

MINUTE ITEM

The Calendar Item No. 22
was approved as Minute Item
No. 22 by the State Lands
Commission by a vote of 3
to 2 at its 08/30/89
meeting.

SS ADMFJAO

CALENDAR ITEM

22

A 29
S 18

08/30/89
W 23555
Louie
Pelkofen

DENIAL OF APPLICATION

Pursuant to Government Code Section 65920 et. seq. (Permit Streamlining Act) state agencies, including the Commission, were required to compile lists of criteria specifying the detailed application information required of applicants for developments projects. Shipwreck salvage is defined as a development project under the Act. The Commission adopted its application criteria as recorded in calendar Item 12, April 27, 1978.

Applicant applied for a salvage permit to salvage the "Yankee Blade" on October 23, 1987. Staff has met with the Applicant and discussed, in detail, the requirements necessary to obtain a permit to salvage this historic vessel. Staff has further provided the Applicant specific written information of the deficiencies in his application. The latest such correspondence was a letter from Ms. Betty Louie dated July 6, 1988. Applicant has for more than one year been unable or unwilling to provide the necessary information.

Government Code Section 65956 (c) provides:

"Failure of an applicant to submit complete or adequate information pursuant to Sections 65943 and 65946 inclusive, may constitute grounds for disapproving a development project."

Applicant was a party in a previous permit request which was authorized by the Commission in August 1985, but which was never issued and subsequently rescinded in September 1987. On that permit request he failed to submit an archaeological recovery plan and to obtain permission to conduct operations in the federally restricted waters off Vandenberg Air Force Base.

CALENDAR PAGE	266
MINUTE PAGE	2596

CALENDAR ITEM NO. 22 (CONT'D)

MINUTE ITEM
No. 22
Page 267

Applicant has been given notice of the Staff's intent to recommend denial of his application by letter dated July 11, 1989. He has also been given notice of this hearing and his right to appear and speak to the matter.

APPLICANT: John Batelle
Batelle Construction
4305 Industrial Road, Suite 175
Las Vegas, Nevada 89103

OTHER PERTINENT INFORMATION:

Pursuant to the Commission's delegation of authority and the State CEQA Guidelines, Staff has determined that this activity is exempt from the requirements of the CEQA because it does not apply to project which a public agency rejects or disapproves.

Authority: P.R.C. 21080(b)(3) and 14 C.C.R. 15270.

AB 884: N/A

EXHIBITS: A. Letter of July 6, 1988
B. Letter of July 11, 1989
C. Letter of August 14, 1987

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THIS ACTIVITY IS EXEMPT FROM CEQA PURSUANT TO 14 CAL. CODE, REGS 15270 BECAUSE CEQA DOES NOT APPLY TO PROJECTS WHICH A PUBLIC AGENCY REJECTS OR DISAPPROVES.
2. DENY THE APPLICATION OF JOHN BATELLE FOR A PERMIT TO SALVAGE THE "YANKEE BLADE".

STATE LANDS COMMISSION

1207 13TH STREET

SACRAMENTO, CALIFORNIA 95814

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STATE LANDS COMMISSION

July 6, 1988

File Ref: W 23555 ✓

Mr. John Batelle
5536 Fire Island Drive
Las Vegas, Nevada 89120

Dear Mr. Batelle:

Subject: Application for Salvage Operations Pertaining
to the Yankee Blade

I have discussed your application with Captain Jeanie Bitner of Vandenberg Air Force Base. She has explained that permission from Vandenberg will be considered only after all other permits have been obtained.

Therefore, as a follow-up to my June 13 letter, your application still lacks an adequate archaeological recovery plan. You have indicated you will be sending us a resume of the archaeologist you propose to retain. Once we receive the archaeological recovery plan, it will be sent to the State Office of Historic Preservation for their review and comment.

Upon receipt and review of the above information, you will be notified if your application is complete. Also, at such time your application has been deemed complete, a reimbursement agreement will be sent to you for signature to cover the necessary environmental processing costs.

Please call me if you have any questions.

Sincerely,

BETTY K. LOUIE
Senior Land Agent
(916) 322-7823

cc: Captain Jeanie Bitner
4392 - ASW/CCE
Vandenberg AFB
California 93437-5000

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EXHIBIT "A"

CALENDAR PAGE	268
MINUTE PAGE	2008

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STATE OF CALIFORNIA

STATE LANDS COMMISSION
GEORGE DEUKMEJIAN, Governor

STATE OF CALIFORNIA
STATE LANDS COMMISSION

EXECUTIVE OFFICE
1807 - 13th Street
Sacramento, California 95811
CLAIRE T. DEDRICK
Executive Officer

LEO T. McCARTHY, Lieutenant Governor
GRAY DAVIS, Controller
JESSE R. HUFF, Director of Finance

July 11, 1989

File Ref. W 23555

Mr. John Batelle
Batelle Construction
4305 Industrial Road, Suite 175
Las Vegas, Nevada 89103

Dear Mr. Batelle:

This is in response to your recent inquiry about your application for a permit to salvage the Yankee Blade. In review of your file it appears that on June 13, 1988 you were advised by Betty Louie that your application was incomplete and were advised what was needed to complete it. None of the required information or material has been submitted.

Based on the evidence in the file and on the authority of Government Code Section 65956 (c) it is my intent to recommend to the Commission that your application be denied. Section 65956(c) states:

"Failure of an applicant to submit complete or adequate information pursuant to Sections 65943 and 65946 inclusive, may constitute grounds for disapproving a development project."

