

MINUTE ITEM
This Calendar Item No. C34 was approved as
Minute Item No. 34 by the California State Lands
Commission by a vote of 3 to 0 at its
12/14/06 meeting.

CALENDAR ITEM
C34

A 16

12/14/06

PRC 5534 WP 5534

S 9

D. Oetzel

**CONSIDER: (1) ADOPTION OF A PROPOSED NEGATIVE DECLARATION AND
ADDENDUM, (2) ACCEPTANCE OF A LEASE QUITCLAIM DEED,
(3) ISSUANCE OF A MINERAL EXTRACTION LEASE FOR MINING OYSTER
SHELL DEPOSITS IN SOUTH SAN FRANCISCO BAY**

APPLICANT:

Morris Tug & Barge
100 East "D" Street
Petaluma, California 94952

AREA, LAND TYPE, AND LOCATION:

Sovereign lands consisting of approximately 1,560 acres in south San Francisco
Bay, San Mateo and Alameda counties.

AUTHORIZED USE:

Hydraulically dredge a maximum of 80,000 cubic yards of historic oyster shell
deposits annually using a tug and barge.

TERMS OF PROPOSED LEASE:

Lease Term:

Ten years, beginning January 1, 2007, with the right to renew for an additional
period of ten years, upon such terms and conditions as outlined in the Lease.

Minimum Biannual Royalty:

\$19,000, due biannually whether or not oyster shells are extracted from the
Lease Premises.

CALENDAR ITEM NO. **C34** (CONT'D)

Quarterly Royalty:

For oyster shells extracted from January 1, 2007, through December 31, 2007, the royalty (R) for the oyster shell extracted is calculated as follows:

R = (T)(B) where
T = tons of oyster shell mined during the quarter
B = the base royalty rate of \$1.90 per ton

For oyster shells extracted commencing January 1, 2008, the royalty (R) for the oyster shell extracted is calculated as follows:

R = (T)(A) where
T = tons of oyster shell mined during the quarter
A = the adjusted royalty rate
The adjusted royalty rate (A) shall be recalculated effective January 1 of each year, upward or downward, based upon the annual change in the January price of the Producer Price Index (index) of crushed and broken limestone.

The adjusted royalty rate shall be calculated as follows:

Adjusted Royalty Rate (A) =

$$\left(\frac{(\text{Current Index} - 181.2)}{181.2} + 1 \right) * \$1.90/\text{Ton}$$

The "Current Index" for each calendar year of the lease term shall be the index price for the month of January of such calendar year.

Annual Land Rent:

\$3.35 per acre per year, an aggregate of \$5,226 per year.

Modification of Royalty and Annual Land Rent:

The State reserves the right to modify the biannual royalty, quarterly royalty and the annual land rent periodically during the lease term, as provided in the lease.

Bond:

\$22,000

CALENDAR ITEM NO. **C34** (CONT'D)

Insurance:

General Liability: Not less than \$1,000,000

Environmental: \$2,000,000

Guaranty:

Jerico Products, Inc., an affiliate of the Applicant, unconditionally guarantees the performance of all the terms, covenants, conditions, agreements and obligations of the Lease.

Other Terms:

Within 90 days of the commencement of the Lease, and at five-year intervals throughout the term of the Lease, Applicant shall conduct, at its own expense, echo sounder surveys to assist in determining the topographical effects on the sea floor of its mining activity. The quality of the surveys must be approved by Commission staff.

OTHER PERTINENT INFORMATION:

1. Morris Tug and Barge (Morris or Applicant) previously entered into a Mineral Lease, Lease No. PRC 5534.1, on January 1, 1979, for a period of ten years, with the right to renew for two successive periods of five years each for the extraction of oyster shells. Upon the renewal of the lease for the second five-year period on September 17, 1996, Morris and the State amended the original lease, with the lease expiration date of December 31, 1998. This prior lease is currently in month-to-month holdover status.
2. Morris has submitted an application to the Commission for a new Mineral Extraction Lease. Prior to the effective date of the Lease, Morris is required to execute a lease quitclaim deed releasing to the Commission all right, title and interest in the prior lease.
3. Oyster shell material, bay water and silt are extracted from the Bay utilizing a suction dredge that is inserted twelve to thirty-six inches below the Bay floor. The material is then pumped onto the barge and washed and the wash water is redistributed to the Bay by underwater pipe disposal. The washed shell material is then offloaded at either Petaluma or Collinsville, where it is processed for sale.
4. Processed shells are sold to chicken farmers as a calcium supplement to increase the strength of egg shells and improve the quality of the egg. Additionally, processed shell is sold to agricultural farmers to decrease the

CALENDAR ITEM NO. **C34** (CONT'D)

acidity of the soil, and; to a lesser degree, the shell is sold to pharmaceutical companies for human consumption.

