE GROUP, INC.
GENERAL LEASE
INDUSTRIAL USE
CONTRA COSTA COUNTY

MJF 10/31/08