

MINUTE ITEM

This Calendar Item No. 44  
was approved as Minute Item  
No. 44 by the State Lands  
Commission by a vote of 3  
0 at its 3/24/87  
meeting.

MINUTE ITEM

44

03/26/87  
PRC 6790  
Pekla

Denial of Request for Extension of Permit to  
Prospect for Minerals Other than Oil, Gas,  
Geothermal Resources, Sand and Gravel,  
City and County of San Francisco

During consideration of Calendar Item 44, attached, Deputy  
Attorney General Dennis Eagan provided the Commission with a  
summary of the events leading up to this calendar item.

Mr. John F. O'Grady, ERSE Corporation, and his attorney,  
Mark Robinson, appeared and stated their objections to staff's  
recommendation and the reasons therefor.

Chairman McCarthy indicated that although the Commission was  
sympathetic to Mr. O'Grady, it has a responsibility to obtain  
the environmental information on which to base a decision on  
any negative impact to the environment which may result from  
this project.

Commission staff was directed to contact staff of the City and  
County of San Francisco concerning any local interest in the  
project.

Chairman McCarthy also suggested that the applicant develop the  
environmental information requested by staff and advised the  
applicant that he would not be precluded from reapplying for a  
new permit.

Upon motion made by Commission-Alternate Nancy Ordway and  
seconded by Commission-Alternate Jim Tucker, the Resolution in  
Calendar Item 44 was approved, as presented, by a vote of 3-0.

Attachment: Calendar Item 44.

CALENDAR ITEM

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03/26/87  
PRC 6790  
Pelka

DENIAL OF REQUEST FOR EXTENSION OF PERMIT TO PROSPECT FOR  
MINERALS OTHER THAN OIL, GAS, GEOTHERMAL RESOURCES,  
SAND AND GRAVEL, CITY AND COUNTY OF SAN FRANCISCO

APPLICANT: ERSE Corporation  
1450 West 228th Street, Suite 8  
Torrance, California 90501

AGENT: Mr. John F. O'Grady  
1450 West 228th Street, Suite 8  
Torrance, California 90501

PROPOSED ACTION: Denial of a requested one-year extension (from  
March 1, 1987 through February 29, 1988) of a  
prospecting permit for ilmenite and other  
valuable minerals, other than oil, gas,  
geothermal resources, sand and gravel on  
320 acres of tide and submerged land located in  
the City and County of San Francisco

AREA, TYPE OF LAND AND LOCATION:  
A parcel of tide and submerged land one-half  
mile in width and one mile in length, lying  
immediately adjacent to the mean high tide line  
of Ocean Beach in the Sunset District of  
San Francisco and lying immediately adjacent to  
upland owned and administered by the Golden  
Gate National Recreation Area (GGNRA). That  
half of the permit area which lies within one  
quarter mile of the mean high tide line is  
within the jurisdictional limits of the GGNRA,  
as prescribed by Congress, and is the subject  
of ongoing negotiations between the federal  
government and the staff of the Commission  
concerning a contemplated no-fee lease of the  
quarter-mile strip to the federal government.

BACKGROUND INFORMATION:

In October 1983, ERSE Corporation (ERSE), through the person of its president, John F. O'Grady, made application for a prospecting permit. The stated purpose of the permit was to ascertain the presence and extent of titanium-bearing ilmenite in the permit area. In part because of data omissions in the application, Commission staff were unaware that the permit area lay immediately adjacent to the GGNRA. As a result, the project was erroneously treated as "categorically exempt" under the CEQA. Commission staff was unaware that ERSE had previously requested, and been denied, a similar prospecting permit from the National Park Service for the area of the beach lying above the mean high tide line and within the area owned and administered by the GGNRA. Although there were questions in the application materials that called both for a listing of other agencies with approval authority over the project and for a description of the adjacent lands and the uses to which they were devoted, the submitted application made no mention of the GGNRA.

The Commission subsequently issued a prospecting permit for a period of two years. The permit was effective on March 1, 1985, and has terminated on February 28, 1987. On November 18, 1986, ERSE requested an extension of the permit for a period of one year.