5. The historic oyster shell deposit in South Bay is estimated to be 60 million tons. The maximum annual extraction of 80,000 cubic yards is estimated to represent 0.07% of total reserves over the 10-year lease term.
6. The mining, processing and marketing of oyster shells involves the use of specialized dredging and processing equipment, upland facilities and marketing arrangements. Staff has contacted aggregate mining companies operating in the San Francisco region to determine whether there would be sufficient interest in the mining of oyster shells to warrant the issuance of the lease pursuant to a competitive bid process. Morris is the only company that has expressed any interest in securing a lease for oyster shell extraction on the State lands. Public Resources Code § 6897 (a)(2) authorizes the Commission to issue a negotiated lease "... if the lands are determined by Commission to be unsuitable for competitive bidding for reasons such as small size, irregular configuration, lack of access, or if a negotiated lease is in the best interest of the State." For the reasons outlined above, staff believes that a negotiated lease of the subject lands would be in the best interest of the State.
7. **Acceptance of Lease Quitclaim Deed:**
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.

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

8. **Issuance of Mineral Extraction Lease:**

Environmental Process

Background

The Proposed Negative Declaration for the Oyster Shell Extraction Project was circulated through the State Clearinghouse for a 30-day public review period from September 7, 2005, to October 7, 2005. Four comment

CALENDAR ITEM NO. C34 (CONT'D)

letters were received during the public review period. One comment letter was received during early agency consultation, from the Department of Conservation, State Mining and Geology Board, stating that a reclamation plan would be required.

An Addendum to the Proposed Negative Declaration was prepared pursuant to section 15164 of the State CEQA Guidelines because:

- 1) The mining depth specified in two attachments to the Negative Declaration was corrected after the Negative Declaration was filed with the State Clearinghouse and the public comment period had closed; and
- 2) The date by which a bathymetric survey will be required has been changed.

A revised Proposed Negative Declaration was not prepared as the staff has determined that the above correction and modified requirement do not meet the tests enumerated in section 15162(a)(1)-(3) of the State CEQA Guidelines.

The Addendum has been sent to agency representatives and other interested parties who received the Proposed Negative Declaration during the public comment period.

Comments on the Negative Declaration

Two rounds of comments and responses to comments were conducted. The first round consisted of comments by staff from the San Francisco Bay Conservation and Development Commission (BCDC), the California Department of Fish and Game (CDFG), NOAA Fisheries, and the San Francisco Bay Regional Water Quality Control Board (SFBRWQCB).

BCDC's comments cited a need for clarification of water depth in which mining is conducted, whether the entire lease area is mined during each mining event, and if water jets are used to break up the substrate; a request for the volume of shell mined annually from 1962-2004; a need for more information on suspended sediments produced by the mining discharge; and a need for bathymetric and benthic surveys. BCDC also suggested requiring more studies during the next lease renewal process.

CALENDAR ITEM NO. C34 (CONT'D)

CDFG's comments cited the role of CDFG as a Trustee Agency, the Long Term Management Strategy for maintenance dredging and disposal of dredged material, and the need for the applicant to immediately consult with CDFG if any "take" of an endangered species occurs.

NOAA Fisheries' comments cited potential entrainment of endangered species and larval fish, potential impacts to native oysters, potential habitat for eelgrass in the area, potential impacts from resuspension of sediments containing contaminants; and a need for more information on benthic disturbance and recovery.

SFBRWQCB's comment asked for more data to be able to assess the water quality impacts.

The Applicant responded to this first round of comments. BCDC and NOAA Fisheries then provided a second round of comments in April, 2006.