You will receive notice of the time and place that the Commission will consider my recommendation and you will be given a opportunity to speak to the matter if you wish.

Sincerely,
Peter Pelkofer
Peter Pelkofer
Senior Counsel

cc: Betty Louie
Kirk Walker

EXHIBIT "B"

CALENDAR PAGE	269
MINUTE PAGE	2590

STATE LANDS COMMISSION

LEO T. MCCARTHY, Lieutenant Governor
GRAY DAVIS, Controller
JESSE H. HUFF, Director of Finance

EXECUTIVE OFFICE
1807 - 13th Street
Sacramento, California 95814
CLAIRE T. DEDRICK
Executive Officer

File Ref.: W23555

August 14, 1987

Mr. John Battelle
c/o Mr. Leon Henson
1323 N. School
Santa Maria, CA 93454-2939

Reference: Yankee Blade Salvage Project

Dear Mr. Battelle:

Mr. Richard Sillanpa and Mr. Thomas Phillips have inquired whether the State Lands Commission staff would be able to approve the form of insurance Mr. Sillanpa had submitted to us for the subject project.

We told both these gentlemen that, based on the Certificate of Insurance Mr. Sillanpa's insurance broker sent us, the language of the policy does not appear to meet our requirements completely. Specifically, certain of the Warranties and Exclusions clauses do not appear to conform with the type of activity that would be involved in this project.

The pertinent language in the permit authorized by the State Lands Commission for this project reads as follows:

22. Permittee shall at all times, in any and all operations under this permit, carry full and complete Workmen's Compensation Insurance, satisfactory to the State, and liability insurance with the State as co-insured, with a combined limit coverage of not less than \$500,000 for personal injury and property damage. Lessee shall give prompt notice to Lessor in case of any accident, injury or casualty on the Lease premises.

The Certificate of Insurance does conform to the permit requirements in several respects. It does show that the State of California is an additional insured under the policy; it references the permit number; it contains a written 30-day notice of cancellation clause; and it was written to exceed the minimum

EXHIBIT "C"

CALENDAR PAGE	270
MINUTE PAGE	3000

GEORGE DEWELEMAN
EXECUTIVE OFFICE
1601 S. 10th Street
Phoenix, Arizona 85010
ADIRGSC

STATE LANDS COMMISSION
PHOENIX, ARIZONA

\$500,000 coverage limit called for in the permit (the Certificate is for \$1,000,000).

The Certificate as submitted does not conform to the permit in several other respects, however. These areas include:

- It is titled an "Underwater Instructors Liability Insurance" policy and as such does not appear to cover liability for your underwater salvage project.
- Exclusion G of the Certificate expressly excludes coverage for "liability arising from the acts other than approved, sanctioned, aquatic organizational instruction, orientation or supervision" from the National YMCA Scuba Program. Therefore, we interpret this to mean that unless this salvage project is officially sanctioned by the National YMCA Scuba Program, there is potentially no coverage for claims arising out of the project.
- The policy does not state that the insurance is primary and noncontributing. This requirement has been communicated by letter from the State Lands Commission staff to Mr. Thomas Phillips dated January 26, 1987 (as well as in the transmittal letter for the permit dated December 31, 1986).

In order to meet the requirements set forth in the permit, as a minimum we would need to see a written endorsement from Mr. Sillanpa's insurance brokerage, Alexander & Alexander, stating expressly that Mini Condo Development Corporation, 4433 South Polaris Ave., Las Vegas, NV, 89103 is insured for the salvage project approved on August 29, 1985 by the State Lands Commission, and to be issued as Permit No. PRC 6886.1.

Additionally, this endorsement should state that Exclusion G would not apply to this activity and that the coverage is primary and noncontributing.

As stated above, your Commission-authorized permit expressly requires you to carry Workmen's Compensation Insurance. It is Mr. Sillanpa's position that this requirement does not apply because he and his divers would be "independent contractors." Until the exact relationship between all the participants in this project is determined to be something other than an employment relationship, you must comply with this requirement by submitting proof that Workmen's Compensation Insurance is in effect for the project.

Aside from questions of insurance coverage, you may recall that your Archeological Recovery Plan states that retrieval of artifacts will involve use of a lift tube for primary excavation by hand or with small suction lift tubes. The purpose of this requirement would be to preserve small artifacts. In a press release we recently received, you discussed the use of a prop blaster in this operation. Although factual inaccuracies in

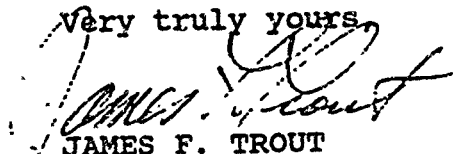
CALENDAR PAGE	277
MINUTE PAGE	2901

reporting do occur, we are sure you will comply with the terms of the permit during the actual operation.

When you have met all the above requirements for issuance of a salvage permit and the permit is signed on behalf of the State, the permit will require you to obtain any and all other permits or licenses which may be needed. This includes any authorization you need under federal law to occupy state waters within the control of Vandenberg Air Force Base. Failure to obtain any needed approvals could cause a breach of the permit.

Completion of the requirements discussed herein will allow us to complete our final review and consider issuance of the subject permit. If you have any questions, please contact Joyce Lane at (916) 322-7814.

Very truly yours,



JAMES F. TROUT

Assistant Executive Officer

cc: G. Kirk Walker

CALENDAR PAGE	272
MINUTE PAGE	2902