The expired permit required ERSE to submit quarterly reports concerning its operations and to "comply with all applicable laws and regulations of the United States and the State of California now or hereafter promulgated ..." It also provided that "any vehicle access shall be restricted to existing roads."

On November 10, 1986, a GGNRA ranger discovered ERSE employees driving on Ocean Beach in a four-wheel drive vehicle. They had obtained access to the beach by crossing under the Great Highway through the Taraval Tunnel, which is a pedestrian access route to the beach that is posted as closed to vehicular traffic. As a

CALENDAR ITEM NO. 44 (CONT'D)

result of this incident, the location of the permit area in relation to the GGNRA was brought to the attention of Commission and GGNRA staff.

Commission staff has subsequently learned that ERSE proceeded with its prospecting activities without applying for or obtaining three required permits.

Specifically:

- a. ERSE failed to obtain an access permit from the GGNRA permitting it to drive vehicles on the beach for purposes of reaching the permit area and transporting sand samples off the beach;
- b. ERSE failed to obtain a coastal permit for its prospecting activities from the California Coastal Commission. (Last December, at the request of Coastal Commission staff, ERSE applied for a coastal permit. The application has been deemed incomplete by the Coastal Commission, however, pending receipt by the State Lands Commission of requested information that is necessary for environmental evaluation of the project. ERSE has since refused to supply this information to Commission staff, claiming that the project is categorically exempt from CEQA); and
- c. ERSE failed to obtain a permit from the United States Army Corps of Engineers.

Failure to obtain these other permits constituted a violation of the terms of the prospecting permit, which required compliance with all applicable laws of the State and federal governments.

Upon learning of the location of the permit area in relation to the GGNRA, Commission staff immediately advised ERSE that the project should not have been treated as categorically exempt from CEQA in the first instance, and

that a request for an extension of the permit would be subject to environmental evaluation under the CEQA, requiring, at minimum, the preparation of an initial study to determine whether the project may have a significant effect on the environment. This conclusion was subsequently confirmed by advice from the Attorney General's Office that, given the location of the permit area immediately adjacent to the GGNRA, treatment of the requested extension as "categorically exempt" was inappropriate. (See 14 Cal. Admin. Code 15061, 15064(b) and 15300.2).

The GGNRA was established by act of Congress in 1972 "in order to preserve for public use and enjoyment certain areas . . . possessing outstanding natural, historic, scenic, and recreational values, and in order to provide for the maintenance of needed recreational open space necessary to urban environment and planning" (16 U.S.C. 460bb). The act requires the Secretary of the Interior to "preserve the recreation area, as far as possible, in its natural setting, and protect it from development and uses which would destroy the scenic beauty and natural character of the area" (ibid).

Commission staff also learned that the Coastal Commission and the City and County of San Francisco have for some time been studying the loss of beach sand through erosion in the vicinity of the permit area. Commission staff viewed this an additional reason for requiring, at minimum, a threshold environmental evaluation in the form of an initial study.

Commission staff later confirmed the need for an initial study in writing, expressly noting the concerns set forth above, and requesting that ERSE provide it with various information, including information concerning the extent and manner of the mining, processing, and transportation of materials that would take place on and adjacent to the site should commercially valuable deposits be found and the project enter the production phase. Although

this latter information was requested on the forms that ERSE completed when it made initial application in 1983, ERSE did not provide the information at that time.

ERSE has refused to provide the requested information. It maintains that its extension request is categorically exempt from the environmental evaluation requirements of CEQA and it has told Commission staff, without supporting particulars, that "it cannot be shown that there is any likelihood of any significant impact on the administration of the Golden Gate National Resource Area (sic) from any activities allowed under the existing permit, nor can this permit extension be treated as a new project."