BCDC's second round of comments cited the need for a bathymetric survey, a second request for information on the use of water jets and historical production data, a need for more information on suspended sediments produced by the mining discharge and substrate disruption, and potential impacts from the entrainment of organisms and destruction of benthic habitat.

NOAA Fisheries' second round of comments cited the need for more information on benthic disturbance and recovery, potential impacts to native oysters, potential entrainment of endangered species and larval fish, potential habitat for submerged aquatic vegetation in the area, a need for more information on bathymetry and the actual locations where dredging is occurring, and a clarification regarding potential noise impacts.

Meeting to Address the Second Round of Comments

A meeting was held on May 4th, 2006, to address the second round of comments from BCDC and NOAA Fisheries. Attendees included staff from BCDC, NOAA Fisheries, SFBRWQCB, CSLC, and the President of Morris and its consultants. The agency staff attending the meeting had authored their agencies' comments for both rounds of comments.

CALENDAR ITEM NO. C34 (CONT'D)

On May 5th a meeting summary was sent to the meeting attendees, who were asked to identify any errors or omissions in the meeting summary. No comments were received.

Responses to the second round of comments were taken primarily from the May 4th meeting summary, with some additional information from the CSLC and the applicant. These responses were sent to agency staff who had attended the meeting. They were requested to review the responses to their comments and reply to CSLC staff by July 14th as to whether their concerns regarding the project had been satisfied.

On July 17th, BCDC staff sent clarification of three items discussed at the May 4th meeting. These clarifications are included in the second round of responses to comments. No other comments were received.

Correction to Mining Depth

During the May 4th meeting the Applicant stated that the suction heads used for oyster shell mining were positioned "several feet" under the surface of the mud and shell substrate, which differed from the Applicant's written statements that mining was conducted at a depth of six inches.

Subsequently, the Applicant submitted corrected language for the two attachments to the Negative Declaration in which the mining depth had been specified as six inches, correcting it to a depth of 12 to 36 inches. Those two attachments are the Reclamation Plan, and "Oyster Shell Mining Within South San Francisco Bay, October 24, 2004".

Agency representatives from BCDC, NOAA Fisheries, SFBRWQCB, the California Department of Fish and Game, and the US Geological Survey were consulted to determine if mining at a depth of 12 to 36 inches would be likely to result in greater or potentially significant impacts than those identified with mining at a depth of six inches, for the same number of cubic yards of material extracted.

From the agencies' responses it was determined that the impacts from mining at 12 to 36 inches were not likely to be greater than those identified with mining at a depth of six inches, which were deemed in the Proposed Negative Declaration not to be significant.

Bathymetric Survey Lease Requirement

At the May 4th meeting agency representatives also agreed that the Applicant be required to conduct a bathymetric survey every five years, beginning no later than November, 2006, and that this requirement would be included as conditions in the lease and BCDC permit. This was in response to comment 1-1 in the second round of comments, from BCDC.

As the lease application and proposed Negative Declaration were not acted on at the October 2006 Commission meeting, the effective date of the Lease was postponed to January 1, 2007, and the bathymetric ("echo sounder") survey covering the Leased Lands is now required within 90 days of the effective date of the Lease. CSLC staff informed BCDC staff of the new bathymetric deadline date in early October 2006.

9. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15025), the staff has prepared a Proposed Negative Declaration identified as CSLC ND 747, State Clearinghouse No. 2005092030. Such Proposed Negative Declaration was prepared and circulated for public review pursuant to the provisions of the CEQA. Subsequent to the close of the public review period for the Proposed Negative Declaration, an Addendum to the Proposed Negative Declaration was prepared pursuant to section 15164 of the State CEQA Guidelines. The Addendum was prepared because of a correction in the specified mining depth and a modification in the date by which the first bathymetric survey is required. Based upon the Initial Study, the Proposed Negative Declaration, the Addendum, and the comments received in response thereto, there is no substantial evidence that the project will have a significant effect on the environment; Title 14, California Code of Regulations, section 15074 (b).
10. 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:

U.S. Army Corps of Engineers
Regional Water Quality Control Board

FURTHER APPROVALS REQUIRED:

San Francisco Bay Conservation and Development Commission
State Mining and Geology Board

EXHIBITS:

- A. Location and Site Map
- B. Land Description

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

ACCEPTANCE OF A LEASE QUITCLAIM DEED:

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 A MINERAL EXTRACTION LEASE:

CERTIFY THAT A PROPOSED NEGATIVE DECLARATION, COMMISSION ND NO. 747, STATE CLEARINGHOUSE NO. 2005092030 AND ADDENDUM TO THE PROPOSED NEGATIVE DECLARATION WERE PREPARED FOR THIS PROJECT PURSUANT TO THE PROVISIONS OF THE CEQA, THAT THE COMMISSION HAS REVIEWED AND CONSIDERED THE INFORMATION CONTAINED THEREIN AND IN THE COMMENTS RECEIVED IN RESPONSE THERETO AND THAT THE PROPOSED NEGATIVE DECLARATION AND ADDENDUM REFLECT THE COMMISSION'S INDEPENDENT JUDGMENT AND ANALYSIS.

ADOPT THE PROPOSED NEGATIVE DECLARATION AND ADDENDUM TO THE PROPOSED NEGATIVE DECLARATION AND DETERMINE THAT THE PROJECT, AS APPROVED, WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT.

SIGNIFICANT LANDS INVENTORY FINDING:

FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE

CALENDAR ITEM NO. **C34** (CONT'D)

LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.

OTHER FINDING:

FIND THAT THE ISSUANCE OF A NEGOTIATED LEASE TO MORRIS TUG AND BARGE WOULD BE IN THE BEST INTEREST OF THE STATE.

AUTHORIZATION:

AUTHORIZE ACCEPTANCE OF A LEASE QUITCLAIM DEED FOR MINERAL LEASE NO. PRC 5534.1, FROM MORRIS TUG AND BARGE, EFFECTIVE JANUARY 1, 2007.

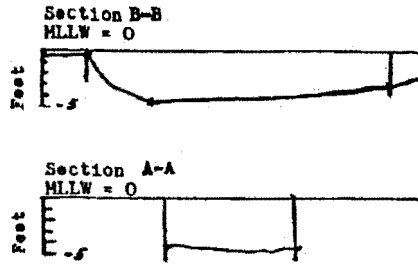
AUTHORIZE THE ISSUANCE OF A TEN-YEAR MINERAL EXTRACTION LEASE TO MORRIS TUG AND BARGE FOR EXTRACTING A MAXIMUM OF 80,000 CUBIC YARDS OF OYSTER SHELL DEPOSITS ANNUALLY FROM SOVEREIGN LANDS IN SOUTH SAN FRANCISCO BAY AS SHOWN ON EXHIBIT A ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF, AND SUBJECT TO THE TERMS AND CONDITIONS SUMMARIZED BELOW AND MORE PARTICULARLY SET FORTH IN THE LEASE ON FILE IN THE OFFICE OF THE COMMISSION:

- A) A TEN-YEAR TERM BEGINNING JANUARY 1, 2007, WITH THE RIGHT TO RENEW THE LEASE FOR AN ADDITIONAL TEN-YEAR PERIOD, UPON SUCH TERMS AND CONDITIONS AS OUTLINED IN THE LEASE;
- B) MINIMUM BIENNIAL ROYALTY OF \$19,000;
- C) AN INITIAL ROYALTY OF \$1.90 PER TON FOR OYSTER SHELL EXTRACTION;
- D) QUARTERLY ROYALTY PAYMENTS;
- E) THE ROYALTY IS TO BE ADJUSTED ANNUALLY IN ACCORDANCE WITH A LIMESTONE PRODUCER PRICE INDEX;
- F) ANNUAL LAND RENT OF \$3.35 PER ACRE; WITH AN AGGREGATE OF \$5,226;

CALENDAR ITEM NO. C34 (CONT'D)