A final staff concern is the extent of the prospecting that ERSE has performed over the two-year period of the permit. The staff has had difficulty in arriving at a dependable figure for the amount of sand extracted, given the conflict and inconsistency among the figures given in reports submitted pursuant to the permit requirement, statements made by Mr. O'Grady to the press, and oral and written statements to the staff by Mr. O'Grady. The permit authorized a total of 17,424 samples. Over the two years of the permit, ERSE has submitted six quarterly reports. The first two showed no activity, and the last four a cumulative total of 1,164 samples taken. Depending on the size of the samples -- which is itself in doubt, given conflicts between the reports and statements by Mr. O'Grady -- this could represent anywhere from 19 to 27 tons. In contrast, Mr. O'Grady has been quoted in the press concerning a rate of extraction that would yield a total of some 78 tons extracted. ERSE has not conducted any operations under the permit since last November, when it was discovered that it lacked the necessary permits from other agencies.

CALENDAR ITEM NO. 44 (CONT'D)

Section 6891 of the P.R.C. provides that the Commission "may, in its discretion" extend the term of a prospecting permit for a period not exceeding one year. On several grounds, staff recommends that the requested extension be denied. Specifically, ERSE has refused to provide information to the Commission that is necessary to perform an initial study of the environmental impacts associated with sand extraction off San Francisco's Ocean Beach. Further, ERSE violated the permit by neglecting to obtain required permits from the Coastal Commission, the GGNRA, and the United States Army Corps of Engineers and by not confining its use of vehicles to existing roads. Considering this past conduct, and the legitimate and unanswered questions about possible adverse environmental impacts of sand extraction at this location, particularly upon the GGNRA, denial of the extension request is appropriate.

EXHIBITS:           A. Parcel Description.  
                      B. Vicinity Map.  
                      C. Project Site Map.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS SUBJECT TO THE REQUIREMENTS OF CEQA AND THAT THE PERMITTEE HAS REFUSED TO PROVIDE THE INFORMATION NECESSARY TO COMPLY WITH THE ENVIRONMENTAL EVALUATION REQUIREMENTS OF CEQA.
2. FIND THAT PERMITTEE HAS VIOLATED THE EXPIRED PERMIT.
3. DENY THE REQUEST OF ERSE CORPORATION FOR EXTENSION OF MINERAL PROSPECTING PERMIT P&C 6790, WHICH TERMINATED ON FEBRUARY 28, 1987.

EXHIBIT "A"

LAND DESCRIPTION

PRC 6790

A parcel of tide and submerged land in the Pacific Ocean, Sunset District, City and County of San Francisco, State of California, more particularly described as follows:

BEGINNING at the intersection of the Great Highway and westerly prolongation of Santiago Street in said City of San Francisco; thence westerly along said prolongation to the ordinary high water mark of said Pacific Ocean; thence continuing westerly along said prolongation 2640 feet; thence southerly at right angles to said prolongation 5280 feet; thence easterly at right angles to last said line 2640 feet to the ordinary high water mark of said Pacific Ocean; thence continuing easterly to said Great Highway; thence northerly along said Great Highway to the point of beginning.

EXCEPTING THEREFROM any portion thereof lying landward of the ordinary high water mark of the Pacific Ocean.

END OF DESCRIPTION

REVIEWED JANUARY 26, 1987, BY BOUNDARY SERVICES UNIT, M. L. SHAFER, SUPERVISOR.