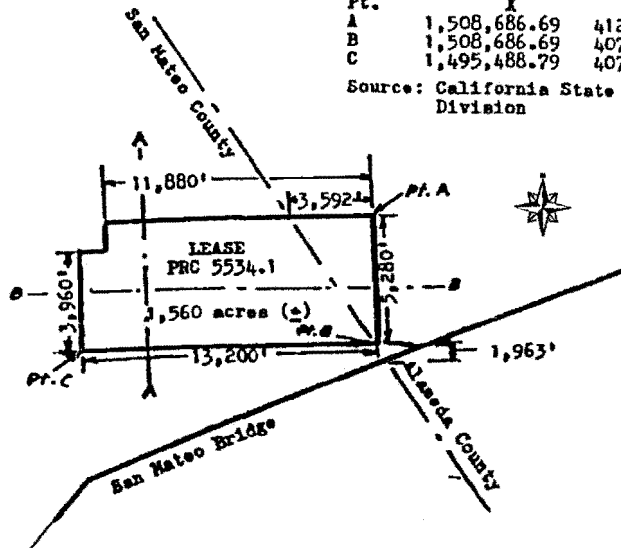
- G) MODIFICATION OF ROYALTY AND ANNUAL LAND RENT - THE STATE RESERVES THE RIGHT TO FIX A DIFFERENT ROYALTY AND ANNUAL LAND RENT PERIODICALLY DURING THE LEASE TERM, AS PROVIDED IN THE LEASE;
- H) SURETY BOND IN THE AMOUNT OF \$19,000;
- I) LIABILITY INSURANCE IN AN AMOUNT OF NO LESS THAN \$1,000,000, AND A SEPARATE POLICY FOR PROTECTION OF WATER QUALITY AND THE ENVIRONMENT IN THE AMOUNT \$2,000,000;
- J) THE GUARANTY BY JERICO, INC., OF THE PERFORMANCE BY THE LESSEE OF ALL THE TERMS, COVENANTS, CONDITIONS, AGREEMENTS, AND OBLIGATIONS OUTLINED IN THE LEASE; AND
- K) THE AUTHORIZED ACTIVITY IS CONTINGENT UPON APPLICANT'S COMPLIANCE WITH APPLICABLE PERMITS, RECOMMENDATIONS, OR LIMITATIONS ISSUED BY FEDERAL, STATE AND LOCAL GOVERNMENTS.
- L) AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO EXECUTE THE GUARANTY AGREEMENT WITH JERICO PRODUCTS, INC. AND SUCH OTHER DOCUMENTS AS MAY BE NECESSARY TO IMPLEMENT THE COMMISSION'S ACTION.

SITE

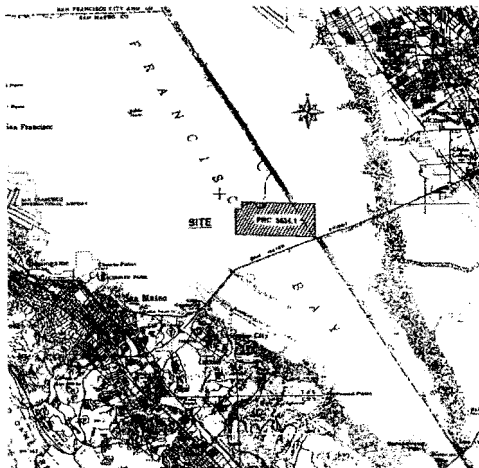


SECTIONS

California Coordinate System
 Zone 3 Coordinates
 Pt. X Y
 A 1,508,686.69 412,779.4
 B 1,508,686.69 407,500.3
 C 1,495,488.79 407,500.3
 Source: California State Lands
 Division



LOCATION



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 5534



000200

CALENDAR PAGE

002644

MINUTE PAGE

DO 9/2006

EXHIBIT B

PRC 5534

LAND DESCRIPTION

A parcel of submerged land in San Francisco Bay, situate between the San Mateo Bridge and the South San Francisco City Boundary, in the Counties of Alameda and San Mateo, California, more particularly described as follows:

BEGINNING at the Northeast corner of said parcel having CCS27 Zone 3 coordinates of North =412779.4, East =1508686.69; thence South to a point having coordinates of North =407500.3, East =1508686.69; thence West to a point having coordinates of North =407500.3, East =1495488.79; thence North 3960 feet; thence East 1320 feet; thence North 1320 feet; thence East to the said point of beginning.

The basis of bearings for this description is California Coordinate System 1927 Zone 3. All bearings and distances are grid and in feet. Coordinates supplied by applicant and shown on United States Army Corps of Engineers Public Notice number 12615-49 on file at California State Lands Commission records.

END OF DESCRIPTION

Prepared 9/19/06 by the California State Lands Commission Boundary Unit

000201

CALENDAR PAGE

002645

MINUTE PAGE