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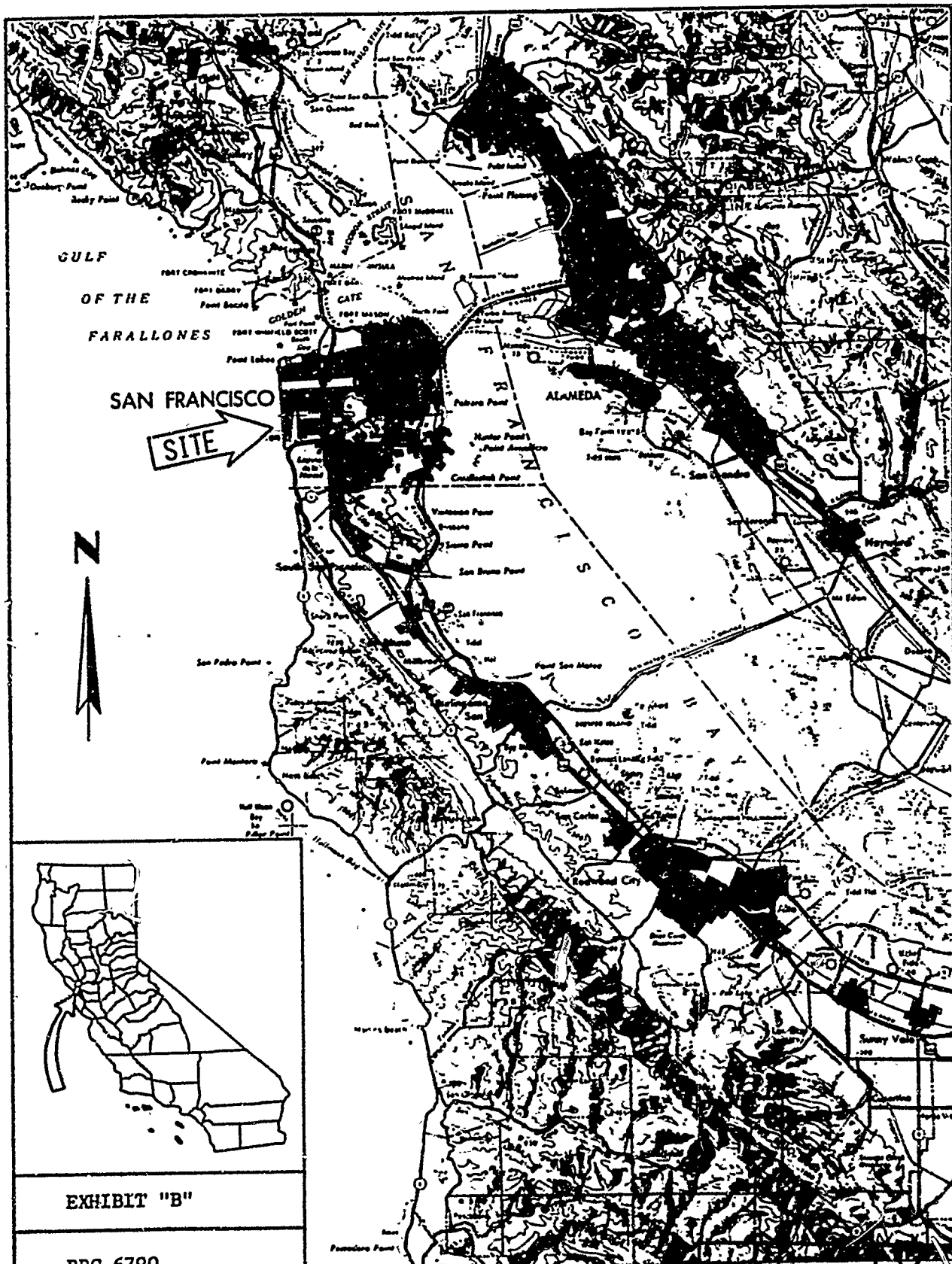


EXHIBIT "B"

PRC 6790

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P A C I F

Ocean  
Beach  
HIGHWAY

37°45'

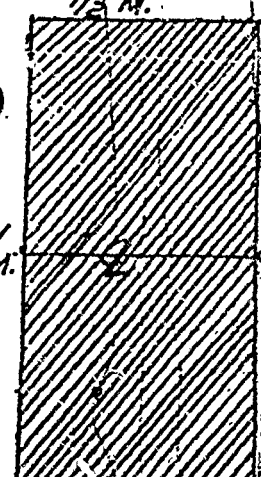


EXHIBIT "C"  
ERSE CORPORATION  
PROSPECTING PERMIT  
(SHADED AREA)  
TITANIUM PROJECT

SCALE 1:24000

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(ADDED 02/10/87)